

Law No. XI of 1997 on the Protection of Trademarks and Geographical Indications*

[Extracts]

TABLE OF CONTENTS**

Articles

Part I: Protection of Trademarks

Chapter I: Subject Matter of Trademark Protection

Signs Capable of Distinction	1
Absolute Grounds for Refusal	2–3
Relative Grounds for Refusal	4–6
Declaration of Consent	7
Registrability	8

Chapter II: Rights and Obligations Deriving from Trademark Protection

Right to Trademark Protection	9
Establishment of Trademark Protection	10
Term of Protection.....	11
Rights Conferred by Trademark Protection.....	12
Reproduction of Trademarks in Reference Works	13
Unlawful Use of a Trademark by an Agent or Representative.....	14
Limitations of Trademark Protection	15

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Preamble: "In order to promote the development of Hungarian market economy, to strengthen competition conditions based on the distinction of goods and services, to assist consumers in gathering information; and in conformity with the international obligations of the Republic of Hungary concerning the protection of intellectual property, the Parliament enacts the following Law on the Protection of Trademarks and Geographical Indications."

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Exhaustion of the Rights Conferred by Trademark Protection	16
Acquiescence.....	17
Use of Trademarks.....	18
Chapter III: Trademarks and Trademark Protection as Objects of Property	
Succession in Title.....	19
Pledge	20
Joint Right to Trademark Protection and Joint Trademark Protection.....	21
Application of the Provisions of the Civil Code.....	22
Chapter IV: Trademark License Contracts	
Conclusion of Trademark License Contracts	23
Rights and Obligations of the Parties	24
Termination of License Contracts	25
Effect of Provisions Relating to License Contracts.....	26
Chapter V: Infringement	
Trademark Infringement.....	27
Customs Law Consequences of Trademark Infringement	28
Rights of the Applicant and the Licensee in the Event of Trademark Infringement	29
Chapter VI: Lapse of Trademark Protection	
Modes of Lapse	30
Partial Lapse by Reason of Expiration of Protection	31
Surrender of Protection.....	32
Cancellation.....	33
Lapse by Reason of Non-Use	34
Lapse by Reason of Losing Distinctive Character or Becoming Deceptive	35
Reclaiming of Royalties	36
Part II: Procedures Before the Hungarian Patent Office in Trademark Matters	
Chapter VII: General Provisions Governing Trademark Procedures	
Competence of the Hungarian Patent Office.....	37

Application of the General Rules of Administrative Procedure.....	38
Decisions of the Hungarian Patent Office	39
Establishment of Facts.....	40
Time Limits	41
Restitutio in integrum	42
Interruption and Suspension of the Procedure.....	43
Representation	44
Use of Languages	45
Access to Files.....	46
Chapter VIII: Registration of Trademark Matters, Information to the Public	
Register of Trademark Applications, Trademark Register.....	47
Entries in the Trademark Register	48
Information to the Public.....	49
Chapter IX: Trademark Registration Procedure	
Filing of Trademark Application and Requirements.....	50
Date of Filing.....	51
Unity of the Sign, List of Goods and Services	52
Priority.....	53
Certification of Exhibition.....	54
Examination on Filing	55–56
Communication of Certain Data.....	57
Observations	58
Examination as to Formal Requirements.....	59
Search for Earlier Rights	60
Substantive Examination	61
Amendment and Division of the Application.....	62–63
Registration of the Trademark.....	64
Chapter X: Other Procedures in Trademark Matters	

Renewal Procedure	65–67
Procedure for Division	68–70
Decision on Lapse by Reason of Expiration and Surrender	71
Cancellation Procedure	72–74
Decision on Lapse by Reason of Non-use, Loss of Distinctive Character or Becoming Deceptive	75–76

Part III: Court Proceedings in Trademark Cases

Chapter XI: Review of Decisions of the Hungarian Patent Office

Request for Review	77
Jurisdiction and Competence	78
Rules Governing Proceedings Concerning Requests for Review	79
Publicity	80
Incompatibility	81
Parties to the Proceedings and Other Participants	82–84
Representation	85
Costs of Proceedings	86
Omission	87
Restitutio in integrum	88
Hearing and Taking of Evidence	89
Decisions	90–92
Court Proceedings at Second Instance	93
Exclusion of Request for Reconsideration	94

Chapter XII: Trademark Litigation

Rules Governing Trademark Litigation	95
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Part IV: Collective Marks and Certification Marks

Chapter XIII: Collective Marks

Collective Marks	96
Regulations Governing Use of Collective Marks	97

Assignment of the Protection of Collective Marks	98
Lapse of Protection of Collective Marks	99
Enforcement of Rights Deriving from the Protection of Collective Marks	100

Chapter XIV: Certification Marks

Certification Marks	101
---------------------------	---------------------

Chapter XV: Application of Provisions Relating to Trademarks to Collective and Certification Marks

Application of Provisions Relating to Trademarks	102
--	---------------------

Part V: ¹

Part VI: Final Provisions

Chapter XVIII: Entry into Force; Transitional and Amending Provisions

Rules Establishing Provisions Concerning the Entry Into Force of this Law and Transitional Provisions	117–118
Repealed Provisions	119
Amending Provisions	120
Authorization	121
Approximation to European Community Law	122

PART I PROTECTION OF TRADEMARKS

Chapter I Subject Matter of Trademark Protection

Signs Capable of Distinction

Art. 1.—(1) Trademark protection shall be granted for any signs capable of being represented graphically provided that these are capable of distinguishing goods or services from those of other undertakings.

(2) Signs which may be granted trademark protection:

- (a) words, combination of words, including personal names and slogans,
- (b) letters, numerals,
- (c) figures, pictures,
- (d) two or three-dimensional forms, including the shape of goods or of their packaging,

¹ Articles concerning protection of geographical indications are published in *Industrial Property Laws and Treaties*, HUNGARY—Text 5-001 (*Editor's note*).

- (e) colors, combination of colors, light signals, holograms,
- (f) sound signals and
- (g) combinations of signs under [\(a\) to \(f\)](#).

Absolute Grounds for Refusal

Art. 2.—(1) A sign may not be granted trademark protection if it is not capable of being represented graphically or does not constitute a trademark under [Article 1\(2\)](#).

(2) A sign shall be excluded from trademark protection if it is devoid of any distinctive character, in particular if:

- (a) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services, or which have become customary in the current language or in the practices of the trade;
- (b) it consists of the shape which results from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods.

(3) A sign shall not be excluded from trademark protection in accordance with [paragraph \(2\)](#) if, either before or after the date of priority, it has acquired a distinctive character.

Art. 3.—(1) A sign may not be granted trademark protection if:

- (a) its use would be contrary to public policy, morality or law;
- (b) it is liable to deceive consumers as to the nature, quality, geographical origin or other characteristics of the goods or services;
- (c) its registration was applied for in bad faith.

(2) A sign shall be excluded from trademark protection if:

- (a) it consists exclusively of State emblems or other emblems of an authority or international organization as defined in the Paris Convention for the Protection of Industrial Property;
- (b) it relates to medals, badges, armorial bearings, not covered by [subparagraph \(a\)](#) above, or to official signs and hallmarks indicating control and warranty which are of public interest;
- (c) it consists of symbols having a close relation to religious or other beliefs.

(3) Trademark protection shall be granted with the consent of the competent authority to signs of which the emblems defined under [paragraph 2\(a\)](#) and [\(b\)](#) form only an element.

Relative Grounds for Refusal

Art. 4.—(1) A sign may not be granted trademark protection:

- (a) with respect to identical goods or services, if the sign with the later date of priority is identical with an earlier trademark;
- (b) if because of its identity with or similarity to the earlier trademark and the identity or similarity of the goods or services there exists a likelihood of confusion on the part of the consumers;

- (c) with respect to dissimilar goods or services if the sign with the later date of priority is identical with or similar to an earlier trademark having a reputation in the country where the use of the later sign would take unfair advantage of or be detrimental to the distinctive character or the repute of the earlier trademark.

(2) “Earlier trademark” means a trademark whose registration was applied for with an earlier date of priority or a sign which has become well-known at an earlier date in the country under the Paris Convention for the Protection of Industrial Property even if that sign is not registered.

(3) A sign may not be refused trademark protection if it conflicts with an earlier trademark which has not been used by the proprietor in accordance with the provisions of [Article 18](#).

Art. 5.—(1) A sign may not be granted trademark protection:

- (a) if it would infringe earlier personal rights of others, in particular a right in a name or of personal portrayal;
- (b) if it would conflict with an earlier copyright or industrial property right of others, including conflict with the name of a protected plant variety or animal breed or with a geographical indication.

(2) With respect to identical or similar goods or services, a sign shall not be granted trademark protection:

- (a) if it has been used effectively in the country without registration where the use of the sign without the consent of the prior user would be contrary to law;
- (b) if it is identical with or similar to a trademark whose protection has been expired for less than two years, unless the earlier trademark had not been used.

(3) In determining whether a right, use or expiration is deemed as earlier within the meaning of [paragraphs \(1\) and \(2\)](#), the priority of the application for registration shall be taken into account.

