

ACT XI OF 1997 ON THE PROTECTION OF TRADE MARKS AND GEOGRAPHICAL INDICATIONS

In order to promote the development of Hungarian market economy, to improve competition conditions based on the use of signs capable of distinguishing goods and services, to assist public in gathering information, and in conformity with the international and European Community law obligations of the Republic of Hungary concerning the protection of intellectual property, the Parliament enacts the following Act on the Protection of Trade marks and Geographical Indications:

PART I

PROTECTION OF TRADE MARKS

Chapter I

SUBJECT MATTER OF TRADE MARK PROTECTION

Signs capable of distinction

Article 1

(1) Trade mark 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 trade mark protection are in particular:

- (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,
- (e) colours, combination of colours, light signals, holograms,
- (f) sound signals, and
- (g) combination of signs under (a) to (f).

Absolute grounds for refusal

Article 2

(1) A sign may not be granted trade mark protection if it does not meet the requirements of Article 1.

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

(a) it is devoid of any distinctive character, in particular if 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 trade;

(b) it consists exclusively of a 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 trade mark protection in accordance with paragraph (2)(a) if, either before or after the date of priority, it has acquired a distinctive character in consequence of the use which has been made of it.

Article 3

(1) A sign may not be granted trade mark protection if:

- (a) it is contrary to public policy or to accepted principles of morality;
- (b) it is liable to deceive public 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 trade mark protection if:

(a) it consists of, or contains any of the emblems listed in Article 6^{ter}(1) of the Paris Convention for the Protection of Industrial Property, provided that such a sign has been communicated according to Article 6^{ter}(3);

(b) it consists of badges, symbols or escutcheons, not covered by point(a), which are of public interest, or if it contains such badges, symbols or escutcheons;

(c) it consists exclusively of symbols having a close relation to religious or other beliefs.

(3) Trade mark 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.

(4) A sign may not be granted trade mark protection if it consists of or contains a geographical indication registered pursuant to this Act or to European Community law. This provision shall apply to goods which do not originate in a geographical area corresponding to the geographical indication or in connection with which the geographical indication cannot be used for any other reason on the basis of the provisions of this Act or of European Community law.

Relative grounds for refusal

Article 4

(1) A sign may not be granted trade mark protection:

(a) with respect to identical goods or services, if the sign with the later date of priority is identical with an earlier trade mark;

(b) if because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services there exists a likelihood of confusion on the part of the public;

(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 trade mark having a reputation in the country where the use without due cause of the later sign would take unfair advantage of or be detrimental to the distinctive character or the repute of the earlier trade mark.

(2) “Earlier trade mark” means a trade mark whose registration was applied for with an earlier date of priority or – for the purposes of paragraph (1)(a) and (b) – 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. “Earlier trade mark” shall also mean – depending on the registration of the sign – an earlier trade mark application.

(3) A sign may not be refused trade mark protection if it conflicts with an earlier trade mark, which has not been used by the holder in accordance with the provisions of Article 18.

(4) For the purposes of this Act, the likelihood of confusion includes the likelihood of association with the earlier trade mark.

Article 5

- (1) A sign may not be granted trade mark 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.
- (2) A sign shall not be granted trade mark protection
- (a) if it has been earlier 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; and
 - (b) if, with respect to identical or similar goods or services, it is identical with or similar to a trade mark whose protection has lapsed by reason of expiration and less than two years have elapsed since the lapse, unless the earlier trade mark had not been used in conformity with the provisions of Article 18.
- (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.

Article 6

A sign shall be excluded from trade mark protection if the representative or agent applies for registration in his own name without the holder's authorization, unless the representative or agent justifies his action.

Declaration of consent

Article 7

- (1) A sign may not be refused trade mark protection in accordance with Articles 4 and 5 if the holder of the earlier right consents to the registration of the later sign.
- (2) A declaration of consent shall be valid if drawn up as an official document or a private document 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 decision of a Court.

Registrability

Article 8

- (1) Trade mark protection shall be granted for a sign if
- (a) it satisfies the requirements of Article 1 and is not excluded from trade mark protection under the terms of Articles 2 to 7 and
 - (b) the relevant application complies with the requirements laid down by this Act.

Chapter II

RIGHTS AND OBLIGATIONS CONFERRED BY TRADE MARK PROTECTION

Right to trade mark protection

Article 9

(1) The right to the legal protection of a trade mark (hereinafter referred to as "trade mark protection") shall belong to the person who has made the trade mark registered according to the procedure prescribed by this Act.

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

(3) If two or more persons apply for registration jointly, trade mark 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 trade mark protection

Article 10

Trade mark protection shall begin with registration and shall be effective retroactively from the date of filing of the application.

Term of trade mark protection

Article 11

(1) Trade mark protection shall have a term of 10 years beginning on the date of filing of the application.

(2) Trade mark protection shall be renewed for further periods of 10 years. In case of renewal, the new period of protection shall begin on the day following the date of expiration of the previous period.

Rights conferred by trade mark protection

Article 12

(1) Trade mark protection shall confer on its holder the exclusive right to use the trade mark.

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

(a) any sign identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with or similarity to the trade mark 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 trade mark in relation to goods and services which are not identical with or not similar to those for which the trade mark is registered, provided that the trade mark has a reputation in the country and the use of that sign without due cause would take unfair advantage of, or would be detrimental to, the distinctive character or the repute of the trade mark.

(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 trade marks in reference works

Article 13

If the reproduction of a trade mark in a dictionary, lexicon, encyclopaedia or similar reference work gives the impression that it constitutes the generic name of the goods or services for which the trade mark is registered, the publisher of the work shall, at the request of the holder of the trade mark, indicate – in the next edition of the publication at the latest – that the trade mark has been registered and is under trade mark protection.

Unlawful use of a trade mark by an agent or representative

Article 14

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

Limitations of trade mark protection

Article 15

(1) Trade mark protection shall not entitle the holder to prohibit a third party from using in the course of trade and in accordance with the requirements of fair trade 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 trade mark 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 holder of the trade mark.

Exhaustion of the rights conferred by trade mark protection

Article 16

(1) Trade mark protection shall not entitle the holder to prohibit the use of the trade mark in relation to goods which have been put on the market in the European Economic Area by him or with his expressed consent.

(2) Paragraph (1) shall not apply where the holder has legitimate reasons to oppose further commercialisation of the goods, in particular where the condition of the goods has been changed or impaired.

Acquiescence

Article 17

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

(2) Paragraph (1) shall only apply to goods or services in relation to which the later trade mark was put in genuine use.

(3) Paragraph (1) shall not apply where the later trade mark was applied for in bad faith.

(4) The holder of a later trade mark shall not be entitled to oppose the use of the earlier trade mark, even though the holder of the earlier trade mark may no longer oppose, on the basis of paragraph (1), the use of the later trade mark.

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

Failure to use of trade marks

Article 18

(1) If, within a period of five years following the date of registration, the holder has not commenced genuine use of the trade mark 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, trade mark protection shall be subject to the legal consequences provided for in this Act [Article 4(3); Article 5(2)(b); Article 30(d); Article 33(2)(a); Article 34; Article 61/E; Article 73(2)], unless the holder duly justifies non-use.

(2) For the purposes of paragraph (1), the following shall also constitute genuine use of the trade mark in the country:

(a) use of the trade mark in a form differing from the registered form only in elements which do not alter the distinctive character;

(b) affixing of the trade mark 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 trade mark with the authorization of the holder shall be deemed to constitute use by the holder.

Chapter III

TRADE MARKS AND TRADE MARK PROTECTION AS OBJECTS OF PROPERTY

Succession in title

Article 19

(1) Rights deriving from a trade mark and from trade mark 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 trade mark, unless otherwise provided by the parties or the circumstances clearly dictate otherwise.

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

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

(5) Where a trade mark is applied for or is registered in the name of the agent or representative without the holder's authorization, the latter shall be entitled to demand the assignment in his favour of the right to trade mark protection or of the registration, unless the agent or the representative justifies his action.

Pledge

Article 20

Rights deriving from a trade mark and from trade mark 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 Trade Mark Register.

Joint right to trade mark protection and joint trade mark protection

Article 21

(1) Where there are two or more holders of the same trade mark, each of the joint holders may exercise the rights conferred by trade mark protection over his own share. Where one joint holder wishes to dispose of his share, the other joint holders shall enjoy a right of preemption with respect to third parties.

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

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

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

(5) Any one of the joint holders may also act individually to renew, enforce and protect trade mark rights. His legal acts - settlement, admission of claims and waiver of rights excepted - shall be binding on any other joint holder who has failed to observe a time limit or to perform a required act, provided that such other joint holder has not subsequently remedied his omission.

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

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

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

Application of the provisions of the Civil Code

Article 22

Matters relating to the transfer, assignment and pledge of rights deriving from a trade mark and from trade mark protection, the joint right to trade mark protection and joint trade mark protection, as well as concerning property rights and personal status relating to trade marks that are not covered by this Act shall be governed by the provisions of the Civil Code.

Chapter IV

TRADE MARK LICENSE CONTRACTS

Conclusion of trade mark license contracts

Article 23

(1) Under a trade mark license contract, the holder of trade mark protection licenses the right to use a trade mark and the 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 fulfilment is likely to mislead the public shall be null and void.

Rights and obligations of the parties

Article 24

(1) The holder shall guarantee for the whole duration of the license contract that no third parties hold rights in the trade mark 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 holder shall inform the licensee of any third party rights in relation to the trade mark 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 holder may control the licensee as to the quality of the goods bearing the trade mark or of the services supplied under the trade mark.

(4) The license contract shall cover all goods and services for which the trade mark 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 holder may also use the trade mark in addition to the licensee who has acquired the right of use, unless expressly excluded by contract. The holder may terminate the exclusivity of a license, subject to a proportional reduction in the royalty, if the licensee does not begin use of the trade mark within a reasonable period of time under the given circumstances.

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

Termination of license contracts

Article 25

The license contract shall terminate *ex nunc* when the contractual period expires or when certain specified circumstances occur or when the trade mark protection expires.

Effect of provisions relating to license contracts

Article 26

(1) The parties may derogate by mutual consent from the provisions relating to license contracts where not prohibited by law.

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

Chapter V

INFRINGEMENT

Trade mark infringement

Article 27

(1) Any person who unlawfully uses a trade mark in contravention of the provisions of Article 12, commits trade mark infringement.

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

(a) he may request that the fact of infringement be declared by the court;

(b) he may request an injunction that the infringer cease his infringement or any acts directly threatening with it;

(c) he may demand that the infringer give information on the identity of persons involved in the production and distribution of the infringing goods or the provision of infringing services and of their channels of distribution;

(d) he may 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) he may require surrender of the enrichment obtained by the infringement of the trade mark;

(f) he may request the seizure, the transfer to a specific person, the recall and the definitive removal from the channels of commerce, or destruction, of the infringing products and the packaging thereof, as well as of the means and materials exclusively or principally used for infringement.

(3) Where a trade mark is infringed, the holder may also claim damages under the rules of civil liability.

(4) The holder may submit the claim referred to in paragraph (2)(b) also against any person whose services were used in the infringing activities.

(5) The holder may submit the claim referred to in paragraph (2)(c) also against any person who

(a) was found in possession of the infringing goods on a commercial scale;

(b) was found to be using the infringing services on a commercial scale;

(c) was found to be providing on a commercial scale services used in infringing activities;

(d) was indicated by the person referred to in points (a) to (c) as being involved in the production or distribution of the infringing goods or the provision of the infringing services.

(6) For the purposes of paragraph (5)(a) to (c), the acts are carried out on a commercial scale if it is obvious from the nature and quantity of the infringing goods or services that these acts are carried out for direct or indirect economic or commercial advantage. In the absence of proof to the contrary, acts carried out by consumers in good faith shall not be regarded as acts carried out on a commercial scale.

(7) On the basis of paragraph (2)(c) and paragraph (5), the infringer or the person referred to in paragraph (5) may be required to provide, in particular, the following information:

(a) the names and addresses of the producers, distributors, suppliers and holders of the infringing goods or services, as well as the intended or involved wholesalers and retailers;

(b) the quantities produced, delivered, received or ordered of the infringing goods or services, as well as the prices obtained or given for the goods or services in question.

(8) At the request of the holder, the court may rule that the infringing nature of the means, materials, goods and packaging seized, recalled or definitively removed from the channels of commerce be removed or, where this is not possible, that they be destroyed. In justified cases, the court may order, in place of destruction, that the means and materials seized be auctioned according to the procedure of judicial execution; in such cases, the court shall decide how the sum obtained is to be used.

(9) Seizure of the means and materials used in infringing activities and of the infringing goods and packaging shall be admissible even if they are not in the possession of the infringer, but the holder knew or had reasonable grounds to know about the infringement.

(10) The court shall order the measures referred to in paragraph (2)(f) and paragraph (8) at the expense of the infringer, except when derogation therefrom is justified by the circumstances of the particular case. In ordering the recall and the definitive removal from the channels of commerce, or destruction, the court shall decide by taking into account the interests of third parties and by ensuring the proportionality of the measures to the seriousness of the infringement.

(11) At the request of the holder, the court may order that its decision be made public at the expense of the infringer. The court shall decide on the manner of the publicity. Publicity shall mean, in particular, publication in a national daily newspaper or on the Internet.

Customs law consequences of trade mark infringement

Article 28

Where a trade mark is infringed, the holder may, according to the provisions of specific legislation, request for action by the customs authorities to prevent infringing goods be put on the market.

Rights of the applicant and the licensee in the case of trade mark infringement

Article 29

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

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

Chapter VI

LAPSE OF TRADE MARK PROTECTION

Modes of lapse

Article 30

(1) Trade mark protection shall lapse:

(a) when its term expires without renewal (Articles 11 and 31), on the day following the date of expiration;

(b) if the holder surrenders the protection (Article 32), on the day following the date of receipt of the surrender or at an earlier date specified by the holder;

(c) if it is cancelled (Article 33), with retroactive effect to the date of filing of the application;

(d) if the holder has not put the trade mark to genuine use (Articles 18 and 34), with retroactive effect to the starting date of the procedure for a decision on revocation or to the date of priority of the conflicting later trade mark, whichever is earlier;

(e) if the trade mark loses its distinctive character or becomes deceptive (Article 35), with retroactive effect to the starting date of the procedure for a decision on revocation or to the date of priority of the conflicting later trade mark, whichever is earlier;

(f) in the event of dissolution of the holder legal person or company without legal personality [Article 9(2)] without a successor in title, with retroactive effect to the date of dissolution.

(2) Under paragraphs (1)(d) and (1)(e), at the request of either of the parties trade mark protection may also be revoked with retroactive effect to such an earlier date on which the grounds for revocation occurred.

Partial lapse by reason of expiration of protection

Article 31

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

Surrender of trade mark protection

Article 32

(1) The holder entered in the Trade Mark Register may surrender his trade mark protection by a written declaration addressed to the Hungarian Intellectual Property Office.

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

(3) Surrender may be made in respect of some of the goods or services for which the trade mark is registered.

(4) Surrender of trade mark protection may not be withdrawn.

Cancellation

Article 33

(1) The trade mark shall be cancelled

(a) if the subject matter of the trade mark protection does not satisfy the requirements laid down in Article 8(a);

(b) if the subject matter of the trade mark protection differs from, or the list of goods or 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;

(c) if the international trade mark application has been filed by a person not entitled to it under the Madrid Agreement or the Protocol Relating to the Madrid Agreement [Article 76/I(1)(a)].

