

**ACT XLVIII OF 2001  
ON THE LEGAL PROTECTION OF DESIGNS**

In order to improve the competitiveness of the Hungarian national economy, to develop the domestic design culture and to acknowledge designers both morally and financially, in conformity with the international and European Community law obligations of Hungary in the field of the protection of intellectual property, the Parliament enacts the following Act on the legal protection of designs:

**PART I**

**DESIGN AND DESIGN PROTECTION**

*Chapter I*

**SUBJECT MATTER OF DESIGN PROTECTION**

*Protectable designs*

**Article 1**

(1) Design protection shall be granted for any designs which are new and have individual character.

(2) Design shall mean the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation.

(3) Product shall mean any industrial or handicraft item. Products shall include *inter alia* packaging, get-up, graphic symbols, typographic typefaces and parts intended to be assembled into a complex product. Computer programs shall not be regarded as products.

(4) Complex product shall mean a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.

*Novelty*

**Article 2**

(1) A design shall be considered new if no identical design has been made available to the public before the date of priority.

(2) Designs shall also be deemed to be identical if their features differ only in immaterial details.

*Individual character*

**Article 3**

(1) A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of priority.

(2) In determining individual character, the degree of freedom of the designer in developing the design shall be taken into consideration, with particular regard to the nature of the product and the characteristics of the industrial or handicraft sector.

*Common provisions concerning novelty and individual character*

**Article 4**

(1) A design shall be considered to have been made available to the public if it has been published, exhibited, put on the market or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the European Community.

(2) A design shall not be considered to have been made available to the public if it has been disclosed to a third person under the conditions of confidentiality.

(3) In determining novelty and individual character, making available to the public of the design that occurred not earlier than twelve months preceding the date of priority shall not be taken into consideration if

(a) it was a consequence of an abuse in relation to the applicant or his predecessor in title; or

(b) it has been made available to the public by the applicant, his predecessor in title, or a third person as a result of information provided or action taken by the applicant or his predecessor in title.

**Article 5**

(1) A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered new and to have individual character if

(a) the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) the visible features of appearance of the component part fulfil in themselves the requirements as to novelty and individual character.

(2) For the purposes of paragraph (1) 'normal use' shall mean use by the consumer or the end user, excluding maintenance, servicing or repair work.

*Grounds for refusal*

**Article 6**

(1) Features of appearance of a product which are solely dictated by its technical function shall not be granted design protection.

(2) Features of appearance of a product may not be granted design protection which must necessarily be reproduced in their exact form and dimensions in order to permit the product to which the design is applied or in which it is incorporated (hereinafter referred to as 'the product embodying the design') to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

(3) Paragraph (2) shall not apply to a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

**Article 7**

A design protection shall not be granted if it is contrary to public policy or to accepted principles of morality.

**Article 8**

(1) A design protection shall not be granted if

(a) it constitutes an unauthorised use of State emblems or other emblems of an authority or international organisation as defined under the Paris Convention for the Protection of Industrial Property;

(b) it contains medals, emblems, armorial bearings, not covered by subparagraph (a), or official signs and hallmarks indicating authentication and warranty the use of which is of public interest.

(2) Design protection shall be granted with the consent of the competent authority to designs which consist of or contain any of the emblems defined under paragraph (1).

#### **Article 9**

(1) A design protection shall not be granted if it conflicts with a design which has been made available to the public after the date of priority and to which design protection has been granted with an earlier date of priority.

(2) 'Design protection with an earlier date of priority' shall mean a design protection granted in or extended to Hungary.

#### **Article 10**

(1) A design protection shall not be granted if it uses a distinctive sign which would conflict with an earlier industrial property right of others, or has been earlier used by others effectively in the country, where the use of the sign in the design without the consent of the prior user would be contrary to law.

(2) A design protection shall not be granted if it conflicts with an earlier copyright.

(3) In determining whether a right or use is deemed as earlier within the meaning of paragraphs (1) and (2), the priority of the design application shall be taken into account.

#### **Registrability**

#### **Article 11**

Design protection shall be granted to a design if

(a) it satisfies the requirements of Articles 1 to 5;

(b) it is not excluded from design protection under the terms of Articles 6 to 10; and

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

### **Chapter II**

#### **RIGHTS AND OBLIGATIONS CONFERRED BY DESIGN AND DESIGN PROTECTION**

##### *Moral rights of the designer and his rights concerning disclosure of the design*

#### **Article 12**

(1) The person who has created the design shall be deemed to be the designer.