Art. 6. A sign shall be excluded from trademark protection if the representative or agent applies for registration in his own name, without the authorization of the proprietor.

Declaration of Consent

Art. 7.—(1) A sign may not be refused trademark protection in accordance with [Articles 4 and 5](#) if the proprietor of the earlier right consents to the registration of the later sign.

(2) A declaration of consent shall be valid if drawn up as a public instrument or private paper providing sufficient evidence.

(3) A declaration of consent may be contested under those provisions of the Civil Code that concern actions for avoidance of a contract by reason of mistake, deception or threat; the declaration may not be withdrawn and may not be replaced by the judgment of a Court.

Registrability

Art. 8.—(1) Trademark protection shall be granted to a sign if

- (a) it satisfies the requirements of [Article 1](#) and is not excluded from trademark protection under the terms of [Articles 2 to 7](#) and
- (b) the relevant application complies with the requirements laid down by this Law.

Chapter II

Rights and Obligations Deriving from Trademark Protection

Right to Trademark Protection

Art. 9.—(1) The right to the legal protection of a trademark (hereinafter referred to as “trademark protection”) shall belong to the person who has registered the trademark according to the procedure prescribed by this Law.

(2) Any natural or legal person or a company without legal personality, irrespective of pursuing economic activities, may apply for trademark protection.

(3) If two or more persons apply for registration jointly, trademark protection shall belong to them jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise provided.

Establishment of Trademark Protection

Art. 10. Trademark protection shall begin with registration and shall be effective retroactively from the date of application.

Term of Protection

Art. 11.—(1) Trademark protection shall have a term of 10 years beginning on the filing date of the application.

(2) Trademark protection shall be renewable for further periods of 10 years. In the event of renewal, the new period of protection shall begin on the day following the date of expiration of the previous period.

Rights Conferred by Trademark Protection

Art. 12.—(1) Trademark protection shall afford the proprietor of the trademark the exclusive right to use the trademark.

(2) On the basis of the exclusive right of use, the proprietor shall be entitled to prevent any person not having his consent from using in the course of trade:

- (a) any sign identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;
 - (b) any sign where, because of its identity with or similarity to the trademark and the identity or similarity of the goods or services, there exists a likelihood of confusion on the part of the public; or
 - (c) any sign which is identical with or similar to the trademark in relation to goods and services which are not identical with or not similar to those for which the trademark is registered, provided that the trademark has a reputation in the country and the use of the sign would take unfair advantage of or would be detrimental to the distinctive character or the repute of the trademark.
- (3) The following, in particular, shall be prohibited under [paragraph \(2\)](#):
- (a) affixing the sign to the goods or to the packaging thereof;
 - (b) putting on the market or offering for sale the goods under that sign or stocking them for such purposes;
 - (c) offering or supplying services under that sign;
 - (d) importing or exporting the goods under the sign;
 - (e) using the sign in business correspondence and in advertising.

Reproduction of Trademarks in Reference Works

Art. 13. If the reproduction of a trademark in a dictionary, lexicon, encyclopedia or similar reference work gives the impression that it constitutes the generic name of the goods or services for which the trademark is registered, the publisher of the work shall, at the request of the proprietor of the trademark, indicate—in the next edition of the publication at the latest—that the trademark has been registered and is under trademark protection.

Unlawful Use of a Trademark by an Agent or Representative

Art. 14. Where a trademark is registered in the name of the agent or representative without the proprietor's authorization, the proprietor shall be entitled to oppose the unauthorized use of his trademark by his agent or representative, unless the agent or representative justifies his action.

Limitations of Trademark Protection

Art. 15.—(1) Trademark protection shall not entitle the proprietor to prohibit a third party from using in the course of trade and in accordance with the requirements of fair business practice,

- (a) his own name or address;
- (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods or service;
- (c) the trademark where it is necessary to indicate the intended purpose of the goods or services, in particular in the case of accessories or spare parts.

(2) On the basis of [paragraph \(1\)\(a\)](#), only a natural person may invoke his own name or address against the proprietor of the trademark.

Exhaustion of the Rights Conferred by Trademark Protection

Art. 16.—(1) Trademark protection shall not entitle the proprietor to prohibit the use of the trademark in relation to goods which have been put on the domestic market by him or with his express consent.

(2) [Paragraph \(1\)](#) shall not apply where the proprietor has legitimate reasons to oppose further commercialization of the goods, in particular where the condition of the goods has been changed or impaired.

Acquiescence

Art. 17.—(1) Where the proprietor has acquiesced, for a period of five successive years, in the use of a later trademark in the country while being aware of such use, he shall no longer be entitled either to oppose the use of the later trademark in the country or to request, on the basis of his earlier trademark, the cancellation thereof ([Article 33\(2\)\(b\)](#)).

(2) [Paragraph \(1\)](#) shall only apply to goods or services in relation to which the later trademark was actually used.

(3) [Paragraph \(1\)](#) shall not apply where the later trademark was applied for in bad faith.

(4) The proprietor of a later trademark shall not be entitled to oppose the use of the earlier trademark, even though the proprietor of the earlier trademark may no longer oppose, on the basis of [paragraph \(1\)](#), the use of the later trademark.

(5) The provisions of [paragraphs \(1\) to \(4\)](#) shall apply *mutatis mutandis* to earlier trademarks having a reputation, to trademarks that have become well-known in the country at an earlier date, as well as to earlier rights as referred to in [Article 5\(1\)](#) and [\(2\)\(a\)](#).

Use of Trademarks

Art. 18.—(1) If, within a period of five years following the date of registration, the proprietor has not commenced genuine use of the trademark in the country in connection with the goods or services for which it is registered, or if such use has been suspended during an uninterrupted period of five years, trademark protection shall be subject to the legal consequences provided for in this Law ([Articles 4\(3\)](#), [30\(d\)](#), [33\(2\)\(a\)](#) and [34](#)), unless the proprietor duly justifies non-use.

(2) For the purposes of [paragraph \(1\)](#), the following shall also constitute genuine use of the trademark in the country:

- (a) use of the trademark in a form differing from the registered form only in elements which do not alter the distinctive character;
- (b) affixing of the trademark to goods or to the packaging thereof in the territory of the country solely for export purposes.

(3) For the purposes of [paragraph \(1\)](#), use of the trademark with the authorization of the proprietor shall be deemed to constitute use by the proprietor.

Chapter III

Trademarks and Trademark Protection as Objects of Property

Succession in Title

Art. 19.—(1) Rights deriving from a trademark and from trademark protection may be transferred and assigned.

(2) The successor in title to a legal person or to a company without legal personality shall also acquire the trademark, unless otherwise provided by the parties or the circumstances clearly dictate otherwise.

(3) Trademark protection may be assigned by contract. Trademark protection may also be assigned in respect of some of the goods or services for which the trademark is registered.

(4) The contract for the assignment of trademark protection shall be null and void where the assignment is likely to mislead the public.

(5) Where a trademark is applied for or is registered in the name of the agent or representative without the proprietor's authorization, the latter shall be entitled to demand the assignment in his favor of the right to trademark protection or of the registration.

Pledge

Art. 20. Rights deriving from a trademark and from trademark protection may be pledged. A right of pledge shall only be constituted if the mortgage contract is made in writing and the right of pledge is entered in the Trademark Register.

Joint Right to Trademark Protection and Joint Trademark Protection

Art. 21.—(1) Where there are two or more proprietors of the same trademark, each of the joint proprietors may dispose of his own share. Where one joint proprietor wishes to dispose of his share, the other joint proprietors shall enjoy a right of preemption with respect to third parties.

(2) The trademark may be used by any one of the joint proprietors alone; however, he shall be obliged to pay appropriate remuneration to the other joint proprietors, in proportion to their shares. For the purposes of [Article 18](#), such use of the trademark shall be deemed to constitute use by all of the proprietors.

(3) A license for the use of a trademark may only be granted to a third party jointly by the joint proprietors. Collective consent may be replaced by a court decision under the general provisions of civil law.

(4) In the event of doubt, the shares of all joint proprietors shall be deemed equal. If one of the joint proprietors surrenders his trademark protection, the rights of the other joint proprietors shall extend to his share, in proportion to their own shares.

(5) Any one of the joint proprietors may also act individually to renew, enforce and protect trademark rights. His legal acts—compromise, recognition and waiver of rights excepted—shall be binding on any other joint proprietor who has failed to observe a time limit or to perform a required act, provided that such other joint proprietor has not subsequently remedied his omission.

(6) Where the acts of the joint proprietors are divergent, a decision shall be taken having regard to all other relevant facts in the procedure.

(7) Costs relating to joint trademark protection shall be borne by the joint proprietors in proportion to their shares. If, despite being notified, a joint proprietor does not pay the costs for which he is liable, the joint proprietor who has paid those costs may claim assignment to him of the share belonging to the joint proprietor having not met his obligations.

(8) The provisions concerning joint trademark protection shall apply *mutatis mutandis* to joint trademark applications.