(2) The trade mark may not be cancelled

(a) if it conflicts with an earlier trade mark [Article 4(2)] the use of which does not satisfy, at the time of filing of the request for cancellation, the requirements laid down in Article 18; or

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

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

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

Revocation by reason of non-use

Article 34

(1) Trade mark protection shall be revoked by reason of non-use in respect of all or some of the goods or services for which the trade mark is registered, depending on whether non-use exists in respect of all or some of the goods or services for which the trade mark is registered.

(2) Revocation of trade mark protection by reason of non-use shall not be declared if, during the interval between expiration of the period laid down in Article 18(1) and filing of the request for revocation by reason of non-use, the trade mark has been put in genuine use or such use has been 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 holder becomes aware that a decision on revocation by reason of non-use will be requested.

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

Revocation by reason of loss of distinctive character or becoming deceptive

Article 35

(1) Trade mark protection shall be revoked

(a) if, in consequence of acts of the holder, the trade mark 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 trade mark has become deceptive, particularly as to the nature, quality or geographical origin of the goods or services.

(2) Trade mark protection shall be revoked by reason of loss of distinctive character or becoming deceptive in respect of all or some of the goods or services for which the trade mark is registered, depending on whether the grounds for revocation exist in respect of all or some of the goods or services for which the trade mark is registered.

(3) Should a request for revocation by reason of loss of distinctive character or becoming deceptive be refused by a final decision, a new procedure for revocation of the same trade mark on the same grounds may not be instituted by any person.

Revocation by reason of dissolution of the holder without successor in title

Article 35/A

Should a request for revocation by reason of dissolution of the holder without successor in title be refused by a final decision, a new procedure for revocation of the same trade mark on the same grounds may not be instituted by any person.

Reclaiming of royalties

Article 36

If the trade mark protection lapses *ex tunc*, only the portion of the royalties paid to the holder that was not covered by the profits derived from the use of the trade mark may be reclaimed.

PART II

PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN TRADE MARK MATTERS

Chapter VII

GENERAL PROVISIONS GOVERNING TRADE MARK PROCEDURES

Competence of the Hungarian Intellectual Property Office

Article 37

(1) The Hungarian Intellectual Property Office shall have competence in the following trade mark matters:

- (a) registration of trade marks,
- (b) renewal of trade mark protection,
- (c) revocation of trade mark protection,
- (d) cancellation of trade marks,
- (e) division of trade mark protection,
- (f) keeping the records of trade mark applications and trade marks,
- (g) official information.

(2) The Hungarian Intellectual Property Office shall also have competence in matters deriving from the application of provisions relating to the Community trade mark system (Chapter X/A) and to the international registration of trade marks (Chapters X/B to X/D).

Application of the general rules of public administration procedures

Article 38

(1) The Hungarian Intellectual Property Office shall proceed in trade mark matters falling within its competence – with the exceptions laid down in this Act – by applying the provisions of the Public Administration Procedures Act.

(2) In the absence of a provision of legislation to the contrary, the Hungarian Intellectual Property Office shall proceed in trade mark matters within its competence on request.

(3) The provisions of the Public Administration Procedures Act which are related to notifications and notices – issued *ex officio* or on request – concerning the start of procedures and first contact shall not apply in trade mark matters.

(4) The provisions of the Public Administration Procedures Act relating to succession in title shall not apply in trade mark matters.

Decisions of the Hungarian Intellectual Property Office

Article 39

(1) *[repealed]*

(2) The Hungarian Intellectual Property Office shall proceed and take its decisions in cancellation and revocation procedures at hearings held by a three-member board, except when the latter procedure is initiated due to the dissolution of the holder of the trade mark without a successor in title. Where a hearing must be held on an opposition filed against the registration of a trade mark in a trade mark registration procedure, a three-member board set up by the Hungarian Intellectual Property Office shall hold the hearing and take a decision. The board shall take its decisions by majority.

(3) Decisions of the Hungarian Intellectual Property Office shall take effect on service unless their review is requested.

(4) Decisions of the Hungarian Intellectual Property Office shall be served by a public notice if

(a) the address or the registered seat (establishment, branch of establishment) of the party is unknown, or

(b) the mail is returned with a remark that the whereabouts or the address of the party are unknown.

(5) The public notice shall be published in the official journal and on the website of the Hungarian Intellectual Property Office on the same day. Decisions served by a public notice shall be considered delivered on the fifteenth day after the publication of the notice. In any other matters pertaining to the service of decisions by a public notice, the provisions of the Public Administration Procedures Act shall apply except that posting shall mean the publication of the public notice.

(6) Where the provisions of Article 44(1) apply, all decisions shall be delivered to the representative.

(7) The provisions of the Public Administration Procedures Act related to the publication of decisions shall not apply in trade mark matters.

Establishment of facts

Article 40

(1) In trade mark procedures before it, the Hungarian Intellectual Property Office shall examine the facts of its own motion, with the exception set out in paragraph (2), its examination shall not be restricted to the allegations of the parties.

(2) In trade mark registration procedures, in the subject of opposition filed against the registration of a sign, in cancellation procedures and in revocation procedures, the Hungarian Intellectual Property Office shall examine the facts within the framework of the request and on the basis of the allegations and statements of the parties and the data verified by them.

(3) The decisions of the Hungarian Intellectual Property Office may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments; however, facts or evidence not submitted by the party in due time may be left out of consideration.

(4) Together with a notice about the legal consequences of the omission, the parties shall be invited or notified to rectify the irregularities of documents submitted in trade mark matters.

(5) Public hearings shall not be held in trade mark matters.

Time limits

Article 41

(1) The time limits prescribed by this Act shall not be extended. Failing to comply with such time limits shall involve legal consequences without further notice.

(2) Where this Act does not prescribe any time limit to rectify irregularities or to submit a statement, a time limit of at least thirty days shall be fixed for the party, 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 particularly justified cases.

(3) The time limits prescribed for administration by the Public Administration Procedures Act shall not apply to trade mark matters, neither shall apply the provisions of the Public Administration Procedures Act prescribing time limits for other measures of the proceeding authority.

(4) In trade mark matters the filing date of documents submitted by post is the date on which the document was delivered to the Hungarian Intellectual Property Office. Documents delivered after the time limit set by the Hungarian Intellectual Property Office shall be deemed submitted in due time if the document was posted by registered mail before the expiration of the time limit, unless the document was delivered later than two months after the expiration of the time limit.

Restitutio in integrum

Article 42

(1) In trade mark matters – unless excluded under paragraph (5) – a request for *restitutio in integrum* may be submitted within 15 days of the unobserved date or of the last day of the unobserved time limit. The request must state the grounds for failing to comply and the circumstances showing that the failure to comply occurred without the requesting party's fault.

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

admissible only within six months from the date not complied with or the last day of the time limit 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 Intellectual Property 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 date 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 maintain or should be revoked in whole or in part.

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

(a) in the event of failing to comply with the time limit prescribed for filing the declaration of priority [Article 53(2)];

(b) in the event of failing to comply with the time limit of six months fixed for claiming convention or exhibition priority;

(c) in the event of failing to comply with the time limit prescribed for filing the opposition [Article 61/B(1) and (2) and Article 76/P(3)];

(d) in the event of failing to comply with the time limit fixed for filing the request for accelerated procedure [Article 64/A(1)].

Suspension of the procedure

Article 43

(1) Where legal proceedings are instituted with respect to the entitlement to file a trade mark application or to the right to trade mark protection, the trade mark procedure shall be suspended until the court decision becomes final. If deciding on the merits of a trade mark case depends on a previous consideration on such a matter in which the procedure falls within the competence of another authority, the Hungarian Intellectual Property Office shall suspend the trade mark procedure.

(2) In the event of the death of a party or the dissolution of a legal entity, the procedure shall be suspended until the successor in title is communicated and attested. If the successor in title is not communicated within a reasonable time according to the circumstances of the case, the Hungarian Intellectual Property Office shall terminate the procedure or shall decide on the basis of the material at its disposal.

(3) The Hungarian Intellectual Property Office shall suspend the trade mark procedure at the request of the party or *ex officio* if the case cannot be decided on solid grounds without a decision taken in another, closely connected procedure under its own competence.

(4) The trade mark registration procedure cannot be suspended at the request of the party, except where the provisions of paragraph (1) or (3) would apply.

(5) The suspension of the procedure shall interrupt all time limits, and the time limits shall recommence from the termination of the suspension.

(6) Even in case of suspension of the procedure, the Hungarian Intellectual Property Office may decide that the suspension shall not affect the ongoing procedural actions and the time limits determined for performing thereof.

Representation

Article 44

(1) In the absence of a provision of an international treaty to the contrary, foreign applicants shall be represented by an authorised patent attorney or an attorney-at-law in all trade mark matters within the competence of the Hungarian Intellectual Property Office.

(2) A power of attorney shall be made in writing. As to the validity of a power of attorney given to a patent attorney, an attorney-at-law, a patent attorneys' office, a patent attorneys' partnership or a law office – either in the country or abroad – the signature by the mandator shall be sufficient for it to be valid. The power of attorney may also be a general authorization, on the basis of which the representative can proceed in all trade mark cases within the competence of the Hungarian Intellectual Property Office, to which the mandator is a party. A power of attorney given to a law office, a patent attorneys' office or a patent attorneys' partnership shall be deemed to be a power of attorney given to any person who certifies that he/she works within the framework of the office or partnership.

(3) The Hungarian Intellectual Property Office shall appoint a trustee from among the patent attorneys and attorneys-at-law in the trade mark procedure:

(a) for unknown heirs or for a party whose whereabouts are unknown, at the request of the opposing party, or

(b) for a foreign party not having an authorized representative, at the request of the opposing party.

(4) Paragraph (1) and paragraph (3)(b) shall not apply if the foreigner is a natural person or a legal entity whose permanent residence or domicile is in the territory of a Member State of the European Economic Area.

(5) Where paragraph (3)(b) and paragraph (4) may not be applied and the foreigner has not complied with the requirements laid down in paragraph (1), the Hungarian Intellectual Property Office shall apply in the trade mark procedure the provisions of Article 59(2) to (4) *mutatis mutandis*, except that it shall decide on the request on the basis of the information at its disposal if the foreigner participating in the procedure is the opposing party does not comply with the requirements laid down in paragraph (1).

(6) The party who requested the appointment shall be required to advance the costs and the remuneration of the trustee.

Use of languages

Article 45

(1) The language of trade mark procedures shall be Hungarian, the trade mark application shall be drawn up in Hungarian.

(2) In trade mark matters, documents in foreign languages may also be filed; however, the Hungarian Intellectual Property Office may require that a translation into Hungarian be filed. Submission of certified translations or legalized documents may be required only if the accuracy of the translation or the authenticity of the facts included in the foreign document is questionable with good reason.

Access to files

Article 46

(1) Any person may inspect the files of trade mark applications, except for draft decisions and all other documents used for the preparation of decisions and expert opinions that were not communicated to the parties.

(2) *[repealed]*

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

(4) Procedures in trade mark matters shall be public only if there is an opposing party participating.

Legal remedies

Article 46/A

(1) Against the decisions of the Hungarian Intellectual Property Office appeals, rehearing or supervisory procedures and protests of the prosecutor shall not be admissible.

(2) Decision of the Hungarian Intellectual Property Office in trade mark matters shall be reviewed by the court in non-contentious civil procedure laid down in Chapter XI.

(3) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is filed and only until such request is transmitted to the court:

- (a) registration of trade marks;
- (b) renewal of trade mark protection;
- (c) division of trade mark protection;
- (d) lapse of trade mark protection by reason of surrender;
- (e) cancellation of trade marks;
- (f) declaration of revocation of trade mark protection;
- (g) forwarding the request for an international trade mark application as well as a request for subsequent designation of the protection resulting from an international trade mark registration;
- (h) final refusal of the protection of a sign designating the Republic of Hungary;
- (i) refusal of the effect of an assignment or of a licence recorded in the international register with respect to the protection resulting from an international registration designating the territory of the Republic of Hungary;
- (j) conversion of an international registration into a national trade mark application.

(4) In the absence of a provision of this Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decision – terminating the procedure – taken in the matters referred to in paragraph (3)(e) and (f) on the basis of a request for review only if it establishes that its decision is contrary to law or if the parties request unanimously the modification or withdrawal of the decision.

(5) Paragraph (4) shall also apply to rulings taken in the matter referred to in paragraph 3(a), provided that a notice of opposition was filed against the trade mark application and the Hungarian Intellectual Property Office did not refuse the trade mark application for any ground laid down in Articles 2 and 3.

Judicial execution

Article 46/B

(1) The provisions of the Public Administration Procedures Act relating to execution shall apply to orders of the Hungarian Intellectual Property Office imposing a procedural fine.

(2) Decisions of the Hungarian Intellectual Property Office on the apportionment of costs shall be enforced by applying the provisions of Act LIII of 1994 on Judicial Execution.

Costs and fees

Article 46/C

(1) In trade mark matters an exemption from the payment of costs may not be permissible.

(2) Apart from the obligations to pay fees laid down by this Act, fees for administrative services shall be paid in trade mark matters – the amount of which is defined by specific legislation and which shall be paid pursuant to detailed rules laid down in specific legislation – for the following requests, too:

(a) requests for amendment, extension of time limits and *restitutio in integrum*;

(b) requests for recording succession in title, right of pledge and license contracts.

(3) In justified cases, the Hungarian Intellectual Property Office may reduce the amount of the fee of the professional representative if it is not commensurate with the actual representation performed. In this case, the Hungarian Intellectual Property Office shall proceed by applying the provisions on the fees and expenses of the attorneys at law and patent attorneys applicable in court proceedings *mutatis mutandis*.

Electronic administration and official services

Article 46/D

(1) In trade mark matters a party to the procedure is not entitled to, except for the cases under paragraph (2) and (3), communicate with the Hungarian Intellectual Property Office, and the Hungarian Intellectual Property Office shall not to be obliged to communicate with the party in electronic form in writing.

(2) The following may also be filed in electronic form:

a) trade mark applications;

b) requests for renewal;

c) requests for recording of the changes in the facts specified in Article 47 (2)(e) to (f) in the Trade Mark Register;

d) requests for accelerated procedure [Article 64/A(1) to (6)] and requests for particularly accelerated procedure [Article 64/A(7) to (8)];

e) requests for an extract from the Register, and;

f) requests for the inspection of the files.

(3) If a party to the procedure initiated proceedings under paragraph (2)(b) to (f) in electronic form via the Client Gate, the Hungarian Intellectual Property Office shall communicate to him its decisions made concerning the request, or send him certified extract from the Register in electronic form.

(4) The documents mentioned in paragraph (2) shall be filed electronically by using the electronic form drawn up by the Hungarian Intellectual Property Office for this purpose.

(5) On receipt of the document filed in electronic form, the Hungarian Intellectual Property Office shall send the party – in a manner laid down by specific legislation – an automatic notification containing an electronic receipt number.

(6) After receipt of a document filed in electronic form, the Hungarian Intellectual Property Office shall examine without delay whether it meets the legal requirements relating to electronic administration.

(7) In the case of electronic sending, the document shall be considered to have been filed when the automatic notification of the electronic receipt was sent to the party, except where the Hungarian Intellectual Property Office establishes that the received document is uninterpretable and notifies the party thereof by electronic mail.