(2) Unless a final court decision rules to the contrary, the person originally mentioned as such in the design application or the person entered as such after the modification of the relevant entry in the Design Register shall be deemed to be the designer.

(3) If two or more persons have created a design jointly, their shares of authorship shall be regarded as equal in the absence of an indication originally mentioned in the design application stating the contrary.

(4) Unless a final court decision rules to the contrary, the shares of authorship originally stated in the design application, those determined under paragraph (3) or those entered after the modification of the relevant entry in the Design Register shall be deemed applicable.

(5) The designer shall have the right to be mentioned as such in the design protection documents. Design protection documents made available to the public shall not mention the designer's name if he so requests in writing.

(6) [repealed]

(7) Prior to the grant of the design protection, the design may only be disclosed with the consent of the designer or his successor in title.

#### *Right to design protection*

### **Article 13**

(1) The right to design protection shall belong to the designer or to his successor in title.

(2) Unless a final court decision or other official decision rules to the contrary, the right to design protection shall belong to the person who filed the application with the earliest date of priority.

(3) If two or more persons have created a design jointly, the right to design protection shall belong to them or to their successors in title jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise provided.

(4) With respect to the joint right to design protection and joint design protection, the provisions of the Act on the protection of inventions by patents (hereinafter referred to as 'the Patent Act') concerning the joint right to a patent and joint patent shall apply *mutatis mutandis*.

(5) If two or more persons have created a design independently from each other, the right to design protection shall belong to the designer or to his successor in title, who filed the application with the earliest date of priority.

#### *Service designs and employee designs*

### **Article 14**

(1) A service design is a design created by a person who, by reason of his employment, is under the obligation to develop solutions in the field of the design.

(2) The right to design protection for a service design shall belong to the employer as successor in title of the designer.

(3) An employee design is a design created by a person who, without being under an obligation by reason of his employment, creates a design the exploitation of which falls within the field of business of his employer.

(4) The right to design protection for an employee design shall belong to the designer, but the employer shall be entitled to exploit the design. The employer's right of exploitation shall be non-exclusive; the employer may not grant license to exploit the design. If the employer ceases to exist or if any of its organisational units are separated, the right of exploitation shall be transferred to its successor in title; it may not be assigned or transferred in any other way.

(5) In any other matters concerning service and employee designs and the remuneration of the designer, the provisions of the Patent Act on service and employee inventions shall apply *mutatis mutandis*, with the following exceptions:

(a) provisions on keeping a service invention secret and on the exploitation of service inventions as solutions subject to trade secrets shall not apply to service designs;

(b) in case of service designs, failure to pay the maintenance fee shall mean failure to renew design protection and expiration shall mean the expiration of the term of design protection after which renewal is no longer possible;

(c) remuneration shall only be due to the designer for the exploitation of a service design that is covered by the design protection.

(6) In the case of designs created by persons working in public service, by persons in service relationship or by members of a co-operative working within the framework of a legal relationship of an employment nature, the provisions of paragraphs (1) to (5) shall apply *mutatis mutandis*.

*Establishment of design protection*

**Article 15**

Design protection shall begin with granting of the design protection to the applicant and shall be effective retroactively from the date of filing of the application.

*Rights conferred by design protection*

**Article 16**

- (1) Design protection shall confer on its holder the exclusive right to exploit the design.
- (2) On the basis of the exclusive right of exploitation, the holder of the design protection shall be entitled to prevent any person not having his consent from exploiting the design.
- (3) Exploitation shall cover, in particular, the making, using, putting on the market, offering for sale, importation, and exportation of the product embodying the design, as well as the stocking thereof for such purposes.

*Limitations of design protection*

**Article 17**

- (1) Design protection shall not entitle its holder to prohibit a third party from
  - (a) acts done privately or for non-commercial purposes;
  - (b) acts done for experimental purposes, including experiments and tests necessary for the authorisation of the marketing of the product constituting the subject matter of the design;
  - (c) acts done for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice, do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
- (2) Design protection shall not entitle the holder to prohibit a third party from the use of the design of a component part exploited for the purpose of the repair of a complex product to the extent necessary to restore its original appearance, provided that such use is compatible with the requirements of fair trade practice and the design necessarily conform to the original appearance of the complex product.
- (3) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the product embodying the design or had made serious preparations for that purpose. The provisions of the Patent Act shall apply to prior use *mutatis mutandis*.
- (4) Subject to reciprocity, the design protection shall have no effect in respect of the equipment of ships and aircrafts registered abroad when these temporarily enter the territory of the country, the importation of spare parts and accessories for the purpose of repairing such crafts, and the execution of repairs on such craft. The President of the Hungarian Intellectual Property Office shall be competent to give a ruling on matters of reciprocity.