Application of the Provisions of the Civil Code

Art. 22. Matters relating to the transfer, assignment and pledge of rights deriving from a trademark and from trademark protection, as well as to the joint right to trademark protection and joint trademark protection that are not covered by this Law shall be governed by the provisions of the Civil Code.

Chapter IV Trademark License Contracts

Conclusion of Trademark License Contracts

Art. 23.—(1) Under a trademark license contract, the proprietor of trademark protection licenses the right to use a trademark and the user (licensee) is required to pay royalties.

(2) The parties shall be free to determine the contents of the license contract. However, any license contract whose fulfillment is likely to mislead the public shall be null and void.

Right and Obligations of the Parties

Art. 24.—(1) The proprietor shall guarantee for the whole duration of the license contract that no third parties hold rights in the trademark preventing or limiting exercise of the right of use. This guarantee shall be subject to the rules applicable to a vendor who transfers proprietary rights, except that the licensee may, instead of cancellation, terminate the contract with immediate effect.

(2) The proprietor shall inform the licensee of any third party rights in relation to the trademark and of any other important circumstances. However, he shall be obliged to transfer economic, technical and organizational know-how only if this has been expressly agreed.

(3) The proprietor may control the licensee as to the quality of the goods bearing the trademark or of the services supplied under the trademark.

(4) The license contract shall cover all goods and services for which the trademark is registered and every mode of use, to any extent whatsoever, without limitation in time or as to territory.

(5) A right of use shall be exclusive only if expressly stipulated by contract. In the case of an exclusive license, the proprietor may also use the trademark in addition to the licensee who has acquired the right of use, unless expressly excluded by contract. The proprietor may terminate the exclusivity of a license, subject to a proportional reduction in the royalty, if the licensee does not begin use of the trademark within a reasonable period of time.

(6) The licensee may transfer the license or grant sub-licenses to third parties only with the express consent of the proprietor.

Termination of License Contracts

Art. 25. A license contract shall terminate, with effect for the future, when the contractual period expires or when certain specified circumstance occur or when the trademark protection expires.

Effect of Provisions Relating to License Contracts

Art. 26.—(1) The parties may derogate by mutual consent from the provisions of license contracts where not prohibited by law.

(2) Matters relating to license contracts that are not covered by this Law shall be governed by the provisions of the Civil Code.

Chapter V Infringement

Trademark Infringement

Art. 27.—(1) Any person who unlawfully uses a trademark in contravention of the provisions of [Article 12](#), commits trademark infringement.

(2) The proprietor may, according to the circumstances of the case, have recourse to the following civil remedies:

- (a) request that the fact of infringement be declared by the court;
- (b) request an injunction that the infringer cease his infringement;
- (c) demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution;
- (d) demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;
- (e) require surrender of the gains obtained by infringement of the trademark;
- (f) request the seizure of the means used exclusively or predominantly for the infringement and of the infringing products and the packaging thereof.

(3) The court may rule, at the request of the proprietor, that the infringing nature of the means, materials, products and packaging seized be removed—in particular by removing the trademark—or, where this is not possible, that they be destroyed. In well-founded cases the court may order, in place of destruction, that the means and materials seized be auctioned according to the provisions on court procedure for the execution of decisions; in such case, the court shall decide how the sum obtained is to be used.

(4) Seizure of the means and materials used for trademark infringement and of the infringing products and packaging shall be admissible even though they are not in the ownership of the infringer if their proprietor knew or had reasonable grounds to know of the trademark infringement.

(5) Where a trademark is infringed, the proprietor may also claim damages under the rules of civil liability.

Customs Law Consequences of Trademark Infringement

Art. 28. Where a trademark is infringed, the proprietor may request—under the provisions of special legislation—measures by the customs authorities to prevent infringing goods from being placed on the market in the country.

Rights of the Applicant and the Licensee in the Event of Trademark Infringement

Art. 29.—(1) An applicant may also institute proceedings for trademark infringement; however, the proceedings shall be suspended until the decision to register the trademark has become final.

(2) A licensee recorded in the Trademark Register may institute proceedings for trademark infringement in his own name if he has invited the proprietor to take appropriate action in order to stop the infringement and the proprietor has failed to take action within 30 days of the invitation.

Chapter VI Lapse of Trademark Protection

Modes of Lapse

Art. 30. Trademark protection shall lapse:

- (a) when the period of protection expires without renewal ([Article 11](#) and [31](#)), on the day following the date of expiration;
- (b) if the proprietor surrenders protection ([Article 32](#)), on the day following receipt of the surrender or at an earlier date specified by the person surrendering protection;
- (c) if the trademark is canceled ([Article 33](#)), with retroactive effect to the filing date of the application;
- (d) if the proprietor has not put the trademark to genuine use ([Articles 18](#) and [34](#)), with retroactive effect to the starting date of the procedure for a decision on the lapse of protection or to the date of priority of the conflicting later trademark, whichever is earlier;
- (e) if the trademark loses its distinctive character or becomes deceptive ([Article 35](#)), with retroactive effect to the starting date of the procedure for a decision on the lapse of protection.

Partial Lapse by Reason of Expiration of Protection

Art. 31. Where trademark protection is renewed in respect of some only of the goods or services for which the trademark has been registered, trademark protection shall lapse by reason of expiration of protection only in respect of the parts not covered by the renewal.

Surrender of Protection

Art. 32.—(1) The proprietor named in the Trademark Register may surrender trademark protection by a written declaration addressed to the Hungarian Patent Office.

(2) If the surrender affects the rights of third parties deriving from legislation, from decisions of an authority, from a license contract or any other contract recorded in the Trademark Register, or if a lawsuit is recorded in the Trademark Register, it shall take effect only with the consent of the parties concerned.

(3) Surrender shall also be possible in respect of some only of the goods or services for which the trademark is registered.

(4) Surrender of trademark protection may not be withdrawn.

Cancellation

Art. 33.—(1) The trademark shall be canceled:

(a) if the subject matter of trademark protection does not satisfy the requirements laid down in [Article 8\(1\)\(a\)](#);

(b) if the subject matter of trademark protection differs from, or the list of goods and services extends beyond, the content of the application as filed at the accorded filing date or—in the case of division—the content of the divisional application.

(2) The trademark may not be canceled:

(a) if it conflicts with an earlier trademark ([Article 4\(2\)](#)) the use of which does not satisfy, at the time of the cancellation procedure, the requirements laid down in [Article 18](#); or

(b) if it conflicts with an earlier trademark, non-registered sign or any other rights whose proprietor was aware of the registration of the later trademark and has acquiesced, for a period of five successive years, in the use of that trademark, unless the proprietor of the later trademark acted in bad faith.

(3) Where the grounds for cancellation exist in respect of some only of the goods or services for which the trademark is registered, cancellation shall be pronounced in the form of a corresponding limitation of the protection.

(4) Should a request for cancellation be rejected by a final decision, a new procedure for the cancellation of the same trademark on the same grounds may not be instituted by any person.

Lapse by Reason of Non-Use

Art. 34.—(1) Trademark protection shall lapse by reason of non-use in respect of some or all of the goods or services for which the trademark is registered, depending on whether non-use covers all or some of the goods or services for which the trademark is registered.

(2) Lapse of trademark protection by reason of non-use shall not be declared if, during the interval between expiry of the period laid down in [Article 18\(1\)](#) and filing of the request for declaring lapse by reason of non-use, genuine use of the trademark has been started or resumed. This provision shall not apply where the commencement or resumption of use within a period of three months preceding the filing of the request occurs only after the proprietor becomes aware that a decision on lapse by reason of non-use will be requested.

(3) Should the request for a decision on lapse by reason of non-use be rejected by a final decision, a new procedure for a decision on lapse of the same trademark on the same grounds may not be instituted by any person.

Lapse by Reason of Losing Distinctive Character or Becoming Deceptive

Art. 35.—(1) Trademark protection shall lapse:

- (a) if, in consequence of acts of the proprietor, the trademark has become the common name in the trade for a product or service for which it is registered; or
- (b) if, in consequence of use, the trademark has become deceptive, particularly as to the nature, quality or geographical origin of the goods or services.

(2) Trademark protection shall lapse by reason of losing distinctive character or becoming deceptive in respect of some or all of the goods or services for which the trademark is registered, depending on whether the grounds for lapse exist in respect of all or some of the goods or services for which the trademark is registered.

(3) Should a request for a decision on lapse by reason of losing distinctive character or becoming deceptive be rejected by a final decision, a new procedure for a decision on lapse of the same trademark on the same grounds may not be instituted by any person.

Reclaiming of Royalties

Art. 36. If trademark protection lapses *ex tunc*, only the portion of the royalties collected by the proprietor that was not covered by the profits derived from the use of the trademark may be reclaimed.

PART II

PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN TRADEMARK MATTERS

Chapter VII

General Provisions Governing Trademark Procedures

Competence of the Hungarian Patent Office

Art. 37. The Hungarian Patent Office shall have competence in the following trademark matters:

- (a) registration of trademarks,
- (b) renewal of trademark protection,
- (c) decision on lapse of trademark protection,
- (d) cancellation of trademarks,
- (e) division of trademark protection,
- (f) recording of trademark applications and trademarks,
- (g) official information.