(8) The party sending an uninterpretable document is obliged to acknowledge receipt of the notification under paragraph (7). If the party does not acknowledge receipt of the notification within fifteen days, the Hungarian Intellectual Property Office shall forward it to him by mail.

(9) Detailed rules for the electronic filing of the documents mentioned in paragraph (2) are laid down by specific legislation.

(10) Requesting and providing information by SMS shall be inadmissible in trade mark matters.

Chapter VIII

TRADE MARK REGISTER, INFORMATION TO THE PUBLIC

Trade Mark Register

Article 47

(1) The Hungarian Intellectual Property Office shall keep a Trade Mark Register of trade mark applications and trade marks in which all facts and circumstances concerning trade mark rights shall be entered in accordance with Article 48.

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

- (a) registration number of the trade mark;
- (b) reference number of the application;
- (c) representation of the trade mark;
- (d) list of goods or services;
- (e) name (official designation) and address (registered seat) of the holder of the trade mark;
- (f) name and registered seat of the representative;
- (g) filing date of the application;
- (h) priority data;
- (i) date of the decision on the registration of the trade mark;
- (j) renewal of trade mark protection;
- (k) lapse of trade mark protection, the date and the grounds for lapse of trade mark protection and limitation of the trade mark protection;
- (l) licenses of use.

(3) The Trade Mark Register authentically attests the existence of the rights and facts recorded therein. In absence of proof to the contrary, the rights and facts recorded in the Trade Mark Register shall be presumed to be existent. The burden of proof against the data recorded in the Trade Mark Register shall be on the person who disputes their correctness or authenticity.

(4) Any right relating to the trade mark protection may only be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Trade Mark Register.

(5) Any person may have access to the Trade Mark Register, the Hungarian Intellectual Property Office shall provide electronic access thereto on its website. Any person may ask for a certified copy of the data recorded in the Trade Mark Register on payment of a fee.

Entries in the Trade Mark Register

Article 48

(1) The Hungarian Intellectual Property Office shall make entries and record facts occurred in trade mark procedures in the Trade Mark Register on the basis of its own decisions or by decision of other authorities or the court. With respect to the entries made on the basis of the decisions listed in Article 77(1), the Trade Mark Register shall also contain the date when such decisions have become final. If a request for review was filed against any decision listed in Article 77(1), this fact as well as such decision is not final shall also be recorded.

(2) The Hungarian Intellectual Property Office shall decide on the acknowledgement and recording of rights and facts relating to trade mark protection – except for facts occurred in trade mark procedures – on the basis of a request filed in writing. An official document or a private document providing sufficient evidence shall be attached to such request. Where requests are filed to the same case in a way that their fulfilment would exclude each other, the requests shall be proceeded in order of their date of receipt.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal irregularities 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 irregularities, the party shall be invited to rectify them or to submit comments. The request shall be refused if it does not satisfy the requirements after the rectification or submitting the comments. If the party does not respond to the invitation within the prescribed time limit, the request shall be considered withdrawn.

Information to the public

Article 49

The official journal of the Hungarian Intellectual Property Office shall contain, in particular, the following data and facts relating to trade mark applications and trade marks:

(a) on publication of the trade mark application, the name and address (registered seat) 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 or services;

(b) after registration of the trade mark, the registration number, the name and address (registered seat) of the holder, name and address (registered seat) of the representative, the reference number, the filing date and the date of priority where the latter is different, the trade mark, the list of goods or services and the date of the decision on registration;

(c) in the case of renewal or division of trade mark protection, the relevant data thereof;

(d) the lapse of trade mark protection, the legal grounds and the date thereof;

(e) changes in rights relating to trade mark protection recorded in the Trade Mark Register.

Article 49/A

Official information on international trade mark applications provided for in Chapters X/B to X/D shall also be published in the official journal of the Hungarian Intellectual Property Office.

Chapter IX

TRADE MARK REGISTRATION PROCEDURE

Filing of a trade mark application and its requirements

Article 50

(1) The procedure for the registration of a trade mark shall begin with the filing of a trade mark application with the Hungarian Intellectual Property Office.

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

(3) Detailed formal requirements to be complied with by trade mark applications shall be laid down by specific legislation.

(4) A trade mark application shall be subject to the payment of a filing fee determined by specific legislation; the fee shall be paid within two months after the date of filing.

(5) Where the list of goods or services in the trade mark application have been prepared in a foreign language, the list of goods or services shall be filed in Hungarian within four months after the date of filing.

(6) The applicant may withdraw the trade mark application until its registration, in compliance with the provisions of Article 32.

Article 50/A

[repealed]

Date of filing

Article 51

(1) The filing date of an application shall be the date on which the application filed with the Hungarian Intellectual Property Office contains at least:

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

(2) In place of filing a representation of the sign and a list of goods or services, reference to a priority document is sufficient for according a date of filing.

Unity of the sign, list of goods or services

Article 52

(1) A trade mark application may seek trade mark protection for one sign only.

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

(3) In the list of goods or 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, if possible, by using the terms included therein.

Priority

Article 53

(1) The date establishing priority shall be:

- (a) generally, the date of filing of the trade mark 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 Intellectual Property Office published in the Hungarian Official Journal, the first day of displaying the sign at an exhibition, which is not earlier than six months prior to the date of filing of the application (exhibition priority);

(d) the date of filing of a previously filed and pending trade mark application for the same sign, which is not earlier than six months prior to the current application, provided that there has been no other priority claimed in relation thereto (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.

(3) Convention priority may also be claimed, under the conditions defined by the Paris Convention, if the foreign application has been filed in a Member of the World Trade Organization which is not party to the Paris Convention or, subject to reciprocity, in any other State. In matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.

Certification of exhibition

Article 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

Article 55

Following the filing of a trade mark application, the Hungarian Intellectual Property 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 or services has been filed in Hungarian language [Article 50(5)].

Article 56

(1) If a date of filing cannot be accorded, the applicant shall be invited to rectify the irregularities within 30 days.

(2) If the applicant complies with that invitation within the specified time limit, the date of receipt of the rectification shall be accorded as the date of filing. Failing to comply with the said invitation, the trade mark 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 or services has not been filed in Hungarian language, the Hungarian Intellectual Property Office shall invite the applicant to rectify

the irregularities within the time limit specified by this Act [Article 50(4) and (5)]. Failing to comply with the said invitation, the application shall be considered withdrawn.

Communication of certain data

Article 57

[repealed]

Observations

Article 58

(1) During the procedure for the registration of a trade mark any person may file an observation with the Hungarian Intellectual Property Office to the effect that the sign may not be granted trade mark protection for any grounds referred to in Articles 2 and 3.

(2) Such observation shall be taken into consideration when the requirement objected to in the observation is examined, except when the observation is filed at a time when its consideration would unduly delay the decision-making. Following the publication of the trade mark application (Article 61/A) the Hungarian Intellectual Property Office shall extend substantive examination, only on the basis of an observation, to ascertain whether the sign is not excluded from trade mark protection for any grounds referred to in Articles 2 and 3 and indicated in the observation. The examination of facts shall be performed within the confines of the observation and on the basis of the statements of the person making the observation and data justified by him.

(3) The applicant shall be notified of the observation, unless the Hungarian Intellectual Property Office ignores the observation in accordance with the first sentence of paragraph (2).

(4) The person filing the observation shall not be party to the procedure for the registration of a trade mark. This person shall be notified of the outcome of his observation.

Examination as to formal requirements

Article 59

(1) If a trade mark application satisfies the requirements examined under Article 55, the Hungarian Intellectual Property Office shall examine whether the formal requirements of Article 50(2) and (3) have been met 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 rectify the irregularities or to divide the application.

(3) The trade mark application shall be refused if, in spite of rectification or comments, it still does not comply with the requirements under examination. An application may be refused 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 trade mark application shall be considered withdrawn.

(5) In the course of the examination of the trade mark application as to formal requirements, the provisions of Article 61(6) and (7) shall apply *mutatis mutandis*.

Search for earlier rights

Article 60

(1) If a trade mark application meets the requirements laid down in Article 59, the Hungarian Intellectual Property Office shall carry out a search for earlier rights referred to in Article 4 and shall draw up a search report on the basis of the sign, with due regard to the list of goods or services.

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

(3) The Hungarian Intellectual Property Office shall send the search report to the applicant.

Notification of the holder of an earlier right indicated in the search report

Article 60/A

(1) The applicant, the holder and the licensee recorded in the Trade Mark Register may request the Hungarian Intellectual Property Office to notify him of the later trade mark application in the search report of which his earlier right was indicated by sending him a copy of the search report.

(2) The request may be filed for a period defined in calendar months, not exceeding one year and starting on the first day of the calendar year or half-year; the request shall be subject to the payment of a fee determined by specific legislation. The Hungarian Intellectual Property Office shall only fulfil the request after the payment of the fee.

(3) In case of failure to send the notification, the Hungarian Intellectual Property Office shall – on request – refund the whole, or proportional to the failure, the part of the fee paid under paragraph (2). The failure to send the notification shall not involve any legal consequences, it shall not affect the application of provisions concerning, in particular, opposition and acquiescence.

Substantive examination ex officio

Article 61

(1) If a trade mark application satisfies the requirements laid down in Article 59, the Hungarian Intellectual Property Office shall carry out a substantive examination of the trade mark application.

(2) The substantive examination shall ascertain:

(a) whether the sign meets the requirements of Article 1 and whether it is not excluded from trade mark protection under Articles 2 and 3;

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

(3) If a trade mark application does not meet the requirements examined under paragraph (2), the applicant shall be invited, according to the nature of the objection, to rectify the irregularities or to submit comments.

(4) A trade mark application shall be refused in whole or in part if it does not meet the examined requirements even after the rectification of the irregularities or the submitting of comments. An application may be refused 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 trade mark application shall be considered withdrawn.

(6) Simultaneously with the forwarding to the court of the request for reviewing the decision on the partial refusal of the trade mark application [Article 77(9) and (10)], the registration procedure shall be suspended with respect to the remaining part of the list of goods or services until the final termination of the court proceedings.

(7) On the basis of substantive examination carried out *ex officio*, the registration procedure shall be continued with respect to the remaining part of the list of goods or services after the decision on the partial refusal of the trade mark application has become final.

Publication of the trade mark application

Article 61/A

(1) If a trade mark application satisfies the requirements laid down in Article 59, the Hungarian Intellectual Property Office shall publish it, at the earliest, one month after the search report has been sent to the applicant [Article 60(3)].

(2) Publication shall be made by publishing official information to the public in the official journal of the Hungarian Intellectual Property Office as laid down in Article 49(a).

(3) The applicant shall be notified of the publication.

(4) After publication, official information shall be published in the official journal of the Hungarian Intellectual Property Office, if the application is withdrawn or considered withdrawn, refused, amended or divided.

Substantive examination upon opposition

Article 61/B

(1) Within a period of three months following the date of publication of a trade mark application, a notice of opposition to registration of the trade mark may be filed on the grounds of Articles 4 to 6:

(a) by the holder of the earlier trade mark and the licensee recorded in the Trade Mark Register thereof;

(b) by the holder of the right referred to in Article 5(1), in the case of an industrial property right the licensee recorded in the Trade Mark Register and in the case of copyright the person acquiring the right of use on the basis of a licensing agreement thereof;

(c) by the prior user on the basis of Article 5(2)(a);

(d) on the basis of Article 6 by the holder without whose authorization the agent or the representative has applied for the registration of a sign in his own name.

(2) *[repealed]*

(3) A notice of opposition shall be filed with the Hungarian Intellectual Property Office with a copy for each applicant plus one additional copy. It shall indicate the grounds on which it is based (grounds for opposition) and documentary evidence shall be attached.

(4) An opposition fee determined by specific legislation shall be paid within one month from the date of filing of the notice of opposition.

(5) If the opposition does not comply with the requirements laid down in paragraphs (1) to (3), the opponent shall be invited to rectify the irregularities; if the opposition fee has not been paid, he shall be invited to make payment within the time limit prescribed by this Act. Failing to comply with these requirements, the opposition shall be considered withdrawn.

Article 61/C

The opponent shall be a party to the procedure for the registration of a trade mark in the subject matter of the opposition.

Article 61/D

(1) The Hungarian Intellectual Property Office shall invite the applicant to submit comments on the opposition. Except for the case referred to in paragraph (2), it shall decide on the registration of the trade mark following the written preparatory work. The order terminating the procedure may also be taken without a hearing.

(2) Following the written preparatory work, the Hungarian Intellectual Property Office shall hold a hearing if the applicant and the opponent must be heard together in order to clarify the facts or if any of the parties so requests in due time.

(3) If the applicant fails to submit comments within the fixed time limit or to appear at the hearing, the Hungarian Intellectual Property Office shall decide on the opposition on the basis of the evidence at its disposal.

(4) The orders taken in the course of a hearing and the ruling shall be pronounced on the day of the hearing. The pronouncement may be deferred – for not more than eight days – only in respect of the ruling and only in the event if it is indispensable because of the complexity of the case. In such a case the time limit for pronouncement shall be fixed immediately and the ruling shall be put into writing until the day of pronouncement.

(5) The pronouncement of the decision shall consist of the presentation of the operative part and of the grounds.

(6) The decision shall be put in writing not later than fifteen days from the day it was taken – except where the Hungarian Intellectual Property Office deferred its pronouncement – and it shall be delivered within fifteen days from putting it in writing.

(7) The opposition shall be considered withdrawn if the opponent

(a) fails to reply to the invitation within the fixed time limit, or

(b) fails to appear at the hearing and has not requested in advance to hold it in his absence.

(8) Following the expiry of the time limit prescribed for filing a notice of opposition [Article 61/B(1) and (2)] no grounds may be indicated as grounds for opposition which have not been stated as such within the time limit referred to. When delivering its final decision, the Hungarian Intellectual Property Office shall not take into consideration the grounds so specified.

Article 61/E

(1) If the opposition is based on conflict with an earlier trade mark, the burden of proof that the use of the opposing party's trade mark met the requirements of Article 18 at the date of the publication of the trade mark application shall be on the opponent. At the request of the applicant filed in due time the Hungarian Intellectual Property Office shall invite the opponent to furnish such proof.

(2) A trade mark application may not be refused on the basis of an opposition in respect of which the furnishing of proof referred to in paragraph (1) was unsuccessful.

(3) Where the opponent does not reply to the invitation referred to in paragraph (1), the notice of opposition shall be considered withdrawn.

Article 61/F

In the subject matter of the opposition settlement may be reached.

Article 61/G

(1) If there is more than one notice of opposition in respect of the same trade mark application, they shall be dealt with in the same procedure.

(2) If there is more than one notice of opposition in respect of the same trade mark application, the procedure may be suspended with respect to some of the oppositions. Review of an

order suspending the procedure in such case [Article 77(1)] cannot be requested from the court separately, it may only be contested in a request for the review of a decision on the registration of the trade mark. The order suspending the procedure in such case shall, if necessary, specify the costs of the opponent arising until the suspension of the procedure.

(3) If, in the trade mark registration procedure, a decision refusing the application becomes final, the opposition in respect of which the procedure have been suspended shall be considered withdrawn. Otherwise the procedure shall be continued on the basis of the opposition in respect of which the procedure has previously been suspended.

