

## ORDER

### Nr. 4/1970. (VII. 1.) of the Minister of Justice on legal procedure in trademark cases

Based on the authorization **paragraph (4) § of 47** of Law No. IX. of 1969 on trade marks (furtheron: Vt) — with the consent of the President of the National Technical Development Commission and the President of the National Office of Inventions<sup>1</sup> — it is ordered as follows:

(to **§ 37.** of Vt)

1. § (1) To the requirements of request for the review of a decision of the National Office of Inventions (furtheron: OTH) the rules concerning complaints are to be applied *mutatis mutandis*.

(2) In case of a late — filed request, the court shall decide on the request for restitution in *integrum*. (**§42** of VT)

2. § The person who filed a request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all rights to which a party is entitled, however, he may not come to compromise, surrender or recognise rights.

(2) The interested person, who did not participate in the procedure before OTH, may submit the claim during the time period being at the disposal for the party who participated in the procedure.

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

(to **§ 40.** of Vt)

3. § (1) On the request of the party, the public may be barred from the trial of the case, and, from the publishing of the decision also without conditions laid down in **§ 7** of the Civil Legal Procedure.

(2) If the court effects the adjudgement of the case out of session, but during the procedure the court deems it necessary, to fix a trial (e.g. hearing of the party, effecting evidence, etc.) the court may set up the trial at any time. In the case however, if the adjudgement of the case will take place on trial, or the hearing is fixed, afterwards the adjudgement of the case cannot be reverted for adjudgement out of session.

(3) The court of second instance will take evidence on trial.

4. § (1) A person, who has a legal interest in the outcome of the trade mark case, may interplead in litigation till the adjudgement in legal force, in the interest of the party having identical interest.

(2) The interpleading person — with the exception of compromise, acknowledgement and recognise of rights — is authorized to take every action, which may be effected by the party supported by him. His acts however have legal effect as far, if the party fails to do the act, resp. as far the acts of the interpleading person are not opposite to the acts of the party.

(3) Legal disputes between the interpleading person and the party cannot be adjudged during the procedure.

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<sup>1</sup> As from 1 January 1996 according to the Law No. XXXIII of 1995 the National Office of Inventions was renamed to Hungarian Patent Office

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(4) Decisions and documents to be delivered for the party are to be delivered for the interpleading person too.

5. § (1) Where neither the applicant nor any of the parties appear at the hearing, or when none of the parties meet the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material of its disposal.

(2) If in the procedure before OTH a compromise was not allowed, the same refers to the legal procedure at the court.

(3) If the party requests a court-decision in a question, which was not the subject of the procedure before OTH, the court will remit the claim to OTH.

6. § For the patent attorney as authorized person the same rules will apply, as for persons having a power of attorney in civil legal procedure, with the alteration that he may claim for his disbursement and his legal fees too.

(to § 44. of Vt)

7. § (1) The court shall decide both on the merits of a case and on other questions by decree.

(2) If by the decision of OTH brought after the submitting of the claim, (e.g. correction, resp. amendment of the decision) the claim became partly or full obsolete, the court will terminate the procedure in this part.

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

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8. § (1) The court decree on the merits of case, will be communicated in any case by service.

(2) The decree of the court of first instance against which appeal is not lodged will get legal force after 15 days reckoned from the last day of the period of appeal.

9. § For patent attorney acting in procedures according to paragraph (1) § 46 of Vt, § 6, for procedures however mentioned in § 46 of Vt. for the barring of the public, paragraph (1) § 3 of the present order are to be applied.

10. § For trade mark cases belonging under paragraph (1) § 37 of Vt, resp. trade mark legal procedures belonging under paragraph (1) § 46 of Vt, if they have been initiated before the 1 July 1970, the previous rules of procedure are to be applied, with the difference that also patent attorney may proceed as a person with power of attorney. For the composition of the Budapest Metropolitan Court also in this case § 39 of Vt is to be applied.

(2) In trade mark procedures belonging under paragraph (1) § 46 of Vt, initiated before 1 July 1970, if the court will make a decision annulling the judgement, for the procedure § 46 of Vt is to be applied. The same provision will apply for the judgement of claims, submitted in procedures initiated before the 1 July 1970.

(3) This order shall come into force on the 1 July 1970.

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