Application of the General Rules of Administrative Procedure

Art. 38. The Hungarian Patent Office shall proceed in trademark matters under its own competence, with the exceptions laid down in this Law, by applying the provisions of Law No. IV of 1957 on the general rules of administrative procedure.

Decisions of the Hungarian Patent Office

Art. 39.—(1) In cancellation procedures, in procedures for a decision on the loss of distinctive character and on becoming deceptive, as well as on lapse for non-use, the Hungarian Patent Office shall proceed in the form of a board consisting of three members; the board shall take its decisions on a majority.

(2) Decisions on the registration of trademarks, on the renewal, division and lapse of trademark protection and on the cancellation of trademarks shall be considered decisions on merits.

(3) Decisions of the Hungarian Patent Office shall take effect on service unless a review is requested.

(4) The Hungarian Patent Office may withdraw or modify its decisions on merits in trademark matters only if a request for review is made and only until such request is transmitted to the court. Its decisions may not be invalidated or changed by a supervisory authority; they shall be without appeal.

(5) The decisions of the Hungarian Patent Office in trademark matters may be repealed or changed by the court in conformity with the provisions of [Chapter XI](#).

Establishment of Facts

Art. 40.—(1) In trademark procedures before it, the Hungarian Patent Office shall examine the facts of its own motion, it shall not be restricted in such examination to the statements and requests of the parties. However, its decisions may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The parties shall be invited or notified to remedy insufficiencies of documents submitted in trademark matters.

Time Limits

Art. 41.—(1) The time limits prescribed by this Law shall not be extended. Failure to comply with such time limits shall involve legal consequences without notice.

(2) Where this Law does not prescribe any time limit to remedy insufficiencies or to submit a statement, a time limit of at least 30 days shall be fixed which may be extended on request before the expiration of the period. A time limit of more than three months and more than three extensions of a time limit may be granted only in special cases.

(3) The time limits generally prescribed to terminate administrative procedures shall not apply to trademark matters.

Restitutio in integrum

Art. 42.—(1) In trademark matters—unless excluded under [paragraph \(5\)](#)—a request for *restitutio in integrum* may be submitted within 15 days of the unobserved time limit or of the last day of the unobserved period. The request must state the grounds for failure to comply and the circumstances showing that the failure to comply occurred without fault.

(2) Where the failure to comply became known to the party subsequently or the cause thereof was removed subsequently, the time limit shall be reckoned from the date on which the failure to comply became known or the cause thereof was removed. The request for *restitutio in integrum*

shall be admissible only within six months of the time limit not complied with or the last day of the period not complied with.

(3) Where a time limit is not complied with, the omitted act must be carried out simultaneously with the filing of the request for *restitutio in integrum* or—if it is admissible—an extension of the time limit may be requested.

(4) If the Hungarian Patent Office grants *restitutio in integrum*, the acts carried out by the party in default shall be considered to have been performed within the time limit not complied with; a hearing held on the day not complied with shall be repeated where necessary. Depending on the outcome of the new hearing, it shall be decided whether the decision taken at the original hearing should stand or should be revoked in whole or in part.

(5) *Restitutio in integrum* shall be excluded:

- (a) in the event of failure to comply with the time limit prescribed for filing the declaration of priority ([Article 53\(2\)](#));
- (b) in the event of failure to comply with the time limit of six months fixed for claiming convention or exhibition priority.

Interruption and Suspension of the Procedure

Art. 43.—(1) In the event of the death of a party or the dissolution of a legal person or of a company without legal personality, the procedure shall be interrupted until the person of the successor in title is registered and his claim justified.

(2) Where legal proceedings are instituted with respect to the entitlement to file a trademark application or the right to trademark protection, the trademark procedure shall be suspended until the court decision becomes final.

Representation

Art. 44.—(1) Foreign applicants shall be represented by an authorized patent attorney or an attorney-at-law, having residence in the country, in all trademark matters within the competence of the Hungarian Patent Office.

(2) A power of attorney shall be drawn up as a public instrument or as a private paper having the force of evidence. A power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

(3) The Hungarian Patent Office shall appoint a trustee from among the patent attorneys and attorneys-at-law:

- (a) for unknown heirs or for a party whose whereabouts are unknown, at the request of the adverse party, or
- (b) for a foreign party not having an authorized representative.

Use of Languages

Art. 45.—(1) The language of trademark procedure shall be Hungarian, the trademark application shall be in Hungarian.

(2) In trademark matters, documents in foreign languages may also be filed; however, the Hungarian Patent Office may require that a translation into Hungarian, certified where necessary, be filed.

Access to Files

Art. 46.—(1) Prior to the communication of certain data of the trademark application ([Article 57](#)), only the applicant and his representative, and after the communication of data, any person may inspect the files, including the sign and the list of goods and services.

(2) Draft decisions and all other documents used for the preparation of decisions and expert opinions which are not communicated to the parties shall be excluded from inspection even after the communication of data:

(3) Upon payment of a fee, the Hungarian Patent Office shall issue copies of documents that may be inspected.

(4) Procedures in trademark matters shall be public only if there is an adverse party participating.

Chapter VIII

Registration of Trademark Matters, Information to the Public

Register of Trademark Applications, Trademark Register

Art. 47.—(1) The Hungarian Patent Office shall keep a Register of Trademark Applications and a Trademark Register which shall contain all facts and circumstances concerning trademark rights.

(2) The Trademark Register shall contain, in particular, the following entries:

- (a) registration number of the trademark;
- (b) reference number;
- (c) representation of the trademark;
- (d) list of goods and services;
- (e) name (official designation) and address (place of business) of the proprietor of the trademark;
- (f) name and place of business of the representative;
- (g) filing date of the application;
- (h) priority data;
- (i) date of the decision on the registration of the trademark;
- (j) renewal of trademark protection;
- (k) legal title and date of the expiration of protection and limitation of trademark protection;
- (l) exploitation licenses.

(3) Any right relative to trademark protection may be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Trademark Register.

(4) Any person may have access to the Trademark Register and may ask for a copy of the registered data on payment of a fee.

(5) Following communication of data of the applications, the provisions of [paragraphs \(3\) and \(4\)](#) shall apply *mutatis mutandis* to the Register of Trademark Applications.

Entries in the Trademark Register

Art. 48.—(1) Entries in the Register of Trademark Applications or in the Trademark Register shall be made exclusively on the basis of decisions of the Hungarian Patent Office or court decisions. Entries on the basis of the decisions listed in [Article 77\(1\)](#), may only be made if no review is requested within the stipulated time limit or if the decision of the court concerning the review has become final.

(2) The Hungarian Patent Office shall decide on rights and facts relating to trademark protection on the basis of a request submitted in writing. An official document or private paper providing sufficient evidence shall be attached to such request.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal defects or which lacks an official authentication required by law, or if it is clear from the contents of the document that the legal statement included therein is invalid.

(4) Where the request or its enclosures contain rectifiable defects, the applicant shall be invited to remedy them or to submit comments.

Information to the Public

Art. 49. The official journal of the Hungarian Patent Office shall contain, in particular, the following data and facts relating to trademark applications and trademarks:

- (a) on communication of certain data, the name and address (place of business) of the applicant and the representative, the reference number of the application, the filing date and the date of priority, where the latter is different, the sign and the list of goods and services;
- (b) after registration of the trademark, the registration number, the name and address (place of business) of the proprietor, name and address (place of business) of the representative, the reference number, the filing date and the date of priority, where the latter is different, the trademark, the list of goods and services and the date of the decision on registration;
- (c) in the case of renewal or division of trademark protection, the relevant data;
- (d) legal title and date of the expiration of trademark protection;
- (e) changes in rights relating to trademark protection entered in the Trademark Register.

Chapter IX Trademark Registration Procedure

Filing of Trademark Application and Requirements

Art. 50.—(1) The procedure for the registration of a trademark shall begin with the filing of a trademark application with the Hungarian Patent Office.

(2) A trademark application shall contain a request for trademark registration, the sign, the list of goods and services and, where necessary, other relevant documents.

(3) Detailed formal requirements to be complied with by trademark applications shall be laid down by special legislation.

(4) A trademark application shall be subject to the payment of a filing fee determined by special legislation; the fee shall be payable within two months after the date of filing.

(5) Where the documents making up the trademark application have been prepared in a foreign language, the list of goods and services shall be filed in Hungarian within four months after the date of filing.

(6) Up to registration, the applicant may withdraw the trademark application in compliance with the provisions of [Article 32](#). The Hungarian Patent Office shall take note of the withdrawal by a decision.

Date of Filing

Art. 51.—(1) The filing date of an application shall be the date on which the application filed with the Hungarian Patent Office contains at least:

- (a) an indication that trademark protection is sought,
- (b) information identifying the applicant,
- (c) a representation of the sign and a list of goods and services, even though they do not comply with other requirements.

(2) In place of the filing of a representation of the sign and a list of goods and services, reference to a priority document shall suffice to accord a date of filing for the application.

Unity of the Sign, List of Goods and Services

Art. 52.—(1) A trademark application may seek trademark protection for one sign only.