Article 61/H

(1) In the case of opposition, the trade mark application shall also be examined to ascertain, with due regard to the grounds of the opposition, whether the sign is not excluded from trade mark protection under Articles 4 to 7.

(2) A trade mark application shall be refused in whole or in part if it does not meet the requirements examined under paragraph (1).

(3) The losing party shall be required to bear the costs arising in connection with the opposition; the opponent shall not be deemed as a losing party if under Article 61/G(3) the opposition shall be considered withdrawn.

(4) Upon request, the Hungarian Intellectual Property Office shall refund the opposition fee [Article 61/B(4)] to the extent and on conditions laid down by specific legislation:

- (a) if the trade mark application is refused under Article 61(4);
- (b) if the trade mark application is considered withdrawn under Article 61(5);
- (c) if the applicant withdraws the trade mark application [Article 50(6)];
- (d) if the opposition is considered withdrawn under Article 61/G(3).

Amendment and division of the application

Article 62

(1) A trade mark application may not be amended in respect of:

- (a) the sign,
- (b) the list of goods or services in such a way that it extends beyond that contained in the application on the date of filing.

(2) The applicant shall be entitled to amend the list of goods or services as laid down in paragraph (1)(b) until the day on which the decision on the registration of the trade mark is delivered.

Article 63

(1) The applicant may divide the application until the day on which the decision on the registration of the trade mark is delivered,

- (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 or services, he claims protection for specified goods or services separately.

(2) A fee determined by specific 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 Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit in

paragraph (2). Failing to comply with the said invitation, the request for division shall be considered withdrawn.

(4) The request for division shall be refused if an opposition to the registration of a trade mark is filed and the division of the application separates the part of the list of goods or services against which the opposition has been directed.

Registration of the trade mark

Article 64

(1) If the trade mark application and the sign to which it relates meet all the requirements of the examination [Article 61(2) and Article 61/H(1)], the Hungarian Intellectual Property Office shall register the subject matter of the application as a trade mark. The date of the decision on registration shall be the date of registration of the trade mark.

(2) The registration of the trade mark shall be recorded in the Trade Mark Register (Article 47), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office [Article 49(b)].

(3) After registration, the Hungarian Intellectual Property Office shall issue a trade mark certificate to which the extract from the register shall be annexed.

Accelerated procedure

Article 64/A

(1) If the applicant so requests, the Hungarian Intellectual Property Office shall apply the accelerated trade mark registration procedure. The request may be filed within one month from the date of filing of the application.

(2) A fee determined by specific legislation shall be paid for the request for accelerated procedure within one month from the filing of the request.

(3) *[repealed]*

(4) If the fee for the request is not paid, the applicant shall be invited to rectify the irregularities within the time limit prescribed by this Act. Failing to comply with the said invitation, the request shall be considered withdrawn.

(5) If the request complies with the requirements laid down in paragraphs (1) and (2), the Hungarian Intellectual Property Office shall order the accelerated procedure.

(6) In the case of an accelerated procedure, by way of derogation from the provisions of Chapters VII and IX,

(a) a time limit of fifteen days may also be fixed for the rectification of irregularities or for the submission of comments;

(b) the trade mark application may also be published prior to the expiry of one month [Article 61/A(1)] from sending the search report to the applicant [Article 60(3)];

(c) with respect to opposition, the Hungarian Intellectual Property Office shall only hold an oral hearing if the clarification of the facts requires that the parties be heard together or if the parties so request unanimously in due time.

(7) If the applicant so requests specially in the request for accelerated procedure, the Hungarian Intellectual Property Office shall register the sign as a trade mark simultaneously with the publication of the trade mark application (particularly accelerated procedure), except that the provisions of Article 64(3) shall only apply after the expiry of the time limit prescribed for filing a notice of opposition [Article 61/B(1) and (2)]. A request for particularly accelerated procedure may only be filed within the time limit laid down in paragraph (1) for the filing of a request for

accelerated procedure; the fee for the requested for particularly accelerated procedure is one and a half times higher than that for the accelerated procedure.

(8) If a notice of opposition to the registration of the sign as a trade mark is filed, the decision ordering the registration of the trade mark under paragraph (7) shall be withdrawn and the registration procedure shall be continued. Withdrawal of the decision ordering the registration of the trade mark under paragraph (7) shall be recorded in the Trade Mark Register, and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

Chapter X

OTHER PROCEDURES IN TRADE MARK MATTERS

Renewal procedure

Article 65

(1) Trade mark protection shall be renewed [Article 11(2)] by the Hungarian Intellectual Property Office at the request of the holder.

(2) The request for renewal shall indicate the registration number of the trade mark to be renewed; otherwise the provisions concerning the requirements of trade mark applications [Article 50(2) and (3)] shall apply *mutatis mutandis* to the request and to its documents.

(3) The request for renewal may be filed not earlier than twelve months before the expiry of the protection and within a period of six months at the latest from the date of expiry or from the date of registration, whichever expires later.

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

(5) On renewal of protection, the trade mark may not be altered and the list of goods or services may not be extended.

Article 65/A

[repealed]

Article 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 rectify the irregularities.

(2) The request for renewal shall be refused if, even after rectification 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 Intellectual Property Office shall invite the requesting party to rectify the irregularity within the time limit prescribed by this Act. Failing to comply with the said invitation, the request shall be considered withdrawn.

Article 67

(1) If the request meets the requirements laid down in Article 65, the Hungarian Intellectual Property Office shall renew the trade mark protection.

(2) The renewal of the trade mark protection shall be recorded in the Trade Mark Register, and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

(3) After renewal, the Hungarian Intellectual Property Office shall issue a trade mark certificate to which the extract from the register shall be annexed.

Procedure for division

Article 68

(1) By separating the list of goods or services, the holder may divide the trade mark protection in respect of specified goods or services.

(2) A request for division of trade mark protection and the necessary documents shall be filed in as many copies, in conformity with each other, as the number of the parts into which the original list of goods or services is to be divided.

(3) The request for division shall indicate the registration number of the original trade mark; otherwise the provisions concerning the requirements of trade mark applications [Article 50(2) and (3)] shall apply *mutatis mutandis* to the request and to its documents.

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

Article 69

(1) If the request for division does not comply with the requirements laid down in Article 68(1) to (3), the holder shall be invited to rectify the irregularities.

(2) The request for division shall be refused if, even after rectification or comments, it still does not comply with the requirements stated in the invitation. Where the holder 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 Intellectual Property Office shall invite the holder to rectify the irregularity within the time limit prescribed by this Act. Failing to comply with the said invitation, the request for division shall be considered withdrawn.

Article 70

(1) If the request meets the requirements laid down in Article 68, the Hungarian Intellectual Property Office shall divide the trade mark protection.

(2) The division of the trade mark protection shall be recorded in the Trade Mark Register and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

(3) After division, the Hungarian Intellectual Property Office shall issue a trade mark certificate for each trade mark, to which the extract from the register shall be annexed.

Lapse by reason of expiration and surrender

Article 71

(1) In the case of lapse by reason of expiration of protection, the Hungarian Intellectual Property Office shall inform the holder of the possibility of renewal.

(2) Where the holder surrenders trade mark protection (Article 32), the Hungarian Intellectual Property Office shall declare lapse of protection by an order.

(3) The lapse by reason of expiration of trade mark protection without renewal [Article 30(a)] and by reason of surrender shall be recorded in the Trade Mark Register and relevant information shall be published in the official journal of the Hungarian Intellectual Property Office.

Cancellation procedure

Article 72

(1) Any person may institute proceedings for cancellation of a trade mark against the holder under Article 33, with the exception laid down in paragraph (2).

(2) Under Articles 4 to 6, only the holder of an earlier, conflicting right may request cancellation of a trade mark.

(3) The request for cancellation shall be filed with the Hungarian Intellectual Property Office with a copy for each holder plus one additional copy. The request shall indicate the grounds on which it is based and documentary evidence shall be attached.

(4) A fee determined by specific legislation shall be paid 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 Act, the requesting party shall be invited to rectify the irregularities; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit prescribed by this Act. Failing to comply with these requirements, the request for cancellation shall be considered withdrawn.

Article 73

(1) The Hungarian Intellectual Property Office shall invite the holder to submit comments on the request for cancellation. Following the written preparatory work, it shall decide at a hearing on the cancellation of the trade mark, on limitation of the trade mark protection or refusal of the request. The order terminating the procedure may also be taken without a hearing. Following the expiration of the time limit fixed by the Hungarian Intellectual Property Office for the requesting party, no grounds may be indicated as grounds for cancellation, which have not been stated as such within the time limit referred to. When delivering the final decision, the grounds so specified shall not be taken into consideration.

(2) If the request for cancellation is based on conflict with an earlier trade mark of the requesting party, the burden of proof that the use of his trade mark met the requirements of Article 18 at the time of filing the request for cancellation shall be on the requesting party. At the request of the holder filed in due time, the Hungarian Intellectual Property Office shall invite the requesting party to furnish such proof.

(3) A trade mark may not be cancelled on the basis of a request for cancellation in respect of which the furnishing of proof referred to in paragraph (2) was unsuccessful.

(4) Where the requesting party does not reply to the invitation referred to in paragraph (2), the request for cancellation shall be considered withdrawn.

(5) The decisions taken in the course of hearings shall be pronounced on the day of the hearing. The pronouncement may be deferred – for not more than eight days – only in respect of the ruling and only in the event if it is indispensable due to the complexity of the case. In such a

case the time limit for pronouncement shall be fixed immediately, and the ruling shall be put into writing until the day of pronouncement.

(6) The pronouncement of the decision shall consist of the presentation of the operative part and of the grounds.

(7) The decision shall be put in writing not later than fifteen days from the day it was taken – except where the Hungarian Intellectual Property Office deferred its pronouncement – and it shall be delivered within fifteen days from putting it in writing.

Article 73/A

(1) At the request of any party, cancellation procedures shall be accelerated if proceedings were initiated for trade mark infringement and this fact is proved.

(2) For the request for accelerated procedure a fee determined by specific legislation shall be paid within one month from the filing of the request.

(3) If the request does not meet the requirements referred to in paragraph (1), the party requesting accelerated procedure shall be invited to rectify the irregularities or to submit comments. The request for accelerated procedure shall be refused if it does not meet the requirements laid down in this Act even after the rectification of irregularities or the submitting of comments. Failing to comply with the said invitation, the request for accelerated procedure shall be considered withdrawn.

(4) If the fee for the request has not been paid, the person requesting accelerated procedure shall be invited to make payment within the time limit prescribed by this Act. Failing to comply with the said invitation, the request for accelerated procedure shall be considered withdrawn.

(5) The Hungarian Intellectual Property Office shall establish the accelerated procedure by an order.

(6) In the case of an accelerated procedure, by way of derogation from the provisions of Articles 41 and 73 (a) a time limit of fifteen days may also be fixed for rectifying the irregularities or submitting comments;

(b) an extension of time limits may be granted only in justified cases;

(c) the Hungarian Intellectual Property Office shall only hold an oral hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

Article 74

(1) If there is more than one request for cancellation of the same trade mark, they shall be dealt with in the same procedure, if possible.

(2) If the request for cancellation is withdrawn, the procedure may be continued *ex officio*, except for the case under Article 72(2). In such case, the Hungarian Intellectual Property Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier. In the case referred to in Article 72(2), settlement may be reached in the cancellation procedure.

(3) The losing party shall be required to bear the costs of the cancellation procedure. If the holder of the trade mark has not provided any grounds for the cancellation procedure and he surrenders the trade mark protection – at least in respect of the concerned part of the list of the goods or services – prior to the expiration of the time limit for submitting comments [Article 73 (1)], the costs of the procedure shall be borne by the requesting party.

(4) The cancellation of the trade mark or limitation of trade mark protection shall be recorded in the Trade Mark Register and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

Revocation by reason of non-use, loss of distinctive character, becoming deceptive or dissolution of the holder without successor in title

Article 75

(1) Any person may institute proceedings for revocation of trade mark protection by reason of non-use under Articles 18 and 34 and by reason of trade mark loss of distinctive character or becoming deceptive under Article 35 against the holder and by reason of dissolution of the holder without successor in title under Article 35/A.

(2) The request for revocation shall be filed with the Hungarian Intellectual Property Office with a copy for each holder plus one additional copy. The request shall indicate the grounds on which it is based and documentary evidence shall be attached. Where revocation is requested under Article 30(2) with retroactive effect to a date which is earlier than the dates set in Article 30(1)(d) or (e), it shall be indicated in the request. Where revocation is requested by reason of non-use, the burden of proof that the use of the trade mark met the requirements of Article 18 shall be on the holder of the trade mark.

(3) A fee determined by specific legislation shall be paid for the request for revocation within two months from the filing of the request.

(4) If the request for revocation does not comply with the requirements laid down in this Act, the requesting party shall be invited to rectify the irregularities; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit prescribed by this Act. Failing to comply with these requirements, the request for revocation shall be considered withdrawn.

Article 76

(1) The Hungarian Intellectual Property Office shall invite the holder to submit comments on the request for revocation. Following the written preparatory work, it shall decide at a hearing on the revocation of trade mark protection, in whole or in part, by reason of non-use, loss of distinctive character, becoming deceptive or dissolution of the holder without successor in title or on the refusal of the request. The order terminating the procedure may also be taken without a hearing. The Hungarian Intellectual Property Office shall take its decisions without a hearing on the revocation of trade mark protection by reason of the dissolution of the holder without a successor in title. Article 73(5) to (7) shall apply to the pronouncement, putting in writing and delivery of decisions taken in the course of hearings.

(2) If there is more than one request for revocation of the same trade mark, or there are requests for both the cancellation and for the revocation of the same trade mark, they shall be dealt with in the same procedure, if possible.

(3) If the request for revocation is withdrawn, the procedure may be continued *ex officio*. In such case, the Hungarian Intellectual Property Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier.

(4) The losing party shall be required to bear the costs of the procedure for revocation. The costs of the procedure for revocation by reason of dissolution of the holder without successor in title shall, however, be borne by the requesting party. If the holder of the trade mark has not provided any grounds for the procedure for revocation and he surrenders the trade mark protection – at least in respect of the concerned part of the list of the goods or services – prior to the expiration of the time limit for submitting comments [Article 76 (1)], the costs of the procedure shall be borne by the requesting party.

(5) The revocation of the trade mark protection, in whole or in part, by reason of non-use, loss of distinctive character, becoming deceptive or dissolution of the holder without successor in title shall be recorded in the Trade Mark Register and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office.

PART III

PROVISIONS CONCERNING THE COMMUNITY TRADE MARK SYSTEM

Chapter X/A

COMMUNITY TRADE MARK AND COMMUNITY TRADE MARK APPLICATION

General provisions

Article 76/A

For the purposes of this Act:

(a) *Community Trade Mark Regulation*: the Council Regulation (EC) No 40/94 on the Community trade mark;

(b) *Community trade mark*: a trade mark as defined in Article 1(1) of the Community Trade Mark Regulation;

(c) *Community trade mark application*: an application for the registration of a Community trade mark, filed in accordance with the Community Trade Mark Regulation.

Forwarding the Community trade mark application

Article 76/B

(1) Where a Community trade mark application is filed with the Hungarian Intellectual Property Office, a fee determined by specific legislation shall be paid on filing the application for forwarding it in accordance with Article 25(2) of the Community Trade Mark Regulation.