*Exhaustion of the rights conferred by design protection*

**Article 18**

The exclusive right of exploitation conferred by design protection shall not extend to acts concerning a product embodying the design put on the market in the European Economic Area by the holder of the design protection or with his express consent.

*Term of design protection*

**Article 19**

- (1) Design protection shall have a term of five years beginning on the date of filing.
- (2) Design protection shall be renewed for further periods of five years, four times at the most. In case of renewal, the new period of design protection shall begin on the day following the date of expiration of the previous period.
- (3) Design protection shall not be renewed after the expiration of twenty-five years from the date of filing.

*Scope of protection*

**Article 20**

- (1) The scope of design protection shall be determined by features affecting the appearance of the whole or a part of the product which can be determined on the basis of the photographs, drawings or other graphical representations deposited in the Design Register (hereinafter referred to together as 'representation') and the partial disclaimer [Article 48(2)], if any.
- (2) The scope of design protection shall extend to all designs which do not produce a different overall impression on the informed user.
- (3) In determining the scope of design protection, the degree of freedom of the designer in developing the design shall be taken into consideration, with particular regard to the nature of the product and the characteristics of the industrial or handicraft sector.

*The design and design protection as objects of property*

**Article 21**

- (1) Rights deriving from a design and from design protection, with the exception of moral rights, may be transferred, assigned and 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 Design Register.
- (2) Under a contract of exploitation (design license contract) the holder of the design protection licenses the right to exploit a design and the person exploiting the design is required to pay royalties. With respect to design license contracts, the provisions of the Patent Act concerning patent license contracts shall apply *mutatis mutandis*.

**Chapter III**

**INFRINGEMENT OF DESIGNS AND DESIGN PROTECTION**

*Infringement of designs*

**Article 22**

Where the subject matter of a design application or design protection has been taken unlawfully from the design of another person, the injured party or his successor in title may claim a

statement to the effect that he is entitled wholly or partly to the design protection and may claim damages under the rules of civil liability.

*Infringement of design protection*

**Article 23**

(1) Any person who unlawfully exploits a protected design commits infringement of design protection.

(2) The holder of the design protection may have recourse to the civil remedies against the infringer in the same way as a patentee, by virtue of the Patent Act, may have recourse thereto against the infringer of his patent. Where a design protection 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.

(3) In case of infringement of design protection, the provisions of the Patent Act shall apply *mutatis mutandis* to the rights of the licensee authorised under a license contract.

*Decision on lack of infringement*

**Article 24**

(1) Any person believing that proceedings for the infringement of design protection may be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product exploited or to be exploited by him does not infringe a particular design protection specified by him.

(2) Where a final decision on lack of infringement has been given, infringement proceedings may not be instituted on the basis of the specified design protection in respect of the same product.

**Chapter IV**

**LAPSE OF DESIGN PROTECTION**

**Article 25**

*[repealed]*

*Lapse of design protection*

**Article 26**

Design protection shall lapse:

- (a) where its term expires without renewal, on the day following the date of expiration;
- (b) if the holder surrenders the protection, on the day following the date of receipt of the surrender or at an earlier date specified by the holder;
- (c) if it is invalid, with retroactive effect to the date of filing of the application.

*Surrender of design protection*

**Article 27**

(1) The holder entered in the Design Register may surrender his design 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 Design Register, or, if a lawsuit is recorded in the Design Register, it shall take effect only with the consent of the persons concerned.

(3) If design protection has been granted for several designs, surrender may be made in respect of some of the designs.

(4) Withdrawal of the surrender of design protection shall have no legal effect.