(2) The list of goods and services is the enumeration of goods and services with respect to which protection of the sign is sought.

(3) In the list of goods and services, the goods or services shall be grouped according to the classes of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks and, where possible, by using the terms included therein.

Priority

Art. 53.—(1) The date establishing priority shall be:

- (a) generally, the date of filing of the trademark application (application priority);
- (b) in the cases defined by the Paris Convention for the Protection of Industrial Property, the date of filing of the foreign application (convention priority);
- (c) in the cases defined in the communication of the President of the Hungarian Patent Office published in the Hungarian Gazette, the starting day of displaying the sign at an exhibition, which is not earlier than 6 months prior to the date of filing of the application (exhibition priority);
- (d) the date of filing of a previously filed and pending trademark application for the same sign, which is not earlier than 6 months prior to the current filing, provided that it has not served as a basis for claiming a right of priority (internal priority).

(2) Convention, exhibition and internal priority shall be claimed within two months after the filing of the application. The document establishing convention priority and the certification of exhibition shall be filed within four months after the date of filing of the application.

Certification of Exhibition

Art. 54.—(1) The authority responsible for the exhibition shall attest to the display and date of the exhibition by means of a certificate of exhibition.

(2) The certificate must be accompanied by the sign whose identity with the sign displayed at the exhibition shall be attested.

(3) The certificate may only be issued during the period of the exhibition and only while the sign can be seen at the exhibition.

Examination on Filing

Art. 55. Following the filing of a trademark application, the Hungarian Patent Office shall examine whether

- (a) the application satisfies the requirements for according a date of filing ([Article 51](#)),
- (b) the filing fee has been paid ([Article 50\(4\)](#)),
- (c) the list of goods has been filed in the Hungarian language ([Article 50\(5\)](#)).

Art. 56.—(1) If a date of filing cannot be accorded, the applicant shall be invited to correct the defects within 30 days.

(2) If the applicant complies with that invitation within the specified time limit, the date of receipt of the correction shall be accorded as the date of filing. Failing which, the trademark application shall be considered withdrawn.

(3) The applicant shall be notified of the accorded date of filing.

(4) If the filing fee has not been paid or the list of goods has not been filed in the Hungarian language, the Hungarian Patent Office shall invite the applicant to remedy the defects within the period specified by this Law ([Article 50\(4\)](#) and [\(5\)](#)). Failing which, the application shall be considered withdrawn.

Communication of Certain Data

Art. 57. Where, either on filing or as a result of a correction, a trademark application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in [Article 49\(a\)](#) in its official journal (communication of certain data).

Observations

Art. 58.—(1) During the procedure for the registration of a trademark any person, except for the cases under [paragraph \(2\)](#), may file an observation with the Hungarian Patent Office to the effect that the sign or the application does not comply with a requirement of registrability.

(2) Only the proprietor of an earlier right may file an observation on the basis of [Articles 4 to 6](#).

(3) Observations shall be taken into consideration when the requirement objected to in the observation is examined, unless they are made by a person not entitled to file an observation.

(4) The person making the observation shall not be a party to the procedure for the registration of a trademark. That person shall be notified of the outcome of his observation by sending him the decision on registration of the trademark.

Examination as to Formal Requirements

Art. 59.—(1) If a trademark application satisfies the requirements examined under [Article 55](#), the Hungarian Patent Office shall examine whether the formal requirements of [Article 50\(2\)](#) and [\(3\)](#) have been satisfied and whether the sign is uniform ([Article 52\(1\)](#)).

(2) Where the application does not comply with the requirements examined under [paragraph \(1\)](#), the applicant shall be invited to correct the defects or to divide the application.

(3) The trademark application shall be rejected if, in spite of correction or comments, it still does not comply with the requirements under examination. An application may be rejected only for grounds precisely and expressly stated in the invitation.

(4) Where the applicant does not reply to the invitation within the fixed time limit or does not divide the application, the trademark application shall be considered withdrawn.

Search for Earlier Rights

Art. 60.—(1) If a trademark application satisfies the requirements laid down in [Article 55](#), the Hungarian Patent Office shall carry out a search for earlier rights and shall draw up a search report on the basis of the sign, with due regard to the list of goods.

(2) The search report shall mention those data which may be taken into consideration in deciding whether the sign to which the trademark application relates is registrable.

Substantive Examination

Art. 61.—(1) The Hungarian Patent Office shall carry out a substantive examination of the trademark application on the basis of the search report.

(2) The substantive examination shall ascertain:

(a) whether the sign meets the requirements of [Article 1](#) and whether it is not excluded from trademark protection under [Articles 2 to 7](#) and

(b) whether the application complies with the requirements laid down by this Law.

(3) If a trademark application does not meet the requirements examined under [paragraph \(2\)](#), the applicant shall be invited, according to the nature of the objection, to correct the defects or to submit comments.

(4) A trademark application shall be rejected in whole or in part if it does not meet the examined requirements even after the correction of the defects or the submitting of comments. An application may be rejected only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. Where necessary, a further invitation shall be issued.

(5) If the applicant fails to reply to the invitation within the fixed time limit, the trademark application shall be considered withdrawn.

Amendment and Division of the Application

Art. 62.—(1) A trademark application may not be amended in respect of:

(a) the sign,

(b) the list of goods in such a way that it extends beyond that contained in the application at the date of filing.

(2) The applicant shall be entitled to amend the list of goods as laid down in [paragraph \(1\)\(b\)](#) up to such time as the decision on the registration of the trademark becomes final.

Art. 63.—(1) The applicant may divide the application up to such time as the decision on the registration of the trademark becomes final,

- (a) prior to the official invitation to this effect ([Article 59\(2\)](#)), if he claimed protection for more than one sign in one application; or
- (b) if, by dividing the list of goods, he claims protection for specified goods or services separately.

(2) A fee prescribed by special legislation shall be paid for division within two months from the filing of the relevant request.

(3) If the fee for division is not paid upon filing the request, the Hungarian Patent Office shall invite the applicant to correct the defect within the time limit fixed in [paragraph \(2\)](#). Failing which, the request for division shall be considered withdrawn.

Registration of the Trademark

Art. 64.—(1) If the trademark application and the sign to which it relates meet all the requirements of the examination ([Article 61\(2\)](#)), the Hungarian Patent Office shall register the subject matter of the application as a trademark.

(2) The registration shall be recorded in the Trademark Register ([Article 47](#)), and relevant information shall be given in the official journal of the Hungarian Patent Office ([Article 49\(b\)](#)).

(3) After registration, the Hungarian Patent Office shall issue a trademark certificate to which the extract from the Register shall be annexed.

Chapter X Other Procedures in Trademark Matters

Renewal Procedure

Art. 65.—(1) Trademark protection shall be renewed ([Article 11\(2\)](#)) by the Hungarian Patent Office at the request of the proprietor.

(2) The request for renewal shall contain the registration number of the trademark; the provisions concerning the requirements of trademark applications ([Article 50\(2\)](#) and [\(3\)](#)) shall apply *mutatis mutandis* to the request and to its requirements.

(3) The request for renewal shall be submitted not earlier than twelve months before the expiry of protection and not later than within a period of six months from the date of expiry.

(4) A fee prescribed by special legislation shall be paid for the request for renewal within two months from the filing of the relevant request.

(5) On renewal of protection, the trademark may not be altered and the list of goods may not be extended.

Art. 66.—(1) If the request for renewal does not comply with the requirements laid down in [Article 65\(1\) to \(4\)](#), the requesting party shall be invited to correct the defects.

(2) The request for renewal shall be rejected if, in spite of correction or comments, it still does not comply with the requirements stated in the invitation. Where the requesting party does not reply to the invitation within the fixed time limit, the request for renewal shall be considered withdrawn.

(3) If the fee for the request for renewal has not been paid, the Hungarian Patent Office shall invite the requesting party to remedy the defects within the period specified by this Law. Failing which, the request shall be considered withdrawn.

Art. 67.—(1) If the request meets the requirements laid down in [Article 65](#), the Hungarian Patent Office shall renew trademark protection.

(2) The renewal shall be recorded in the Trademark Register, and relevant information shall be given in the official journal of the Hungarian Patent Office.

(3) After renewal, the Hungarian Patent Office shall issue a trademark certificate to which the extract from the Register shall be annexed.

Procedure for Division

Art. 68.—(1) By separating the list of goods, the proprietor may divide trademark protection in respect of specified goods and services.

(2) A request for division of trademark protection and the necessary documents shall be filed in as many copies, in conformity with each other, as there are parts into which the initial list of goods is to be divided.

(3) The request for division shall contain the registration number of the initial trademark; the provisions concerning the requirements of trademark applications ([Article 50\(2\)](#) and [\(3\)](#)) shall apply *mutatis mutandis* to the request and to its requirements.

(4) A fee prescribed by special legislation shall be paid for the request for division within two months from the filing of the relevant request.

Art. 69.—(1) If the request for division does not comply with the requirements laid down in [Article 68\(1\) to \(3\)](#), the proprietor shall be invited to correct the defects.