(2) If the fee for forwarding the Community trade mark application has not been paid, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. The Hungarian Intellectual Property Office shall forward the Community trade mark application after the payment of the fee.

Community trade mark as earlier trade mark

Article 76/C

(1) For the purposes of Article 4 and Article 5(2)(b), the Community trade mark shall be deemed an earlier trade mark of the same kind as a trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act, with the exceptions laid down in paragraphs (2) and (3).

(2) For the purposes of Article 4(1)(c), the earlier Community trade mark having a reputation in the European Community shall be taken into consideration in compliance with Article 9(1)(c) of the Community Trade Mark Regulation.

(3) For the purposes of Article 4(3), a sign shall not be excluded from trade mark protection if it conflicts with an earlier Community trade mark which has not been put to genuine use by the holder in accordance with Article 15 of the Community Trade Mark Regulation.

(4) For the purposes of this Act, reference to a use in accordance with the provisions of Article 18 shall be construed in the case of Community trade marks as reference to a use in accordance with the provisions of Article 15 of the Community Trade Mark Regulation.

(5) The provisions relating to acquiescence (Article 17) shall apply *mutatis mutandis* if the earlier trade mark is a Community trade mark and the later trade mark is a trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act.

(6) The provisions of paragraphs (1) to (5) shall govern also for the purposes of Article 33(2).

Legal consequences of the infringement of a Community trade mark

Article 76/D

To the infringement of a Community trade mark the same legal consequences shall apply – in accordance with the provisions of Article 14 of the Community Trade Mark Regulation – as to the infringement of a trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act.

Conversion into a national trade mark application

Article 76/E

(1) On a request – filed on the basis of Article 109(3) of the Community Trade Mark Regulation – for the conversion of a Community trade mark application or for a Community trade mark, the Hungarian Intellectual Property Office shall start the procedure for the registration of the trade mark by applying the provisions of Chapters VII to IX *mutatis mutandis* and on the conditions laid down in paragraphs (2) to (5).

(2) The filing fee [Article 50(4)] shall be paid within two months from the receipt of the request by the Hungarian Intellectual Property Office.

(3) The Hungarian translation of the request under paragraph (1) and of its documents shall be filed with the Hungarian Intellectual Property Office within four months from the receipt of the request by the Hungarian Intellectual Property Office. For the purposes of the provisions of Chapter IX, this translation shall be considered as a translation to be filed on the basis of Article 50(5).

(4) The Hungarian Intellectual Property Office shall notify the requesting party of the receipt of the request under paragraph (1) by sending simultaneously the notice under Article 56(4).

(5) The date of filing, the date of priority and the seniority shall be determined in accordance with Article 108(3) of the Community Trade Mark Regulation. Article 50(3) shall be applied with regard to the provisions of Article 110(2) of the Community Trade Mark Regulation.

(6) In the procedure started under paragraph (1) on the basis of a request for the conversion of a Community trade mark the Hungarian Intellectual Property Office, following the payment of the filing fee and the filing of the translation prescribed in paragraph (3), shall register the Community trade mark on the basis of this Act (Article 64) without any further examination.

(7) In any other matters pertaining to the examination of the request for the conversion of a Community trade mark application or Community trade mark and to the procedure started under paragraph (1), the provisions of Chapters VII to IX shall apply *mutatis mutandis*.

Seniority of a Community trade mark

Article 76/F

(1) A trade mark registered by the Hungarian Intellectual Property Office on the basis of this Act, the seniority of which has been claimed with respect to a Community trade mark under Articles 34 and 35 of the Community Trade Mark Regulation and the protection of which has lapsed by reason of expiration of protection without renewal or by reason of surrender, may be cancelled or revoked by reason of non-use, by reason of trade mark loss of distinctive character or becoming deceptive or by reason of dissolution of the holder without successor in title, if the conditions for cancellation or for revocation have existed both at the date of filing the request and at the date of the earlier lapse of trade mark protection.

(2) It shall be indicated in the Trade Mark Register that the seniority of the trade mark has been claimed with respect to a Community trade mark. Loss of seniority shall also be entered in the Trade Mark Register.

(3) All facts and circumstances concerning trade marks, in particular licenses of use, right of pledge, any other encumbrance of rights relating to trade marks or deriving from trade mark protection as well as transfer and assignment of such rights, shall be entered into the Trade Mark Register even after the lapse, by reason of expiration of protection without renewal or by reason of surrender, of the protection of the trade mark the seniority of which has been claimed with respect to a Community trade mark.

(4) A Community trade mark shall be taken into consideration as an earlier trade mark (Article 76/C) with its duly claimed seniority even if the protection of the trade mark registered by the Hungarian Intellectual Property Office under this Act, the seniority of which has been claimed with respect to the Community trade mark, has lapsed by reason of expiration of protection without renewal or by reason of surrender.

Article 76/G

[repealed]

Community trade mark court

Article 76/H

(1) In the Republic of Hungary the Metropolitan Court shall proceed at first instance, in the composition laid down in Article 78(2), as the Community trade mark court referred to in Article 91(1) of the Community Trade Mark Regulation.

(2) The Metropolitan Court of Appeals, as the Community trade mark court of second instance, shall have jurisdiction concerning appeals against the decisions of the Metropolitan Court.

PART IV

PROVISIONS CONCERNING THE INTERNATIONAL REGISTRATION OF TRADE MARKS

Chapter X/B

GENERAL PROVISIONS CONCERNING INTERNATIONAL TRADE MARK APPLICATIONS

General provisions

Article 76/I

(1) For the purposes of this Act:

(a) *International trade mark application*: an application filed under the Madrid Agreement of April 14, 1891 Concerning the International Registration of Marks (for the purposes of this part hereinafter referred to as the “Agreement”) and under the Protocol of June 27, 1989 relating to the Madrid Agreement (hereinafter referred to as the “Protocol”);

(b) *International Bureau*: the International Bureau of the World Intellectual Property Organization;

(c) *International register*: the registry maintained by the International Bureau, of trade marks filed under the Agreement or the Protocol;

(d) *Application designating the Republic of Hungary*: an international trade mark application in which the extension of protection to the territory of the Republic of Hungary has been requested;

(e) *Office of origin*: the Office of the country of origin defined in Article 1(3) of the Agreement or the Office of origin defined in Article 2(2) of the Protocol, or both, as the case may be.

(2) Where this Act refers to the application of the Agreement or the Protocol, it shall be construed as meaning also the application of the Common Regulations under the Agreement and the Protocol.

(3) Unless otherwise provided in the Agreement or the Protocol, the provisions of this Act shall apply to international trade mark applications with the exceptions laid down in this Part (Chapters X/B to X/D).

(4) *[repealed]*

Chapter X/C

INTERNATIONAL TRADE MARK APPLICATIONS FILED UNDER THE AGREEMENT

Applications filed through the intermediary of the Hungarian Intellectual Property Office

Article 76/J

(1) The holder of a trade mark registered by the Hungarian Intellectual Property Office may file – under the Agreement – an international trade mark application through the Hungarian Intellectual Property Office as Office of origin.

(2) The Hungarian Intellectual Property Office shall forward the international trade mark application with respect to which the applicant:

(a) has a real and effective industrial or commercial establishment in the country; or failing this

(b) has his domicile in the country; or failing this

(c) is of Hungarian nationality.

(3) The international trade mark application shall be filed with the Hungarian Intellectual Property Office as Office of origin in compliance with the formal requirements, in the manner and in the language prescribed by the Agreement.

(4) If the international trade mark application is filed before the registration of the trade mark referred to in paragraph (1), the date of registration of the trade mark shall be considered as date of filing.

(5) At the invitation of the Hungarian Intellectual Property Office the applicant shall certify that he is entitled to file an international trade mark application under paragraph (2). Failing to comply with the said invitation, the Hungarian Intellectual Property Office shall refuse the request to forward the international application.

Article 76/K

(1) Prior to forwarding the international trade mark application, the Hungarian Intellectual Property Office shall examine:

(a) whether the application contains the registration number of the trade mark referred to in Article 76/J(1);

(b) whether the application contains a request to forward the international application, information identifying the applicant, a representation of the sign and a list of goods or services;

(c) whether the data of the application are in compliance with the data of the trade mark referred to in Article 76/J(1) as appearing in the Trade Mark Register;

(d) whether the application contains designation of the countries to the territory of which the extension of protection is claimed;

(e) whether the application has been filed in the language and in the manner prescribed by the Agreement;

(f) whether the application is signed by the applicant or the representative.

(2) Where the application does not comply with the requirements of paragraph (1)(a) to (c) and (f) – except for the case when the list of goods or services of the application is narrower than the list of goods or services of the trade mark referred to in Article 76/J(1) – the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. The applicant shall be notified that if the application is not received by the International Bureau within two months following the filing of the request, the date of the international registration shall not be the date of the filing of the request, but the date of the receipt of the international application by the International Bureau.

(3) Where the invitation to rectify the irregularities under paragraph (1) has no result, the Hungarian Intellectual Property Office shall refuse the request to forward the international trade mark application.

(4) Where the application does not comply with the requirements of paragraph (1)(d) and (e), the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. Failing to comply with the said invitation, the application shall be forwarded to the International Bureau as filed by the applicant.

Article 76/L

(1) For the forwarding of the international trade mark application a forwarding fee determined by specific legislation shall be paid to the Hungarian Intellectual Property Office, and in connection with the international application the international fee determined by the Agreement shall be paid to the International Bureau.

(2) The forwarding fee referred to in paragraph (1) shall be due on the date of filing of the international trade mark application. If the fee is not paid within one month following the due date, the request to forward the international trade mark application shall be considered withdrawn.

(3) The international fee referred to in paragraph (1) shall be paid directly to the International Bureau within the time limit and in the manner prescribed by the Agreement.

(4) In the case of international trade mark applications filed through the intermediary of the Hungarian Intellectual Property Office the date and number of the international registration shall be recorded in the Trade Mark Register.

Subsequent extension, through the intermediary of the Hungarian Intellectual Property Office, of protection resulting from the international registration

Article 76/M

(1) Where the Hungarian Intellectual Property Office is the Office of the Contracting State of the holder of an international registration, a subsequent extension of the protection resulting from the international registration may be requested through the intermediary of the Hungarian Intellectual Property Office.

(2) The request for the subsequent extension of protection shall be filed in compliance with the formal requirements, in the manner and language prescribed by the Agreement.

(3) Prior to forwarding the request for subsequent extension, the Hungarian Intellectual Property Office shall examine:

(a) whether the request contains a request to forward it and whether it is signed by the holder or the representative;

(b) whether the request has been filed in the manner prescribed by the Agreement.

(4) Where the request for the subsequent extension of protection does not comply with the requirements of paragraph (3)(a), the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularities. Failing to comply with the said invitation, the Hungarian Intellectual Property Office shall refuse the said request.

(5) Where the request for the subsequent extension of protection does not comply with the requirements of paragraph (3)(b), the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularities. Failing to comply with the said invitation, the request for the subsequent extension of protection shall be forwarded to the International Bureau as filed by the requesting party.

(6) The provisions of Article 76/L shall apply *mutatis mutandis* with respect to the request for the subsequent extension of protection.

(7) The provisions of paragraphs (1) to (6) shall apply *mutatis mutandis*, if a request for recordal, in the international register, of a change relating to the international trade mark application or the protection resulting from the international registration is filed under the Agreement through the intermediary of the Hungarian Intellectual Property Office.

Applications designating the Republic of Hungary

Article 76/N

(1) An application designating the Republic of Hungary shall have the same effect as a trade mark application duly filed with the Hungarian Intellectual Property Office from the date of the international registration under Article 3(4) of the Agreement or of the subsequent extension of protection resulting from the international registration under Article 3^{ter}(2) of the Agreement.

(2) The international registration effected on the basis of an application designating the Republic of Hungary shall result in protection – from the date laid down in paragraph (1) – to the same effect as registration under Article 64 if the Hungarian Intellectual Property Office does not refuse, under Article 5(1) and (2) of the Agreement, protection of the sign extended to the Republic of Hungary or withdraws the refusal.

(3) The provisions relating to applications designating the Republic of Hungary shall apply *mutatis mutandis* if subsequent extension, to the Republic of Hungary, of protection resulting from the international registration is requested.

(4) Following international registration on the basis of an application designating the Republic of Hungary, the Hungarian Intellectual Property Office shall make available for inspection its contents as published and shall ensure access to the entries of the international register relating to the application.

Article 76/O

(1) Publication of an application designating the Republic of Hungary shall be made by publishing the following data of the international trade mark application:

(a) the sign;
(b) the number of the international registration;
(c) the date of publication in the Gazette of the International Bureau and the issue of the Gazette containing the publication.

(2) The Hungarian Intellectual Property Office shall publish the application designating the Republic of Hungary under paragraph (1) after notification of the international registration.

Article 76/P

(1) The Hungarian Intellectual Property Office shall draw up the search report under Article 60 and shall carry out the substantive examination under Article 61 with respect to the application designating the Republic of Hungary.

(2) The Hungarian Intellectual Property Office shall send the search report to the applicant through the intermediary of the International Bureau.

(3) For the purposes of Article 61/B(1), the time limit of opposition relating to an application designating the Republic of Hungary shall be reckoned from the date of publication under Article 76/O(1).

(4) If the international trade mark application does not meet the requirements examined under Article 61(2), or an opposition has been filed against it, the International Bureau shall be notified in the manner and within the time limit laid down by the Agreement (provisional refusal). In the notification a time limit of at least three months shall be fixed for submitting comments, which can be extended upon a request filed before expiration.

(5) Where the applicant does not reply to the invitation within the fixed time limit, the Hungarian Intellectual Property Office shall notify the International Bureau – except when paragraph (5)(a) is applicable – that the protection of the trade mark extending to the Republic of Hungary is refused (final refusal), or that – in accordance with paragraph (5)(e) – protection is only partially recognised by the Hungarian Intellectual Property Office. The Hungarian Intellectual Property Office shall send notifications to the International Bureau after the decision on final refusal or on partial withdrawal of a provisional refusal has become final. Where trade mark protection is recognised in part, the date of registration shall be considered to be the date of the decision.

(5a) Where the applicant does not reply, within the fixed time limit, to an invitation issued by the Hungarian Intellectual Property Office solely on the basis of an opposition, the Hungarian Intellectual Property Office shall decide on the registration of the trade mark on the basis of the available information, and shall notify the International Bureau accordingly, sending either a notification on the final refusal or a notification made in accordance with paragraph (5)(e).

(5b) Where the applicant replies to the invitation, the Hungarian Intellectual Property Office shall continue the substantive examination and shall decide on the registration of the trade mark on

the basis thereof. If the trade mark application must be refused on the basis of the substantive examination [Article 61(4), Article 61/H(2)], the Hungarian Intellectual Property Office shall notify the International Bureau that the protection of the trade mark extending to the Republic of Hungary is refused (final refusal) after the decision on it has become final.

(5c) Where the Hungarian Intellectual Property Office does not issue any notice of provisional refusal and sends no notification to the International Bureau on the basis of paragraph (5d), either, the date of registration shall be considered to be the first day after the expiration of the time limit prescribed for provisional refusal.

(5d) Where the Hungarian Intellectual Property Office finds before the expiration of the time limit prescribed for provisional refusal that it is inadmissible to issue any provisional refusal, it shall notify the International Bureau without delay of the recognition of the protection. The date of registration shall be considered to be the date of the notification on the recognition of the protection.