#### *Invalidation and limitation of the design protection*

#### **Article 28**

(1) Design protection shall be invalid:

(a) if the subject matter of the design protection does not satisfy the requirements laid down in Articles 1 to 10;

(b) if the representation deposited in the Design Register does not present the design in a manner prescribed by this Act (Article 39);

(c) if the subject matter of the design protection differs from the design presented in the application as filed at the accorded filing date or, in case of division, in the divisional application;

(d) if the design protection has been granted to a person who is not entitled to it under this Act;

(e) if the international industrial design application has been filed by a person not entitled to it under the Hague Agreement (Article 60/F).

(2) Instead of invalidation, the design protection may be maintained in an amended form [Article 48(1)–(2)], provided that with the amendment no ground for invalidation exists.

(3) If, in case of a design protection granted for several designs, the grounds for invalidation exist in respect only of some of the designs covered by the design protection, the design protection shall be limited to the rest of the designs.

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

#### *Reclaiming of royalties*

#### **Article 29**

If the design protection lapses *ex tunc*, only the portion of the royalties paid to the holder or the designer that was not covered by the profits derived from the exploitation of the design may be reclaimed.

#### **Chapter IV/A**

#### **APPLICATION OF THE PROVISIONS OF THE CIVIL CODE**

#### **Article 29/A**

(1) Matters relating to

(a) the transfer, assign, pledge of rights relating to a design or deriving from design protection, as well as the joint right to design and joint design protection;

(b) the exploitation contract (licence agreement); and

(c) other moral and economic issues concerning designs

that are not covered by this Act shall be governed by the provisions of the Civil Code.



(2) The designer shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the design.

## **PART II**

### **PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN DESIGN MATTERS**

#### *Chapter V*

#### **GENERAL PROVISIONS GOVERNING DESIGN PROCEDURES**

##### *Competence of the Hungarian Intellectual Property Office*

#### **Article 30**

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

- (a) grant of design protection,
- (b) renewal of design protection,
- (c) division of design protection,
- (d) decision on lapse of design protection,
- (e) invalidation of design protection,
- (f) decision on lack of infringement,
- (g) registration of design protection,
- (h) official information.

(2) The Hungarian Intellectual Property Office shall also have competence in matters deriving from the application of provisions relating to the Community system of protection of designs (Chapter VIII/A) and to the international registration of industrial designs (Chapter VIII/B).

##### *Application of the general rules of public administration procedures*

#### **Article 31**

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

##### *Decisions of the Hungarian Intellectual Property Office*

#### **Article 32**

(1) *[repealed]*

(2) In invalidation procedures and in procedures for a decision on lack of infringement, the Hungarian Intellectual Property Office shall proceed and take its decision at a hearing by a board consisting of three members. The board shall take its decisions by majority.

(3) *[repealed]*

##### *Legal remedies*

#### **Article 32/A**

(1) Against the decisions of the Hungarian Intellectual Property Office appeals, rehearing and supervisory procedures and notice of the prosecutor under the Act of Prosecution shall not be admissible.

(2) Decisions of the Hungarian Intellectual Property Office in design matters shall be reviewed by the court in non-contentious civil procedure laid down in Chapter IX.

(3) In the absence of a provision of the Patent 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) grant of design protection;
- (b) renewal of design protection;
- (c) division of design protection;
- (d) decision on lapse of design protection;
- (e) invalidation of design protection;
- (f) ruling on lack of infringement;
- (g) refusal of the effects of an international registration designating Hungary.

(4) In the absence of a provision of the Patent Act to the contrary, the Hungarian Intellectual Property Office may withdraw or modify its decisions – 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) In cases where no opposing parties are involved, the Hungarian Intellectual Property Office may – according to the request for review – withdraw or amend the decisions defined in Article 61(1)(b) to (e) even if the decision does not infringe the law, nevertheless the Hungarian Intellectual Property Office agrees with the content of the request for review.

(6) Decision based on a request for review shall be communicated to the requester and to whom the decision concerned by the request for review was communicated.

(7) The same legal remedy shall apply against the modifying decision as against the modified decision.

### *Electronic administration and official services*

#### **Article 32/B**

(1) In design 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 be obliged to communicate with the party in electronic form in writing.

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

- (a) design applications;
- (b) requests for renewal;
- (c) requests for recording of the changes in the facts specified in Article 34 (2)(e) to (g) in the Design Register;
- (d) requests for an extract from the Register,
- (f) requests for the inspection of the files.

(3) If a party to the procedure initiated proceedings under paragraph (2)(b) to (e) in electronic form via the identification service provided by the Government, 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 design matters.