(2) The request for division shall be rejected if, in spite of correction or comments, it still does not comply with the requirements stated in the invitation. Where the proprietor does not reply to the invitation, the request for division shall be considered withdrawn.

(3) If the fee for the request for division has not been paid, the Hungarian Patent Office shall invite the proprietor to remedy the defect within the period specified by this Law. Failing which, the request for division shall be considered withdrawn.

Art. 70.—(1) If the request meets the requirements laid down in [Article 68](#), the Hungarian Patent Office shall divide trademark protection.

(2) The division of trademark protection shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

(3) After division, the Hungarian Patent Office shall issue a trademark certificate for each trademark, to which the extract from the Register shall be annexed.

Decision on Lapse by Reason of Expiration and Surrender

Art. 71.—(1) In the case of lapse by reason of expiration of protection, the Hungarian Patent Office shall inform the proprietor of the possibility of renewal.

(2) Where the proprietor surrenders protection ([Article 32](#)), the Hungarian Patent Office shall declare lapse of protection by a decision.

(3) The expiration of trademark protection without renewal ([Article 30\(a\)](#)) and lapse by reason of surrender shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

Cancellation Procedure

Art. 72.—(1) Any person may institute proceedings for cancellation of a trademark against the proprietor under [Article 33](#), except for the cases under [paragraph \(2\)](#).

(2) Under [Articles \(4\) to \(6\)](#), only the proprietor of an earlier, conflicting right may request cancellation of a trademark.

(3) The request for cancellation shall be filed with the Hungarian Patent Office with a copy for each proprietor plus one additional copy. The request shall state the grounds on which it is based and documentary evidence shall be annexed.

(4) A fee prescribed by special legislation shall be payable for the request for cancellation within two months from the filing of the request.

(5) If the request for cancellation does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the defects; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit fixed by this Law. Failure to remedy the defects shall result in the request for cancellation being considered withdrawn.

Art. 73.—(1) The Hungarian Patent Office shall invite the proprietor to submit comments on the request for cancellation. Following the written preparatory work, it shall decide, at a hearing on the cancellation of the trademark, on limitation of trademark protection or refusal of the request.

(2) Where the request for cancellation is based on conflict with an earlier trademark of the requesting party, the burden of proving that the use of his trademark met the requirements of [Article 18](#) at the time of the cancellation procedure shall be on the requesting party.

Art. 74.—(1) If there is more than one request for cancellation of the same trademark, they shall be dealt with together.

(2) If the request for cancellation is withdrawn, the procedure may be continued *ex officio*, except for the case under [Article 72\(2\)](#).

(3) The losing party shall be required to bear the costs of the cancellation procedure.

(4) The cancellation of the trademark or limitation of trademark protection shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

Decision on Lapse by Reason of Non-use, Loss of Distinctive Character or Becoming Deceptive

Art. 75.—(1) Any person may institute proceedings against the proprietor for a decision on the lapse of trademark protection by reason of non-use under [Articles 18](#) and [34](#) and by reason of the trademark losing distinctive character or becoming deceptive under [Article 35](#).

(2) The request for a decision on lapse shall be filed with the Hungarian Patent Office with a copy for each proprietor plus one additional copy. The request shall state the grounds on which it is based and documentary evidence shall be annexed.

(3) A fee prescribed by special legislation shall be payable for the request for a decision on lapse within two months from the filing of the request.

(4) If the request for a decision on lapse does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the defects; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit fixed by this Law. Failure to remedy the defects shall result in the request for a decision on lapse being considered withdrawn.

Art. 76.—(1) The Hungarian Patent Office shall invite the proprietor to submit comments on the request for a decision on lapse. Following the written preparatory work, it shall decide at a

hearing on the lapse of trademark protection, in whole or in part, by reason of non-use, loss of distinctive character or becoming deceptive, or on the refusal of the request.

(2) If there is more than one request for a decision on lapse of the same trademark, or there are requests for both the cancellation and for a decision on lapse of the same trademark, they shall be dealt with together.

(3) If the request for a decision on lapse is withdrawn, the procedure may be continued *ex officio*.

(4) The losing party shall be required to bear the costs of the procedure for a decision on lapse.

(5) The lapse of trademark protection, in whole or in part, by reason of non-use, loss of distinctive character or becoming deceptive shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

PART III

COURT PROCEEDINGS IN TRADEMARK CASES

Chapter XI

Review of Decisions of the Hungarian Patent Office

Request for Review

Art. 77.—(1) Upon request, the court may repeal or review (hereinafter referred to together as “review”) decisions on merits taken by the Hungarian Patent Office ([Article 39\(2\)](#)) as also its decisions declaring interruption of procedure, suspending procedure or furnishing a basis for entries in the Register of Trademark Applications or the Trademark Register.

(2) Any person may request review of a decision:

- (a) who was a party to the procedures before the Hungarian Patent Office, furthermore
- (b) who has a legal interest in the review of the decision and has filed an observation in the procedure before the Hungarian Patent Office ([Article 58](#)).

(3) Review of a decision on the registration and cancellation of a trademark may be requested by the public prosecutor under [Article 3\(1\)\(a\)](#) and [\(b\)](#) and [Article 3\(2\)](#).

(4) The request for review must be filed within 30 days from the date of notification of the decision to the party concerned or, in the case of application of [paragraph \(2\)\(b\)](#), to the person making the observation.

(5) The request shall be filed with the Hungarian Patent Office which shall forward it, together with the documents of the trademark file, to the court within 15 days.

(6) The rules concerning complaints shall apply *mutatis mutandis* to the requirements for a request for review.

(7) In the case of a request filed late, the court shall decide on the request for *restitutio in integrum*.

Jurisdiction and Competence

Art. 78.—(1) In proceedings for the review of decisions taken by the Hungarian Patent Office, the Metropolitan Court shall have jurisdiction and exclusive competence.

(2) The Metropolitan Court shall sit in a chamber consisting of three professional judges.

(3) In appeals lodged against decisions of the Metropolitan Court, the Supreme Court shall have jurisdiction.

Rules Governing Proceedings Concerning Requests for Review

Art. 79. The court shall hear requests for the review of decisions taken by the Hungarian Patent Office in accordance with the rules of non-contentious civil procedure, subject to the exceptions mentioned in this Law. Unless this Law or the non-contentious nature of the procedure indicates otherwise, the rules of the Code of Civil Procedure shall apply to the proceedings *mutatis mutandis*.

Publicity

Art. 80. The court may, at the request of a party, exclude the public from the hearing or from the pronouncing of the decision notwithstanding the fact that the requirements prescribed in the general provisions of the Code of Civil Procedure may not be fulfilled.

Incompatibility

Art. 81.—(1) In addition to the cases determined in the general provisions of the Code of Civil Procedure, the following persons shall be excluded from participating in proceedings or from acting as judges:

- (a) persons who participated in taking the decision of the Hungarian Patent Office;
- (b) relatives, as defined in the general provisions of the Code of Civil Procedure relating to the incompatibility of judges, of a person mentioned under (a), above.

(2) The provisions of [paragraph \(1\)](#) shall also apply to persons keeping records of evidence and to experts.

Parties to the Proceedings and Other Participants

Art. 82.—(1) The person who filed the request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which a party is entitled, except that he may not agree to a compromise nor relinquish or recognize rights.

(2) Where an adverse party has also taken part in the procedure before the Hungarian Patent Office, the court proceedings shall be initiated against that party.

Art. 83. Where a joint proprietor acts independently to maintain and protect trademark rights, or proceedings have been initiated against one only of the joint proprietors, the court shall notify the other joint proprietors that they may join the proceedings.

Art. 84.—(1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Patent Office may intervene in the proceedings, until such time as the court decision becomes final, in favor of the party whose interests he shares.

(2) Save for compromise, recognition and surrender of rights, the intervenor may take any action which the party he supports is entitled to take, except that his acts shall have effect only where they do not conflict with the acts of the party concerned.

(3) Any legal dispute between the intervenor and the party concerned may not be decided in the course of the proceedings.

Representation

Art. 85.—(1) Patent attorneys may also act as representatives in proceedings.

(2) The power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

Costs of Proceedings

Art. 86.—(1) Where an adverse party also takes part in the court proceedings, the provisions on litigation costs shall apply *mutatis mutandis* to the preliminary deposit and payment of the costs of proceedings.

(2) In the absence of an adverse party, the applicant shall advance and meet the costs.

(3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

Omission

Art. 87. Where neither the applicant nor any of the parties appear at the hearing or where none of the parties respond to the invitation of the court within the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

Restitutio in integrum

Art. 88. The provisions of [Article 42](#) shall apply *mutantis mutandis* to the submission of a request for *restitutio in integrum* in non-contentious proceedings.

Hearing and Taking of Evidence

Art. 89.—(1) The court of first instance shall take evidence and shall hold its hearings in accordance with the provisions of the Code of Civil Procedure.

(2) If no adverse party takes part in the proceedings and the case can be settled on the basis of documentary evidence, the court may take a decision without a hearing, but the party shall be heard at his request.