(5e) Where the Hungarian Intellectual Property Office withdraws the provisional refusal in whole or in part after the substantive examination, it shall notify the International Bureau of the recognition of the protection in whole or in part after the decision on withdrawal has become final. The date of registration shall be considered to be the date of the decision on withdrawal.

(6)-(7) [repealed]

(8) By applying the provisions of Article 48 *mutatis mutandis*, the Hungarian Intellectual Property Office shall record in the Trade Mark Register that under Article 4^{bis} of the Agreement the international registration has replaced the trade mark registered by the Hungarian Intellectual Property Office.

Refusal of the effect of an assignment and of a licence contract

Article 76/R

(1) Where the Hungarian Intellectual Property Office considers that an assignment or a licence contract recorded in the international register with respect to the protection resulting from the international registration and extending to the territory of the Republic of Hungary is contrary, in part or in whole, to the provisions of this Act, it shall notify the applicant, through the intermediary of the International Bureau, in the manner and within the time limit prescribed by the Agreement.

(2) The notification that the change shall have no effect shall indicate the reasons for and the extent of refusal.

Invalidation of an international trade mark

Article 76/S

For the purposes of this Act, invalidation of an international trade mark referred to in Article 5(6) of the Agreement shall mean the cancellation of the trade mark and the revocation of trade mark protection.

Supplementary Register

Article 76/T

The Hungarian Intellectual Property Office shall keep a Supplementary Register with respect to applications designating the Republic of Hungary, which shall contain all facts and circumstances that cannot be recorded in the international register under the Agreement.

Chapter X/D

INTERNATIONAL TRADE MARK APPLICATIONS FILED UNDER THE PROTOCOL

Applications filed through the intermediary of the Hungarian Intellectual Property Office

Article 76/U

(1) The applicant of a trade mark application filed with the Hungarian Intellectual Property Office and the holder of a trade mark registered by the Hungarian Intellectual Property Office may file – under the Protocol – an international trade mark application through the Hungarian Intellectual Property Office as Office of origin.

(2) If the international trade mark application is filed before the registration of the trade mark referred to in paragraph (1), the applicant may declare that he wishes to file the international trade mark application on the basis of the trade mark referred to in paragraph (1). In this case the date of registration of the trade mark shall be considered as the date of filing.

(3) The Hungarian Intellectual Property Office shall forward the international trade mark application with respect to which the applicant:

- (a) is of Hungarian nationality, or
- (b) has his domicile in the country; or
- (c) has a real and effective industrial or commercial establishment in the country.

(4) The international trade mark application shall be filed with the Hungarian Intellectual Property Office as Office of origin in compliance with the formal requirements, in the manner and – at the option of the applicant – in one of the languages prescribed by the Protocol.

(5) The provisions of Article 76/J(5) and Articles 76/K to 76/M shall apply *mutatis mutandis* to international trade mark applications filed under the Protocol, provided that any reference to the Agreement shall be construed as a reference to the Protocol.

Application of provisions concerning international trade mark applications filed under the Agreement

Article 76/V

The provisions of Articles 76/N to 76/T shall apply *mutatis mutandis* to international trade mark applications filed under the Protocol, provided that any reference to the Agreement shall be construed as a reference to the Protocol.

Transformation of an international registration into national application

Article 76/Z

(1) The request for transformation under Article 9^{quinquies} of the Protocol shall be filed with the Hungarian Intellectual Property Office within three months from the date on which the international registration was cancelled.

(2) The Hungarian translation of the list of goods or services shall be filed within four months following the filing of the request for transformation and the transformation fee amounting to a proportion, determined by specific legislation, of the filing fee shall be paid within two months. Failing to comply with these, the request for transformation shall be considered withdrawn.

(3) In any other matter pertaining to the request for transformation, the provisions of Chapters VII to IX shall apply *mutatis mutandis*; if, however, the international registration is cancelled after the date referred to in Article 76/P(7), the Hungarian Intellectual Property Office shall register the trade mark without applying the provisions of Articles 61 to 63. In this case, the date referred to in Article 76/P(7) shall be the date of registration.

PART V

COURT PROCEEDINGS IN TRADE MARK MATTERS

Chapter XI

REVIEW OF DECISIONS OF THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE

Request for review

Article 77

(1) Upon request, the court may review the Hungarian Intellectual Property Office's

(a) decisions referred to in Article 46/A(3);

(b) decisions suspending the procedure or furnishing a basis for entries in the register of trade mark applications or the Trade Mark Register;

(c) orders excluding or limiting the inspection of files, against which independent legal remedy is admissible under the provisions of Public Administration Procedures Act;

(d) orders denying persons the legal status as a party to the procedure apart from those who have filed request for the commencement of a procedure;

(e) decisions imposing procedural fines or ruling on the amount and on the apportionment of procedural costs.

(2) A request for review brought against a decision imposing procedural fine or ruling on the amount and on the apportionment of procedural costs shall have no delaying force with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final.

(3) Any order of the Hungarian Intellectual Property Office not referred to in paragraph (1) may only be contested in a request for the review of the decisions referred to in paragraph (1).

(4) Review of a decision may be requested by:

(a) any party to the procedures before the Hungarian Intellectual Property Office;

(b) any person excluded from, or limited in, the inspection of files;

(c) any person whose legal status as a party to the procedure has been denied.

(5) Review of a ruling on the registration and cancellation of a trade mark may be requested by the public prosecutor under Article 3(1)(a) and (b) and Article 3(2). Any other participant to the procedures before the Hungarian Intellectual Property Office may file, in his own right, an independent request for review of the decision or a provision thereof relating to him.

(6) The request for review must be filed or posted by registered mail, with the exceptions laid down in paragraphs (7) and (8), within thirty days from the date of communication of the decision to the party concerned or to any other participant to the procedure.

(7) The time limit of thirty days for the filing of a request for review shall be reckoned from the communication of the order refusing, or considering not to have been filed, the request for *restitutio in integrum*, if

(a) that date is later than the date of communication of the decision under paragraph (6), and

(b) the request for *restitutio in integrum* was filed to remedy an omission, which served directly as a basis for the decision under paragraph (6).

(8) If the review of a decision of the Hungarian Intellectual Property Office is requested on the basis of a decision taken by the Constitutional Court under the provisions of the Public Administration Procedures Act, the time limit for filing a request for review shall open again for thirty days from the pronouncement of the decision of the Constitutional Court.

(9) The request for review shall be filed with the Hungarian Intellectual Property Office, which shall forward it, together with the documents of the trade mark file, to the court within fifteen days except for the case provided for in paragraph (10). Where an opposing party took part in the procedure, the Hungarian Intellectual Property Office shall simultaneously notify that party of the forwarding of the request.

(10) If the request for review raises legal questions of fundamental importance, the Hungarian Intellectual Property Office may make a written statement about that question and shall forward it, together with the request for review and the documents of the trade mark file, to the court within thirty days.

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

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

Jurisdiction and competence

Article 78

(1) In proceedings for the review of decisions taken by the Hungarian Intellectual Property 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) [*repealed*]

Rules governing proceedings concerning requests for review

Article 79

The court shall hear requests for the review of decisions taken by the Hungarian Intellectual Property Office in accordance with the rules of non-contentious civil procedure, subject to the exceptions mentioned in this Act. Unless this Act or the non-contentious nature of the procedure indicates otherwise, the rules of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as “the Code of Civil Procedure”) shall apply to the proceedings *mutatis mutandis*.

Publicity

Article 80

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

Exclusion

Article 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 the proceedings or from acting as judges:

(a) persons who participated in taking the decision of the Hungarian Intellectual Property Office;

(b) relatives, as defined in the general provisions of the Code of Civil Procedure relating to the exclusion of judges, of a person mentioned under point(a), above.

(2) The provisions of paragraph (1) shall also apply to persons drawing up the minutes and to experts.

Parties to the proceedings and other participants

Article 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 settlement, admit claims or waive any right.

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

Article 83

Where a holder of a joint protection acts independently to maintain and protect trade mark rights, or proceedings have been initiated against only one of the joint holders, the court shall notify the other joint holders that they may join the proceedings.

Article 84

(1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Intellectual Property Office may intervene in the proceedings in favour of the party whose interests he shares until the court decision becomes final.

(2) Save for settlement, admission of claims and waiver 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

Article 85

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

(2) As to the validity of a power of attorney given to a patent attorney or an attorney-at-law either in the country or abroad, the signature by the principal shall be sufficient.

Costs of proceedings

Article 86

(1) Where an opposing party also takes part in the court proceedings, the provisions on litigation costs shall apply *mutatis mutandis* to the advance and payment of the costs of proceedings.

(2) In the absence of an opposing 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

Article 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 in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

Restitutio in integrum

Article 88

The provisions of Article 42 shall apply *mutatis mutandis* to the submission of a request for *restitutio in integrum* in non-contentious proceedings.

Measures on the basis of the request

Article 88/A

If the Hungarian Intellectual Property Office has made a written statement concerning the request for review [Article 77(10)], the chairman of the proceeding chamber shall inform the party or parties of this statement in writing.

Hearing and taking of evidence

Article 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 opposing 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 finds 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) Settlement may not be reached in the court proceedings if such settlement was not admissible in the procedure before the Hungarian Intellectual Property Office.

Decisions

Article 90

The court shall decide both on the merits of a case and on other matters by an order.

Article 91

(1) If the court alters a decision taken in a trade mark case, its order shall replace the decision of the Hungarian Intellectual Property Office. In place of reviewing the decision in a trade mark matter the court shall repeal the decision and order the Hungarian Intellectual Property Office to continue the procedure if the request for review was filed against a decision refusing, withdrawing or considering withdrawn a trade mark application, in the absence of which continuation of the registration procedure at the Hungarian Intellectual Property Office would have been admissible.

(2) The court shall repeal the decision and order the Hungarian Intellectual Property 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 exclusion;

(b) substantive rules of procedure were infringed during the procedure before the Hungarian Intellectual Property Office which cannot be remedied by the court.

(c) *[repealed]*

(3) Where a party requests a court decision on a matter, which was not the subject of the procedure before the Hungarian Intellectual Property Office, the court shall refer the request to the Hungarian Intellectual Property Office, except when, in the case of opposition, the Hungarian Intellectual Property Office left the ground for opposition out of consideration under Article 61/D(8), in the cancellation procedure, the Hungarian Intellectual Property Office left the ground for cancellation out of consideration under paragraph 73(1) or when the new ground for opposition or cancellation was stated in the request for review or after the filing thereof; such ground for opposition or cancellation shall be left out of consideration by the court. In the case of the referral of the request the court shall, if necessary, repeal the decision of the Hungarian Intellectual Property Office.

(4) The court shall leave out of consideration any facts, allegations or evidence submitted by the party in the request for review or after the filing thereof, which the Hungarian Intellectual Property Office – in compliance with Article 40(3) – duly left out of consideration in the procedure before it.

(5) Where, after the filing of a request for review, the Hungarian Intellectual Property Office withdraws any of its decisions referred to in Article 77(1)(b) to (d), the court shall terminate the proceedings. If the Hungarian Intellectual Property Office has altered its decision, the court proceedings may only continue in respect of matters still pending.

Article 92

The court order on the merits of a case shall be communicated by service, it shall not be considered published by the pronouncement thereof. If the court decides on the request for review at a hearing, the order on the merits of the case shall be pronounced also on the day of the hearing. The pronouncement may be deferred – for not more than eight days – only in the event if it is indispensable because of the complexity of the case. In such a case the time limit for pronouncement shall be fixed immediately and the judgment shall be put into writing until the day of pronouncement.

Article 93

In deciding on the appeal filed against the Metropolitan Court's decision, the provisions of Article 257 of the Code of Civil Procedure shall apply *mutatis mutandis*, with the proviso that in the case of a request to this effect the court of second instance shall also hear the parties orally, except when the appeal was filed against an order on a request for review filed against a decision of the Hungarian Intellectual Property Office referred to in Article 77(1)(c) and (d).

Article 94

[repealed]

Chapter XII

TRADE MARK LITIGATION

Rules governing trade mark litigation

Article 95

(1) The Metropolitan Court shall have exclusive competence in court proceedings concerning trade mark infringement, the prohibition of the use of a trade mark by the representative or the agent under Article 14 or the assignment of the right to trade mark protection or of the trade mark protection under Article 19(5) as well as the prohibition of the use of Community trade marks under Articles 106 and 107 and Article 159a(5) of the Community Trade Mark Regulation [Article 76/A(a)]. In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in Article 78(2).

(2) In court proceedings on trade mark infringement, provisional measures – until the contrary is rendered probable – shall be considered necessary to protect the plaintiff's rights deserving specific appreciation if the plaintiff proves that the trade mark is protected, and he is the holder of the trade mark 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 trade mark infringement or 60 days from the date on which the plaintiff became aware of the infringement and of the identity of the infringer.

(4) In the case of trade mark infringement, the request for provisional measures may also be filed before initiating an action; the Metropolitan Court shall decide on the request in a non-contentious procedure. With the exceptions deriving from the particular features of non-contentious procedures, the provisions of this Act and the general rules of the Code of Civil Procedure shall apply *mutatis mutandis* to the non-contentious procedure for provisional measures. If the plaintiff has initiated an action for trade mark infringement in accordance with paragraph (8), the amount exceeding the fee paid in the non-contentious procedure shall be paid as fee for the action.

(5) In addition to civil remedies applicable in the case of infringement, the holder may request the court, on conditions relating to provisional measures, to

(a) order precautionary measures in accordance with the provisions of the Act on Judicial Execution, if he demonstrates circumstances likely to endanger the later satisfaction of his claim for damages or for the surrender of the enrichment obtained by infringement;

(b) compel the infringer to communicate or present his banking, financial or commercial documents with a view to ordering the precautionary measures in accordance with point (a);

(c) order the lodging of security, if in place of demanding discontinuance of the trade mark infringement, the holder consents to the continuation, by the infringer, of the allegedly infringing activity.

(6) The court may order the lodging of security under paragraph (5)(c) even in the absence of a request of the holder to this effect, provided that the holder filed a request for the discontinuance of infringement, which the court does not allow.

(7) The court shall decide on the provisional measures out of turn, within fifteen days from the filing of a request to this effect at the latest. The court of second instance shall decide on the appeal filed against the decision on the provisional measures out of turn, within fifteen days from the filing of the appeal at the latest.

(8) At the request of the defendant, the court shall annul its decision on provisional measures – including paragraphs (5) and (6) as well – requested before the initiation of an action, if the holder has not instituted, within fifteen days from the communication of such decision, proceedings for trade mark infringement with respect to the claim enforced by the provisional measures. The court shall decide on the request for annulling the provisional measures out of turn, within fifteen days from the filing of the request at the latest.

(9) Where, in the course of proceedings for trade mark infringement, one of the parties has already produced reasonably available evidence, the court may, at the request of the party producing the evidence, require the defendant to

(a) present the documents and other exhibits in his possession and to make inspection possible;

(b) communicate or present his banking, financial or commercial documents.

(10) Preliminary production of evidence shall also be admissible before instituting proceedings if the holder has made the fact or danger of trade mark infringement likely to a reasonable extent. If the proceedings have not yet started, preliminary production of evidence shall be requested at the Metropolitan Court. Preliminary evidence shall be taken by the Metropolitan Court. Against decisions ordering preliminary production of evidence appeals shall be admissible.