#### *Other general provisions governing design procedures*

### **Article 33**

(1) Subject to paragraphs (1a) to (3), in matters not regulated in Articles 30 to 32/B, the general provisions governing patent procedures shall apply *mutatis mutandis* to design matters before the Hungarian Intellectual Property Office.

(1a) Filing of a request for continuation of the procedure shall be inadmissible in design matters.

(2) In design matters *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 40(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 request for *restitutio in integrum*.

(3) For the purposes of the provisions of the Patent Act related to access to files the publication of the patent application shall mean the grant of the design protection. In design matters the provisions on the treatment of patent applications as classified data shall not apply.

## **Chapter VI**

### **DESIGN REGISTER, INFORMATION TO THE PUBLIC**

#### *Design Register*

### **Article 34**

(1) After the grant of the design protection the Hungarian Intellectual Property Office shall keep a register of design protections in which all facts and circumstances concerning design rights shall be entered.

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

(a) registration number of the design protection;

(b) reference number of the application;

(c) representation of the design together with the partial disclaimer of the applicant [Article 48(2)];

(d) denomination of the product embodying the design;

(e) name (official designation) and address (registered seat) of the holder of the design protection;

(f) name and registered seat of the representative;

(g) name and address of the designer;

(h) filing date of the application;

(i) priority data;

(j) date of the decision on the grant of design protection;

(k) renewal or division of the design protection;

(l) lapse of design protection, the legal ground and date thereof, as well as the maintenance in an amended form or limitation of the design protection;

(m) exploitation licenses.

(3) The Design 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 Design Register shall be presumed to be existent. The burden of proof against the data recorded in the Design Register shall be on the person who disputes their correctness or authenticity.

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

(5) Any person may have access to the Design 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 Design Register on payment of a fee.

(6) The provisions of the Patent Act on the making entries in the Patent Register shall apply *mutatis mutandis* to entries in the Design Register.

#### *Information to the public*

### **Article 35**

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

(a)-(c) [*repealed*]

(d) in case of publication of the grant of design protection, the registration number, the name and address (registered seat) of the holder of the design protection, the name and registered seat of the representative, the reference number, the filing date of the application, the date of priority, the denomination of the product embodying the design and its international classification code, the representation of the design, the name and address of the designer and the date of the decision on granting;

(e) in case of renewal or division of design protection, the relevant data thereof;

(f) lapse of design protection, legal ground and date thereof, as well as the maintenance in an amended form or limitation of the design protection;

(g) changes in rights relating to the design protection recorded in the Design Register.

## **Chapter VII**

### **PROCEDURE FOR GRANTING DESIGN PROTECTION**

#### *Design application and its requirements*

### **Article 36**

(1) The procedure for the grant of a design protection shall begin with the filing of a design application with the Hungarian Intellectual Property Office.

(2) A design application shall contain a request for the grant of the design protection, the representation of the design, the denomination of the product embodying the design and, where necessary, other relevant documents.

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

(4) A design 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) The applicant may withdraw the design application until the grant of the design protection in compliance with the provisions of Article 27.

#### ***Article 36/A***

*[repealed]*

#### ***Date of filing***

#### ***Article 37***

(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 design protection is sought,

(b) information identifying the applicant and permitting contacts with him,

(c) the representation of the design, even though it does not comply with other requirements.

(2) In place of filing the representation of the design, reference to a priority document is sufficient for according a date of filing.

#### ***Unity of the design***

#### ***Article 38***

(1) A design application may seek design protection for several designs, provided that the products embodying the designs belong to the same class of the international classification. In addition, a design application may seek design protection for a group of designs linked by their common ornamental features affecting the overall impression they produce on the informed user.

(2) The specific legislation on the detailed formal requirements for design applications [Article 36(3)] may determine the maximum number of designs for which design protection may be sought in a single design application.

(3) In the design application the product embodying the design shall be identified, if possible, by indicating the code under the international classification and by using the terms included therein.

#### ***Representation of the design***

#### ***Article 39***

The representation constituting part of the design application shall clearly present the design for which design protection is sought.

#### ***Priority***

#### ***Article 40***

- (1) The date establishing priority shall be
- (a) generally, the date of filing of the design 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 design 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 design application for the same design, 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. The provisions of the Patent Act on the certification of exhibition shall apply *mutatis mutandis* to the certification of exhibition.
- (3) If internal priority is claimed, the previous design application shall be considered withdrawn.
- (4) If one or more priorities are claimed with respect to a design application seeking design protection for several designs, the right of priority shall cover only those designs that are presented in the application establishing the given priority in accordance with Article 39.
- (5) 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.