(3) Should the court consider the case without a hearing, but find during the proceedings that a hearing is necessary, it may at any time order such hearing. However, where the court considers the case at a hearing, or has ordered a hearing, it may not revoke such order and consider the case without a hearing.

(4) Compromise may not be reached in the court proceedings if such compromise was not possible in the procedure before the Hungarian Patent Office.

Decisions

Art. 90. The court shall decide both on the merits of a case and on other matters by a judgment.

Art. 91.—(1) If the court changes a decision taken in a trademark case, the judgment shall replace the decision of the Hungarian Patent Office.

(2) The court shall repeal a decision and order the Hungarian Patent Office to start a new procedure if:

- (a) the decision was taken with the participation of a person who could be objected to on the grounds of incompatibility;
- (b) important rules of procedure which cannot be remedied by the court were infringed during the procedure before the Hungarian Patent Office;

- (c) the trademark application has been rejected for formal reasons and the applicant remedies the defects simultaneously with the filing of a request for review or at the invitation of the court.

(3) Where a party requests a court decision on a matter which was not the subject of the procedure before the Hungarian Patent Office, the court shall refer the request to the Hungarian Patent Office. In such case, the court shall, if necessary, repeal the decision of the Hungarian Patent Office.

(4) Where, after the filing of a request for review, the Hungarian Patent Office withdraws or repeals its decision, since it does not qualify as taken on merits, the court shall terminate the proceedings. If the Hungarian Patent Office has changed its decision, the court proceedings may only continue in respect of matters still pending.

Art. 92. The court judgment on the merits of a case shall be communicated by service.

Court Proceedings at Second Instance

Art. 93.—(1) The court of second instance shall decide on appeals lodged against decisions of the court of first instance in accordance with the provisions of the Code of Civil Procedure except that it may also take limited evidence at a hearing.

(2) The court of second instance shall decide on appeals at a hearing if an adverse party also takes part in the proceedings.

Exclusion of Request for Reconsideration

Art. 94. No request for reconsideration is admissible in respect of final court decisions on the amendment of decisions of the Hungarian Patent Office.

Chapter XII Trademark Litigation

Rules Governing Trademark Litigation

Art. 95.—(1) The Metropolitan Court shall have jurisdiction and exclusive competence in court proceedings concerning trademark infringement. In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in [Article 78\(2\)](#).

(2) In trademark litigation, provisional measures shall be considered necessary to protect the petitioner's rights deserving special appreciation if the petitioner proves that the trademark is protected and he is the proprietor of the trademark or a user entitled to institute proceedings for infringement in his own name.

(3) [Paragraph \(2\)](#) shall not apply where six months have already elapsed from the beginning of trademark infringement or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(4) The court shall decide on the provisional measures out of turn, but not later than within 15 days from the filing of a request to this effect.

(5) Where, in the course of proceedings for trademark infringement, one of the parties has already produced due evidence of the facts, the court may, at the request of the party producing the evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(6) In proceedings for trademark infringement, the court may subject the ordering of preliminary production of evidence to the providing of security.

(7) Any other trademark litigation not mentioned under [paragraph \(1\)](#) shall be heard by the county courts (or Metropolitan Court).

(8) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to under [paragraphs \(1\)](#) and [\(7\)](#), with the exceptions laid down in [Articles 80](#), [81](#) and [85](#) of this Law.

PART IV

COLLECTIVE MARKS AND CERTIFICATION MARKS

Chapter XIII

Collective Marks

Collective Marks

Art. 96.—(1) Collective marks are marks that are capable of distinguishing goods or services of the members of a social organization, public body or association (hereinafter referred to together as “social organization”) from the goods or services of other undertakings according to the quality, origin or other characteristics of goods or services bearing the collective mark.

(2) In the case of collective marks, protection shall be granted for a sign even if it consists exclusively of the indication of the geographical origin of the goods or services.

(3) A sign shall be excluded from trademark protection as a collective mark:

- (a) if it is liable to mislead the public as to its character or importance, in particular if, in the case of registration, consumers might deem it a mark other than a collective mark;
- (b) if the regulations governing its use contain provisions contrary to public policy, morality or law.

(4) The right to the protection of a collective mark shall belong to the social organization, whose members shall be entitled to use the collective mark.

(5) The proprietor social organization itself may not use the collective mark; it shall, however, control use by the members.

(6) Use of a collective mark by any member of the social organization shall be deemed to constitute use within the meaning of [Article 18](#).

Regulations Governing Use of Collective Marks

Art. 97.—(1) A sign shall be granted protection as a collective mark if its use is governed by regulations complying with the requirements laid down in [paragraphs \(2\)](#) and [\(3\)](#). The regulations shall be established by the social organization being the proprietor of the collective mark.

(2) The regulations shall specify:

- (a) the name and headquarters of the social organization,
- (b) information on the members authorized to use the mark, including their names, addresses and headquarters,
- (c) the conditions of membership,
- (d) the conditions of use of the collective mark,

- (e) the prescriptions relating to the control of the use of the collective mark,
- (f) the institution of proceedings against unauthorized use of the collective mark.

(3) If the collective mark consists exclusively of an indication of geographical origin, the regulations must provide that any person whose goods or services originate in the geographical area concerned shall be authorized to become a member of the social organization.

(4) The application for a collective mark shall contain the regulations. With respect to collective marks, the data indicated in [paragraph 2\(b\)](#) shall also be recorded in the Trademark Register. The regulations and the amendments thereof shall be attached to the entry in the Register relating to the collective mark.

Assignment of the Protection of Collective Marks

Art. 98.—(1) Assignment of the protection of collective marks shall require the recording in the Trademark Register of the relevant written contract and of the change of proprietorship.

(2) The protection of collective marks may not be assigned if after the assignment the requirements set out in [Article 96](#) are not satisfied or the sign becomes excluded from protection as a collective mark.

Lapse of Protection of Collective Marks

Art. 99.—(1) The protection of collective marks shall also lapse in the event of the dissolution of the proprietor of the collective mark without successor in title. The protection shall lapse on the day of the dissolution of the proprietor.

(2) Any person may request a decision on the lapse of protection under [paragraph \(1\)](#).

(3) The protection of collective marks shall also lapse—on the day indicated in the decision on lapse—where the proprietor does not take the necessary action in order to stop the use of the collective mark contrary to the regulations.

(4) Where a sign may not be granted protection as a collective mark under [Article 96\(3\)](#), the collective mark shall be canceled. If a sign becomes excluded from protection under [Article 96\(3\)](#), lapse of the protection of the collective mark shall be declared with retroactive effect to the filing date of the request for a decision on lapse.

Enforcement of Rights Deriving from the Protection of Collective Marks

Art. 100. Persons who are authorized to use the collective mark by reason of their membership may bring an action against an infringer only with the consent of the proprietor; they may, however, intervene in the proceedings instituted by the proprietor.

Chapter XIV Certification Marks

Certification Marks

Art. 101.—(1) Certification marks are trademarks that distinguish goods or services of specified quality or of other characteristic from other goods or services by attesting to such quality or characteristic.

(2) Protection of certification marks may not be obtained by:

- (a) an undertaking which produces, puts on the market or imports the goods or supplies the services for which the trademark is registered;

- (b) an undertaking which—pursuant to the Law on the Prohibition of Unfair Market Practices and of Restrictions on Competition—is not independent of the undertaking under [subparagraph \(a\)](#):
- (c) an undertaking with which the undertaking under [subparagraph \(a\)](#) is in a lasting legal relationship in respect of the goods or services for which the mark is registered.

(3) The proprietor himself may not use the certification mark, he shall, however, authorize its use with respect to the goods or services complying with the prescribed quality requirements or with other characteristics.

(4) A certification mark shall be granted protection if it is accompanied by regulations satisfying the requirements set out under [paragraph \(5\)](#).

(5) The regulations shall specify:

- (a) the name and headquarters of the proprietor,
- (b) the quality requirements relating to the goods or services for which the mark is registered,
- (c) the rules of the certification of quality,
- (d) the conditions of use of the mark,
- (e) the prescriptions relating to the control of the use of the mark,
- (f) the order of proceedings against unauthorized use of the mark.

(6) For the regulations, application and registration, the use and assignment of the certification mark, for the lapse of the protection of the certification mark and for the enforcement of rights deriving from the protection of such marks, the provisions relating to collective trademarks and to their protection shall apply *mutatis mutandis*.

(7) For the use of certification marks, the provisions of special legislation on the certification of quality or of other characteristics shall also apply.

Chapter XV

Application of Provisions Relating to Trademarks to Collective and Certification Marks

Application of Provisions Relating to Trademarks

Art. 102. Matters relating to collective and certification marks and to their protection that are not covered by this part shall be governed by the provisions relating to trademarks and to their protection.

PART V

...²

PART VI

FINAL PROVISIONS

² See footnote 1 (*Editor's note*)

Chapter XVIII

Entry Into Force; Transitional and Amending Provisions

Rules Establishing Provisions Concerning the Entry Into Force of this Law and Transitional Provisions

Art. 117.—(1) This Law shall enter into force on July 1, 1997; its provisions shall apply— with the exceptions set out in [paragraph \(2\)](#)—only in procedures that begin after its entry into force.