(11) At the request of the defendant, the court shall annul its decision ordering preliminary production of evidence, if the holder has not instituted proceedings for trade mark infringement within fifteen days from the communication of the decision ordering preliminary production of evidence. The court shall decide on the request for annulling preliminary production of evidence out of turn, within fifteen days from the filing of the request at the latest.

(12) Where any delay would cause irreparable harm, it shall be regarded as a case of extreme urgency and – taking this into account – provisional measures, including paragraphs (5) and (6) as well, may be taken without the defendant having been heard. Where any delay would cause irreparable harm, or the risk of the destruction of evidence is likely, it shall be regarded as an urgent case and – taking this into account – preliminary evidence may be taken without the defendant having been heard. Decisions taken without the defendant having been heard shall be communicated to the defendant on execution. After communication of the decision, the defendant may request to be heard, the review or the annulment of the decision ordering provisional measures or the preliminary production of evidence.

(13) The court may subject the ordering of preliminary production of evidence and – with the exception of paragraph (5)(c) and paragraph (6) – of provisional measures to the lodging of security.

(14) If, in the cases referred to in paragraph (5)(c), paragraph (6) and paragraph (13), the party entitled to compensation from the amount of the security does not enforce his claim within three months from the date on which the decision annulling a decision on the preliminary

production of evidence or provisional measures or the judgment on the discontinuance of proceedings took effect, the depositor may demand refund of the security.

(15) Any other trade mark litigation not mentioned under paragraph (1) shall be heard by the county courts (Metropolitan Court).

(16) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to in paragraphs (1) and (15), with the exceptions laid down in Articles 80, 85 and 86(3) of this Act.

PART VI

COLLECTIVE MARKS AND CERTIFICATION MARKS

Chapter XIII

COLLECTIVE MARKS

Collective marks

Article 96

(1) Collective marks are trade 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) *[repealed]*

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

(a) *[repealed]*

(b) if the regulations governing its use contain provisions contrary to public policy, accepted principles of 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 holder social organization itself may not use the collective mark, it shall, however, control the use by the members.

(6) The 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 the use of collective marks

Article 97

(1) A sign shall be granted protection as a collective mark if its use is governed by regulation complying with the requirements laid down in paragraphs (2) and (3). The regulation shall be established by the social organization being the holder of the collective mark.

(2) The regulation shall include:

(a) the name and the registered seat of the social organization,

(b) information on the members authorized to use the mark, including their names, addresses and registered seats,

(c) the conditions of membership,

(d) the conditions of the use of the collective mark,

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

(3) *[repealed]*

(4) The application for a collective mark shall contain the regulation. With respect to collective marks, the data indicated in paragraph 2(b) shall also be recorded in the Trade Mark Register. The regulation 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

Article 98

(1) Assignment of the protection of collective marks shall require the relevant written contract and the recording in the Trade Mark Register of the succession in title.

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

Lapse of protection of collective marks

Article 99

(1)–(2) *[repealed]*

(3) The protection of collective marks shall also lapse – on the day indicated in the decision on lapse – where the holder 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 collective mark under Article 96(3), the collective mark shall be cancelled. 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 conferred by the protection of collective marks

Article 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 holder; they may, however, intervene in the proceedings instituted by the holder.

Chapter XIV

CERTIFICATION MARKS

Certification marks

Article 101

(1) Certification marks are trade marks that distinguish goods or services of specified quality or of other characteristics 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 trade mark is registered;

(b) an undertaking which – pursuant to the Act on the Prohibition of Unfair and Restrictive Market Practices – is not independent of the undertaking under point(a);

(c) an undertaking with which the undertaking under point(a) is in a permanent legal relationship in respect of the goods or services for which the mark is registered.

(3) The holder 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 regulation satisfying the requirements prescribed under paragraph (5).

(5) The regulation shall include:

(a) the name and registered seat of the holder,

(b) the quality requirements relating to the goods or services for which the mark is registered,

(c) the rules of attesting the quality,

(d) the conditions of the use of the mark,

(e) the provisions relating to the control of the use of the mark,

(f) the order of proceedings against unauthorized use of the mark.

(6) For the regulation, 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 trade marks and to their protection shall apply *mutatis mutandis*.

(7) A certification mark shall also be cancelled if the application was filed by a person not entitled to it under paragraph (2).

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

Chapter XV

APPLICATION OF PROVISIONS RELATING TO TRADE MARKS TO COLLECTIVE AND CERTIFICATION MARKS

Application of provisions relating to trade marks

Article 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 trade marks and to their protection, provided that observations may also be filed with respect to the grounds referred to in Article 96(3).

PART VII

PROTECTION OF GEOGRAPHICAL INDICATIONS

Chapter XVI

SUBJECT MATTER OF PROTECTION, RIGHTS CONFERRED, INFRINGEMENT AND LAPSE OF PROTECTION

Geographical indications and appellations of origin capable of protection

Article 103

(1) Geographical indications and appellations of origin which are used in the course of trade to identify the geographical origin of a product shall be granted protection as geographical indications.

(2) Geographical indication means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein the specific quality, reputation or other characteristics of which are due essentially to that geographical origin, and the production, processing or preparation of which takes place in the defined geographical area.

(3) Appellation of origin means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein the specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

Article 104

Geographical indications of spirit drinks shall be granted protection if the products bearing the geographical indications comply also with the conditions specified in the product specification provided for by specific legislation.

Grounds for refusal

Article 105

(1) A geographical indication may not be granted protection if in the course of trade it has become the common name of a product irrespective of whether the product originates in the place specified by the geographical indication.

(2) After its registration, a geographical indication may not become the common name of a product in the course of trade.

Article 106

(1) A geographical indication shall be excluded from protection:

(a) with respect to identical products, if it is identical with an earlier geographical indication;

(b) with respect to identical or similar products, if it is identical with or similar to an earlier geographical indication;

(c) if it is identical with or similar to an earlier trade mark and its use – due to the reputation, renown or lasting presence on the market of the trade mark – would result in a likelihood of confusion on the part of public.

(2) A geographical indication may not be granted protection if it conflicts with the name of an earlier – protected or other – plant variety or animal breed and as a result is likely to mislead the public as to the origin of the product.

Registrability, right to protection

Article 107

(1) Protection shall be granted for a geographical indication if:

(a) it satisfies the requirements of Articles 103 and 104 and is not excluded from protection under Articles 105 and 106 and

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

(2) Any natural or legal person or a company without legal personality may apply for the protection of a geographical indication which produces, processes or prepares, in the defined geographical area, a product for which the designation of the geographical indication is used.

(3) The protection of a geographical indication shall belong jointly to the persons who produce, process or prepare products in accordance with paragraph (2) (hereinafter referred to as "holders").

(4) Foreigners shall be entitled to the protection of a geographical indication only on the basis of an international agreement or subject to reciprocity. In matter of reciprocity, the opinion of the President of the Hungarian Intellectual Property Office shall be decisive.

Establishment and term of protection

Article 108

(1) Protection of the geographical indication shall begin with registration and shall be effective retroactively from the date of filing of the application.

(2) Protection of geographical indications shall be unlimited in time.

Rights conferred by protection

Article 109

(1) Protection shall confer on its holders the exclusive right to use the geographical indication. Only the holders may use the geographical indication, they may not license the right of use.

(2) On the basis of the exclusive right of use, any of the holders shall be entitled to prevent any person who, in the course of trade:

(a) uses the protected geographical indication or a denomination liable to create confusion with respect to products not originating in the defined geographical area;

(b) uses the protected geographical indication with respect to products not included in the list of products, but similar to those and therefore takes unfair advantage of or infringes the repute of the protected geographical indication.

(c) imitates or evokes in any manner whatsoever the protected geographical indication, even if the true origin of the product is indicated or if the protected name is translated or accompanied by various additions;

(d) uses any false or misleading indication as to the provenance, origin, nature or essential characteristics of the product, no matter where it is indicated (e.g. on the packaging, advertising material or documents relating to the product concerned);

- (e) performs any other act liable to mislead the public as to the true origin of the product.

Infringement of protection

Article 110

(1) Any person who unlawfully uses a protected geographical indication in contravention of the provisions of Article 109, commits an infringement.

(2) Any one of the holders may also institute proceedings for infringement individually. Proceedings for infringement may also be instituted by interest groups of the holders and by organizations for the protection of consumers.

(3) For the civil remedies available against the infringer, the provisions of Article 27, and for the customs law consequences of infringement, the provisions of Article 28 shall apply *mutatis mutandis*.

Lapse of protection

Article 111

(1) Protection of a geographical indication shall lapse:

(a) if the protection is cancelled, with retroactive effect to the date of filing of the application;

(b) if the holders have violated the requirements laid down in the product specification, with retroactive effect to the starting date of the procedure for revocation.

(2) The protection shall be cancelled if the geographical indication does not satisfy the requirements laid down in Article 107(1)(a).

(3) The protection of a geographical indication of spirit drinks shall be revoked if the designated inspection authority establishes serious defects, in relation to the product specification, in the use of the geographical indication, which cannot be remedied in any other way.

(4) Should the request for cancellation or for revocation be refused by a final decision, a new procedure for the cancellation, or for revocation of the same geographical indication on the same grounds may not be instituted by any person.

Chapter XVII

PROCEDURES CONCERNING THE PROTECTION OF GEOGRAPHICAL INDICATIONS

General provisions governing procedures before the Hungarian Intellectual Property Office

Article 112

(1) The Hungarian Intellectual Property Office shall have competence in the following matters concerning geographical indications:

(a) registration of geographical indications;

(b) cancellation and revocation of protection;

(c) keeping the records of applications for the protection of geographical indications and of registered geographical indications;

(d) official information on the protection of geographical indications.

(2) The Hungarian Intellectual Property Office shall also have competence in matters concerning the application of provisions relating to the Community protection of certain geographical indications and to the international registration of appellations of origins (Chapters XVII/A and XVII/B).

(3) In cancellation procedures and in revocation procedures, the Hungarian Intellectual Property Office shall proceed and shall take a ruling at the hearing in the form of a board consisting of three members.

(4) The Hungarian Intellectual Property Office may withdraw or modify its decisions – terminating the procedure – taken in the following matters only if a request for review is filed and only until such request is transmitted to the court:

- (a) registration of geographical indications;
- (b) cancellation of geographical indications;
- (c) revocation of protection;
- (d) forwarding of applications filed under the Council Regulation;
- (e) forwarding of international applications for the registration of appellation of origins;
- (f) final refusal of the protection of an appellation of origin registered by the International

Bureau designating the Republic of Hungary.

(5) The Hungarian Intellectual Property Office may withdraw or modify its final decision – terminating the procedure – taken in the matters referred to in paragraph (4)(b) and (c) on the basis of a request for review only if it establishes that its decision is contrary to law or if the parties request unanimously the modification or withdrawal.

(6) In any other matters in procedures before the Hungarian Intellectual Property Office, the provisions of Chapters VII and VIII shall apply *mutatis mutandis*, except that in matters concerning geographical indications a party to the procedure is not entitled to – except for the case under paragraphs (7) and (8) – communicate with the Hungarian Intellectual Property Office in electronic form in writing, and the Hungarian Intellectual Property Office shall not to be obliged to communicate with the party in electronic form in writing.

(7) The following may also be filed in electronic form:

- a) requests for an extract from the Register,
- b) requests for the inspection of the files.

(8) If a party to the procedure initiated proceedings under paragraph (7) in electronic form via the Client Gate, the Hungarian Intellectual Property Office shall communicate to him its decisions in the procedure or send him certified extract from the Register in electronic form.

(9) For filing the document defined in paragraph (7) in electronic form, Article 46/D(4)-(9) shall apply *mutatis mutandis*.

Procedure for registration of geographical indications

Article 113

(1) The application for the registration of geographical indications shall contain a request for registration, the name of the geographical indication, the list of products and the other documents. Detailed formal requirements to be complied with by applications shall be laid down by specific legislation.

(2) An application for the registration of a geographical indication shall be subject to the payment of a filing fee determined by specific legislation; the fee shall be paid within two months from the date of filing.

(3) If, either on filing or as a result of a rectification, an application for the registration of geographical indications satisfies the requirements for according a date of filing, the Hungarian

Intellectual Property Office shall publish official information thereon in its official journal (communication of data). Communication of data shall contain the following data:

- (a) the name of the geographical indication;
- (b) the date of filing;
- (c) the list of products.

(4) After the communication of data in the procedure for the registration of a geographical indication any person may file an observation with the Hungarian Intellectual Property Office to the effect that the indication or the application does not comply with a requirement of registrability laid down by this Act.

(5) If an application for the registration of a geographical indication satisfies the requirements examined under Article 55, the Hungarian Intellectual Property Office shall carry out a substantive examination of the application. The substantive examination shall assess:

- (a) whether the geographical indication meets the requirements of Article 103 and whether it is not excluded from protection under Articles 105 and 106; and
- (b) whether the application complies with the requirements laid down by this Act.
- (6) [repealed]

(7) In the procedure for the registration of geographical indications, in matters not regulated in paragraphs (1) to (5), the provisions of Chapter IX shall apply *mutatis mutandis*, except that any reference to the list of goods or services shall be construed as a reference to the list of products.

Article 113/A

(1) If the registration of a geographical indication of a spirit drink is requested in an application for the registration of a geographical indication, the provisions of Article 113 shall apply subject to the following exceptions:

(a) besides those specified in Article 113(1) the application for the registration of geographical indications shall also contain the product specification provided for by specific legislation;

(b) the Hungarian Intellectual Property Office shall carry out the examination on filing (Articles 55 and 56) and the examination as to formal requirements (Article 59) out of turn;

(c) if the application satisfies the requirements examined under point (b), the Hungarian Intellectual Property Office shall send the copies of the documents of the matter out of turn to the minister responsible for agricultural policy (hereinafter referred to as the “Minister”);

(d) on the basis of the procedure followed under specific legislation for the examination of product specifications, the Minister shall give a statement to the Hungarian Intellectual Property Office within nine months from sending the documents pursuant to paragraph (c) whether he agrees, with regard to the product specification, with the registration of the geographical indication; the Hungarian Intellectual Property Office, sending simultaneously the decision, shall inform the Minister that the decision on the registration of the geographical indication has become final;

(e) until the decision on the registration of the geographical indication becomes final the applicant may submit comments to the Hungarian Intellectual Property Office whether he requests Community protection for his geographical indication of spirit drinks.

(2) In the procedure for amendment of the product specification related to the registered geographical indication of spirit drinks the provisions of paragraph (1) shall apply *mutatis mutandis*.

Procedure for cancellation and for revocation

Article 114

For the procedure for cancellation of the protection of geographical indications, the provisions of Articles 72 to 74, and for the procedure for revocation, the provisions of Articles 75 and 76 shall apply *mutatis mutandis*.

Court proceedings concerning protection of geographical indications

Article 115

In court proceedings concerning the protection of geographical indications, the provisions of Chapters XI and XII shall apply *mutatis mutandis*.

Inspection of geographical indications of spirit drinks

Article 116

Inspection in accordance with the requirements under Article 104 of the use of geographical indications of spirit drinks employed in the course of trade shall fall within the competence of the authority designated by specific legislation.