(2) The provisions of [Article 42](#) shall also apply *mutatis mutandis* to pending matters.

(3) Use of a trademark before the entry into force of this Law shall be subject to the previously applicable provisions with respect to the scope of trademark protection, the concept of the use of a trademark and trademark infringement.

(4) The time limits prescribed by this Law for legal consequences attached to acquiescence and failure to use the trademark shall begin on the day of entry into force at the earliest. On the basis of the previously applicable provisions lapse of trademark protection may also be declared even if the five years during which the trademark has not been used in the country expire after the entry into force of this Law.

Art. 118.—(1) By way of derogation from [Article 103\(3\)](#), certain geographical names, traditionally used for foodstuffs, shall be treated as appellations of origin even if the live animals, meat and milk used as raw materials for the production of the foodstuffs concerned come from a geographical area larger than or different from the processing area, provided that

- (a) the breeding area may be determined,
- (b) special conditions for the production of the raw materials exist and
- (c) there are inspection arrangements to ensure that those conditions are adhered to.

(2) Protection of geographical indications of traditional foodstuffs under [paragraph \(1\)](#) may be claimed within two years from the entry into force of this Law.

(3) By virtue of this Law, protection shall also be afforded to appellations of origin which were recorded, before the entry into force of this Law, in the national register kept under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. Such appellations of origin shall be recorded in the Register of Geographical Indications and relevant information shall be given in the official journal of the Hungarian Patent Office.

Repealed Provisions

Art. 119. Simultaneously with the entry into force of this Law, there shall be repealed:

- (a) Law No. IX of 1969 on Trademarks (hereinafter referred to as “the Trademark Law”), [Article 23\(2\)](#) of Law No. LXVIII of 1992 and [Articles 7](#) and [8](#) of Law No. VII of 1994;
- (b) [Article 27\(3\)](#) of Law No. XC of 1995 on Foodstuffs;
- (c) [Article 117\(a\)](#) of Law No. XXXIII of 1995 on the Protection of Inventions by Patents, [Article 170](#) of Law No. XCVI of 1995 on Insurance Companies and Insurance Activities, further [Article 211\(7\)](#) of Law No. C of 1995 on Customs Law, Customs Procedures and Customs Administration;
- (d) Joint Decree No. 2/1970 (VII. 1.) OMF-B-IM on the Implementation of the Trademark Law;
- (e) Decree No. 4/1970 (VII. 1.) IM on Court Proceedings in Trademark Cases.

Amending Provisions

Art. 120. Simultaneously with the entry into force of this Law,

- (a) the following provisions shall be substituted for **Article 3(6)** of Law No. IV of 1957, amended several times, on the General Rules of Administrative Procedure:

“(6) Unless otherwise provided by legislation, this Law shall apply to matters relating to national defense, foreign trade administration, social insurance, industrial property protection, tax, revenue and customs administration, to procedures of the Office of Economic Competition concerning competition supervision, and to matters laid down in the Law on the Establishment of Prices and in the Law on Insurance Companies and Insurance Activities.”;

- (b) The following [subparagraphs \(d\)](#) and [\(e\)](#) shall be added to **Article 52(1)** of Copyright Law No. III of 1969, as amended several times, simultaneously the marking of the present [subparagraph \(d\)](#) shall change to *(f)*:

(In case of infringement of his copyright the author may, according to the circumstances of the case, have recourse to the following civil remedies:)

“(d) demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing objects and in the supply of infringing services and of their channels of use;

(e) require surrender of the undue gains obtained by infringement;”;

- (c) The following [paragraphs \(3\)-\(7\)](#) shall be added to **Article 52** of the Copyright Law:

“(3) In copyright litigation, provisional measures shall be considered necessary to protect the petitioner’s rights deserving special appreciation if the petitioner proves that the work is copyrighted, and he is the author, the successor in title to the author, or a user of the work or an organization dealing with the common administration of copyrights entitled to institute proceedings for infringement in his or its own name.

(4) [Paragraph \(3\)](#) shall not apply where six months have already elapsed from the beginning of the infringement of copyright or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, but not later than within 15 days from the filing of a request to this effect.

(6) Where, in the course of proceedings for infringement of copyright, one of the parties has already produced due evidence, the court may, at the request of the party producing the evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(7) In proceedings for infringement of copyright the court may subject the ordering of preliminary production of evidence to the providing of security.”

- (d) The following provisions shall be added to the second sentence of [Article 3\(1\)](#) of Decree-Law No. 28 of 1978 on the Protection of Industrial Designs, as amended several times (hereinafter referred to as “the Designs Law”):

“A right of pledge shall only be constituted if the mortgage contract is made in writing and the right of pledge is entered in the Designs Register.”

- (e) The following sentence shall be added to [Article 11\(2\)](#) of the Designs Law:

“He may demand furthermore that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution.”

- (f) The following [paragraphs \(3\)-\(7\)](#) shall be added to [Article 20](#) of the Designs Law, simultaneously the numbering of the present [paragraph \(3\)](#) shall change to [\(8\)](#):

“(3) In design litigation, provisional measures shall be considered necessary to protect the petitioner’s rights deserving special appreciation if the petitioner proves that the design is protected, and he is the owner of the design protection, or an exploiter of the design entitled to institute proceedings for infringement in his own name.

(4) [Paragraph \(3\)](#) shall not apply where six months have already elapsed from the beginning of the infringement of design protection or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, but not later than within 15 days from the filing of a request to this effect.

(6) Where, in the course of proceedings for infringement of design protection, one of the parties has already produced due evidence, the court may, at the request of the party producing the evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(7) In proceedings for infringement of design protection the court may subject the ordering of preliminary production of evidence to the providing of security.”

- (g) The following provisions shall be substituted for [Article 17\(1\)](#) of Law No. XXXVIII of 1991 on Utility Model Protection:

“(1) With respect to succession in title, to the pledging of rights deriving from the utility model and from utility model protection, as well as to exploitation contracts, the provisions of the Patent Law shall apply *mutatis mutandis*.”

- (h) The following [paragraph \(3\)](#) shall be added to [Article 1](#) of Law No. XXXII of 1995 on Patent Attorneys:

“(3) Where, in industrial property matters, legal representation is mandatory for a party, this requirement shall be met if the party is represented by a patent attorney.”

- (i) The following [paragraph \(2\)](#) shall be added to [Article 25](#) of Law No. XXXIII of 1995 on the Protection of Inventions by Patents (hereinafter referred to as “the Patent Law”), simultaneously the present text shall be numbered (1):

“(2) “A right of pledge shall only be constituted if the mortgage contract is made in writing and the right of pledge is entered in the Patent Register.”

- (j) The following [subparagraph \(d\)](#) shall be added to [Article 35\(2\)](#) of the Patent Law, simultaneously the marking of the present [subparagraphs \(d\)](#) and [\(e\)](#) shall change to [\(e\)](#) and [\(f\)](#):

“(d) may demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution.”;

- (k) The following provisions shall be substituted for [Article 104](#) of the Patent Law:

“Art. 104.—(1) The Metropolitan Court shall have jurisdiction and exclusive competence in court proceedings concerning the grant, modification or cancellation of a compulsory license, the establishment of prior or continued use and concerning the infringement of an invention or a patent.

(2) In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in [Article 87](#).

(3) In patent litigation, provisional measures shall be considered necessary to protect the petitioner’s rights deserving special appreciation if the petitioner proves that the invention is patented, and he is the patentee or an exploiter entitled to institute proceedings for infringement in his own name.

(4) [Paragraph \(3\)](#) shall not apply where six months have already elapsed from the beginning of patent infringement or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, but not later than within 15 days from the filing of a request to this effect.

(6) Where in the course of proceedings for patent infringement one of the parties has already produced due evidence, the court may, at the request of the party producing the evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(7) In proceedings for patent infringement the court may subject the ordering of preliminary production of evidence to the providing of security.

(8) Any other patent litigation not mentioned under [paragraph \(1\)](#) shall be heard by the county courts (or Metropolitan Court).

(9) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to under [paragraphs \(1\)](#) and [\(8\)](#), with the exceptions laid down in [Articles 89, 90, 94](#) and [95\(3\)](#) of this Law.”

Authorization

Art. 121.—(1) The Government shall be authorized to:

- (a) establish by decree the measures applicable in cases of infringement of intellectual property rights in procedures concerning customs administration;
- (b) establish by decree the detailed rules concerning the protection of geographical indications of agricultural products and foodstuffs.

(2) The Minister for Justice shall be authorized to establish by decree, in agreement with the President of the Hungarian Patent Office, the detailed formalities for trademark applications and for applications for the protection of geographical indications.

Approximation to European Community Law

Art. 122. Pursuant to [Article 3](#) of Law No. 1 of 1994 promulgating the Agreement, signed in Brussels on December 16, 1991, establishing an association between the Republic of Hungary and the European Communities and the Member States, this Law contains regulations compatible with the following legislation of the European Communities:

- (a) Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks;
- (b) Council Regulation 2081/92/EEC on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.