PART VIII

**PROVISIONS CONCERNING COMMUNITY PROTECTION OF CERTAIN
GEOGRAPHICAL INDICATIONS AND THE INTERNATIONAL REGISTRATION OF
APPELLATIONS OF ORIGIN**

Chapter XVII/A

**PROVISIONS CONCERNING THE COMMUNITY PROTECTION OF GEOGRAPHICAL
INDICATIONS FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS, FOR VINE AND
WINE PRODUCTS AS WELL AS SPIRIT DRINKS**

Article 116/A

(1) Community protection of geographical indications of agricultural products and foodstuffs shall be governed by the provisions of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (hereinafter referred to as “Regulation 510/2006/EC”).

(2) Community protection of geographical indications of vine and wine products shall be governed by the provisions of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (hereinafter referred to as “Regulation 479/2008/EC”).

(3) On the basis of Regulation 510/2006/EC and Regulation 479/2008/EC, the Minister and the Hungarian Intellectual Property Office shall proceed in matters falling within the competence of the Member States.

(4) Applications under Article 5 of Regulation 510/2006/EC and Article 35(1) of Regulation 479/2008/EC (for the purposes of this Chapter hereinafter together referred to as “the application”) shall be filed with the Minister. Without delay the Minister shall forward the application satisfying the requirements provided for by specific legislation to the Hungarian Intellectual Property Office.

(5) The Hungarian Intellectual Property Office shall examine the application out of turn whether it satisfies the following:

(a) the requirements of Articles 2 to 3 of Regulation 510/2006/EC in the case of agricultural products and foodstuffs;

(b) the requirements of Articles 34, 42 and 43 of Regulation 479/2008/EC in the case of vine and wine products.

(6) The examination of the Hungarian Intellectual Property Office shall not ascertain whether the link exists

(a) between an agricultural product or a foodstuff and the geographical name, as laid down in Article 2(1)(a) and (b) of Regulation 510/2006/EC;

(b) between a vine or wine product and the geographical name, as laid down in Article 34(1) of Regulation 479/2008/EC.

(7) The Hungarian Intellectual Property Office shall give a statement to the Minister within two months from the receipt of the application whether, on the basis of the requirements examined under paragraph (5), it agrees with the forwarding of the application to the European Commission, as laid down in paragraph (9).

(8) Following the statement of the Hungarian Intellectual Property Office under paragraph (7) and the detailed examination of the application as provided for by specific legislation, the Minister shall publish the application in the official journal of the ministry headed by him. Objections may be filed against the application within two months from the date of publication, as laid down in Article 5(5) of Regulation 510/2006/EC and Article 38(3) and (4) of Regulation 479/2008/EC. The Minister shall decide on the objection in its decision under paragraph (9), in agreement with the Hungarian Intellectual Property Office if industrial property issues are involved.

(9) The Minister shall decide within nine months from the filing of the application, in conformity with the statement of the Hungarian Intellectual Property Office and following its detailed examination as laid down by specific legislation, whether the application complies with the requirements laid down by this Act and by specific legislation. The Minister shall publish the decision together with the product specification in the official journal of the ministry headed by him. In the case of a decision in favour of the applicant the Minister shall forward to the European Commission the details and documents referred to in Article 5(7) of Regulation 510/2006/EC or in Article 38(5)(b) of Regulation 479/2008/EC.

(10) The favourable decision under paragraph (9) shall give rise to transitional protection in accordance with the first subparagraph of Article 5(6) of Regulation 510/2006/EC and Article 38(7) of Regulation 479/2008/EC with effect from the date on which the application is filed with the European Commission. The Minister shall notify the applicant of the date of the establishment of transitional protection. An applicant whose geographical indication has been granted transitional protection may also institute proceedings for infringement; however, the proceedings shall be suspended until the decision of the European Commission on the application has become final.

(11) The provisions of paragraphs (1) to (10) shall apply *mutatis mutandis*

(a) to applications for an amendment of the product specification filed under Article 9 of Regulation 510/2006/EC and to requests for cancellation filed under Article 12 in the case of agricultural products and foodstuff;

(b) to applications for an amendment of the product specification filed under Article 49 of Regulation 479/2008/EC and to requests for cancellation filed under Article 50 in the case of vine and wine products.

(12) The objection under Article 7(2) of Regulation 510/2006/EC shall be filed with the Minister within four months from the date of publication in the Official Journal of the European Union of the detail and document referred to in the first subparagraph of Article 6(2) of Regulation 510/2006/EC. The tasks of a Member State relating to objections shall be performed by the

Minister, in agreement with the Hungarian Intellectual Property Office if industrial property issues are involved.

(13) The provisions of Articles 27 and 28 and Chapter XII shall apply *mutatis mutandis*

(a) where acts referred to in Article 13(1) of Regulation 510/2006/EC are committed which infringe Community protection of geographical indications and designations of origin for agricultural products and foodstuffs or transitional protection provided for in paragraph (9);

(b) where acts referred to in Article 45(2) of Regulation 479/2008/EC are committed which infringe Community protection of geographical indications and designations of origin for vine and wine products or transitional protection provided for in paragraph (9).

Article 116/B

(1) Community protection of geographical indications of spirit drinks shall be governed by Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (hereinafter referred to as "Regulation 110/2008/EC"). On the basis of Regulation 110/2008/EC the Minister shall proceed in matters falling within the competence of the Member States.

(2) If the applicant has submitted comments under Article 113/A(1)(e) the Hungarian Intellectual Property Office shall inform the Minister thereon in the notification under Article 113/A(1)(d). Failing to submit comments under Article 113/A(1)(e) the applicant may request the carrying out of the procedure for the grant of Community protection of the geographical indication at any time after the decision on the registration of the geographical indication of a spirit drink becomes final; the request must be filed with the Minister. The Minister shall submit the application pursuant to Article 17(1) of Regulation 110/2008/EC within sixty days from the notification of the Hungarian Intellectual Property Office, or from the filing of the request of the right holder.

(3) In the case of the amendment pursuant to Article 113/A(2) of the product specification relating to a geographical indication of spirit drinks under Community protection, the provisions of paragraph (2) shall apply *mutatis mutandis*.

(4) where acts referred to in Article 16 of Regulation 110/2008/EC are committed which infringe Community protection of geographical indications of spirit drinks, the provisions of Articles 27 and 28 and Chapter XII shall apply *mutatis mutandis*.

Article 116/C

(1) In issues not regulated in paragraphs 116/A and 116/B provisions of specific legislation shall apply. This specific legislation may provide that the verification of compliance with the product specification may also be ensured by the following bodies:

(a) in the case of agricultural products and foodstuffs the product certification bodies under Article 11(1) of Regulation 510/2006/EC;

(b) in the case of spirit drinks the product certification bodies under Article 22(1) of Regulation 110/2008/EC;

(c) in the case of vine and wine products the product certification bodies under Article 48(1) of Regulation 479/2008 EC.

(2) Specific legislation referred to in paragraph (1)

(a) may provide conditions for the production and the putting on the market of agricultural products and foodstuffs, spirit drinks, vine and wine products which are granted protection of geographical indication, and

(b) may prohibit the use of a geographical indication.

(3) If the producer does not fulfil the condition laid down in paragraph (2)(a) or does not comply with the prohibition under paragraph (2)(b) and continues to use the geographical indication for a product which is not in compliance with the product specification, the producer shall pay a fine, with an amount determined by specific legislation.

Chapter XVII/B

PROVISIONS CONCERNING THE INTERNATIONAL REGISTRATION OF APPELLATIONS OF ORIGIN

General provisions

Article 116/D

(1) For the purposes of this Act

(a) 'Application for the international registration of an appellation of origin' (hereinafter referred to as "international application") means an application filed under the Lisbon Agreement of October 31, 1958 for the Protection of Appellations of Origin and their International Registration (for the purposes of this part hereinafter referred to as the "Agreement");

(b) 'International Bureau' means the International Bureau of the World Intellectual Property Organization;

(c) 'international register' means the register maintained by the International Bureau, of appellations of origin filed under the Agreement;

(d) 'Office of the country of origin' means the competent Office of the country of origin defined in Article 2(2) of the Agreement.

(2) Where this Act refers to the application of the Agreement, it shall be construed as meaning also the application of the Regulations under the Agreement.

(3) Unless otherwise provided in the Agreement, the provisions of this Act shall apply *mutatis mutandis*, to international applications with the exceptions laid down in this Chapter.

(4) [repealed]

Applications filed through the intermediary of the Hungarian Intellectual Property Office

Article 116/E

(1) The holder of an appellation of origin registered by the Hungarian Intellectual Property Office [Article 107(3)] may file an international application with the International Bureau through the Hungarian Intellectual Property Office as Office of the country of origin.

(2) The international application shall be filed with the Hungarian Intellectual Property Office as Office of the country of origin in compliance with the formal requirements, in the manner and in the language prescribed by the Agreement.

(3) If the international application is filed before the registration of the appellation of origin referred to in paragraph (1), the date of registration of the appellation of origin shall be considered the date of filing.

Article 116/F

(1) Prior to forwarding the international application, the Hungarian Intellectual Property Office shall examine:

(a) whether the application contains the indication of the country of origin, information identifying the applicant, the appellation of origin, the list of products and the geographical area belonging to the appellation of origin;

(b) whether the data of the application are in compliance with the data of the appellation of origin referred to in Article 116/E(1) as appearing in the Register;

(c) whether the application has been filed in the language and in the manner prescribed by the Agreement;

(d) whether the application is signed by the applicant or by the representative.

(2) Where the application does not comply with the requirements of paragraph (1), the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities. Failing to comply with the said invitation, the application shall be forwarded to the International Bureau as filed by the applicant.

Article 116/G

(1) For the forwarding of the international application a forwarding fee determined by specific legislation shall be paid to the Hungarian Intellectual Property Office, and in connection with the international application the international fee determined by the Agreement shall be paid to the International Bureau.

(2) The forwarding fee referred to in paragraph (1) shall be due on the date of receiving the international application. If the fee is not paid within one month following the due date, the request to forward the international application shall be considered withdrawn.

(3) The international fee referred to in paragraph (1) shall be paid directly to the International Bureau within the time limit and in the manner prescribed by the Agreement.

(4) In the case of international applications filed through the intermediary of the Hungarian Intellectual Property Office, the date and number of the international registration shall be recorded in the Register.

Article 116/H

The international protection of an appellation of origin shall lapse if the protection of the underlying appellation of origin has lapsed.

International appellations of origin registered by the International Bureau

Article 116/I

(1) An international appellation of origin registered by the International Bureau shall have the same effect from the date specified in Rule 7(1) of the Regulations under the Agreement as an application for the registration of an appellation of origin duly filed with the Hungarian Intellectual Property Office.

(2) The international registration shall result in protection – from the date laid down in paragraph (1) – to the same effect as a registration by the Hungarian Intellectual Property Office if the Hungarian Intellectual Property Office does not refuse, under Article 5(3) of the Agreement, protection of the appellation of origin extended to the Republic of Hungary or withdraws the refusal.

Article 116/J

(1) Following the notification of the international registration, the Hungarian Intellectual Property Office shall publish official information on the international application in its official journal (communication of data). The communication of data shall contain the following data:

- (a) the name of the appellation of origin;
- (b) the number of the international registration;
- (c) the date of the international registration;
- (d) the date of publication in the Gazette of the International Bureau and the issue of the Gazette containing the publication.

(2) If the Hungarian Intellectual Property Office does not refuse, under Article 5(3) of the Agreement, protection of the appellation of origin extended to the Republic of Hungary or withdraws the refusal, it shall publish official information thereon by indicating the data referred to in paragraph (1).

Article 116/K

(1) After the communication of data, any person may file an observation with the Hungarian Intellectual Property Office to the effect that the appellation of origin constituting the subject matter of the application or the application does not comply with a requirement of registrability laid down by this Act.

(2) With respect to the international application registered by the International Bureau, the Hungarian Intellectual Property Office shall draw up a search report under Article 60 and shall carry out a substantive examination under Article 113(5).

(3) If the international application does not meet the requirements examined under Article 113(5), the International Bureau shall be notified in the manner and within the time limit laid down by the Agreement (provisional refusal).

(4) Where the application shall be refused [Article 61(4)] or shall be considered withdrawn [Article 61(5)], the Hungarian Intellectual Property Office shall notify the International Bureau that the protection of the appellation of origin extending to the Republic of Hungary is refused (final refusal).

(5) Where the Hungarian Intellectual Property Office does not issue any notice of provisional refusal under paragraph (3), the date of registration shall be considered to be the first day after the expiration of the time limit prescribed for provisional refusal.

(6) Where the Hungarian Intellectual Property Office finds before the expiration of the time limit prescribed for provisional refusal that it is inadmissible to issue any provisional refusal, it shall notify the International Bureau of the recognition of the protection. The date of registration shall be considered to be the date of the notification on the recognition of the protection.

(7) Where the Hungarian Intellectual Property Office withdraws the provisional refusal in whole or in part after the substantive examination, it shall notify the International Bureau of the recognition of the protection after the decision on withdrawal has become final. The date of registration shall be considered to be the date of the decision on withdrawal.

PART IX

FINAL PROVISIONS

Chapter XVIII

ENTRY INTO FORCE; TRANSITIONAL AND AMENDING PROVISIONS

Rules establishing provisions concerning the entry into force of this Act and transitional provisions

Article 117

(1) This Act shall enter into force on July 1, 1997; its provisions shall apply – with the exceptions set out in paragraph (2) – only in procedures started after its entry into force.

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

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

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

(5) Article 76/P (5)-(5e) of this Act provided for by Act CXLVIII of 2010 on the necessary amendments relating to Act XLII of 2010 on the listing of the ministries of the Republic of Hungary and on the amendment of certain industrial property acts shall also be applicable to cases already pending on 1 January 2011.

Article 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 Act.

(3) By virtue of this Act, protection shall also be afforded to appellations of origin which were recorded, before the entry into force of this Act, in the national Register kept under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. These 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 Intellectual Property Office.

Article 119

[repealed]

Article 120

[repealed]

Authorizations

Article 121

(1) The Government shall be authorized to:

(a) establish by decree the detailed rules concerning electronic filing of trade mark applications and requests for renewal;

(b) establish by decree the detailed rules concerning the procedure for the protection of geographical indications of agricultural products and foodstuffs, spirit drinks as well as vine and wine products, concerning the inspection of products and the procedural costs related thereto, concerning the amounts of fines which may be imposed during inspection, and concerning the filing of the product specification in the case of spirit drinks and vine and wine products which are granted protection under Article 20 of Regulation 110/2008/EC and Article 51 of Regulation 479/2008/EC, and concerning the conditions in question for putting the product on the market and for production, as well as concerning the area of prohibition of the use of geographical indications and to designate the inspection authority or authorities.

(2) The minister responsible for justice shall be authorized to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office and in agreement with the minister exercising the rights of supervision over the Hungarian Intellectual Property Office, the detailed formal requirements for trade mark applications and for applications for the protection of geographical indications.

Compliance with the law of the European Union

Article 122

(1) This Act serves compliance with the following acts of the European Union:

(a) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;

(b) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks.

(2) This Act lays down the rules required for implementing the following acts of the European Union:

(a) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark;

(b) Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;

(c) Commission Regulation (EC) No 1898/2006 of 14 December 2006 laying down detailed rules of implementation of Council Regulation (EC) No 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

(d) Chapter III of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89;

(e) Chapter IV of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999.