#### *Examination on filing*

##### **Article 41**

Following the filing of a design application, the Hungarian Intellectual Property Office shall examine whether

- (a) the application satisfies the requirements for according a date of filing (Article 37),
- (b) the filing fee has been paid [Article 36(4)].

(2) In any other matters, the provisions of the Patent Act on the examination on filing shall apply *mutatis mutandis* to examination on filing of a design application.

##### **Article 42**

*[repealed]*

##### **Article 43**

*[repealed]*

#### *Novelty search*

##### **Article 44**

(1) If a design application satisfies the requirements laid down in Article 41(1), the Hungarian Intellectual Property Office shall carry out a novelty search and shall draw up a search report on the

basis of the representation of the design, with due regard to the denomination of the product embodying the design.

(2) The search report shall indicate those documents and data which may be taken into consideration in deciding whether the design represented in the application is new and has individual character.

(3) The search report, together with copies of any cited documents, shall be sent to the applicant upon request.

***Article 45***

*[repealed]*

***Article 46***

*[repealed]*

*Examination as to formal requirements and substantive examination*

***Article 47***

(1) If a design application meets the requirements laid down in Article 41(1), the Hungarian Intellectual Property Office shall carry out the examination of the design application.

(1a) Within the examination as to the formal requirements the Hungarian Intellectual Property Office shall examine the application whether the formal requirements of Article 36 (2) and (3) have been met.

(2) The substantive examination shall ascertain

(a) whether the design meets the requirements of Articles 1 to 5 and whether it is not excluded from design protection under Articles 6 to 8, and

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

(3) If a design application does not meet the requirements examined under paragraphs (1a) or (2), the applicant shall be invited, according to the nature of the objection, to rectify the irregularities, to submit comments or to divide the application.

(4) A design 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.

(5) An application may be refused only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. If necessary, a further invitation shall be issued.

(6) If the applicant fails to reply to the invitation or to divide the application, the design application shall be considered withdrawn.

*Amendment and division*

***Article 48***

(1) A design application may only be amended in such a way that its subject matter remains identical with the design presented in the application at the date of filing.

(2) A declaration of the applicant to the effect that a particular part of the representation does not belong to the design and design right is not claimed therefore shall be considered to be an amendment.

(3) The applicant shall be entitled to amend the application as laid down in paragraph (1) until the day on which the decision on the grant of design protection is delivered.

***Article 49***

(1) If the applicant has claimed design protection for several designs in a single application, he may divide the application, retaining the date of filing and any earlier priority, if any, until the day on which the decision on the grant of design protection is delivered.

(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.

#### *Grant of design protection*

#### **Article 50**

(1) If the design and the design application meet all the requirements of the examination [Article 47(1a) and (2)], the Hungarian Intellectual Property Office shall grant design protection for the subject matter of the application. The date of the decision on the grant of the design protection shall be the date of the grant of the design protection.

(2) The grant of design protection shall be recorded in the Design Register (Article 34), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 35).

(3) After the grant of design protection, the Hungarian Intellectual Property Office shall issue a design certificate to which the extract from the register shall be annexed.

### **Chapter VIII**

#### **OTHER PROCEDURES IN DESIGN MATTERS**

#### *Renewal procedure*

#### **Article 51**

(1) Design protection shall be renewed [Article 19(2)] by the Hungarian Intellectual Property Office at the request of its holder. Renewal of design protection granted for several designs may also be requested in respect of only a part of those designs (partial renewal).

(2) The request for renewal shall indicate the registration number of the design protection to be renewed and, in the case of partial renewal, the designs concerned.

(3) The request for renewal may be filed not earlier than six months before the expiry of the design protection and within a period of six months from the date of expiry at the latest.

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

#### **Article 51/A**

*[repealed]*

#### **Article 52**

(1) If the request for renewal does not comply with the requirements laid down in Article 51(1) to (3), 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 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 53**

(1) If the request meets the requirements laid down in Article 51, the Hungarian Intellectual Property Office shall renew the design protection.

(2) The renewal of the design protection shall be recorded in the Design Register (Article 34), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 35).

### *Procedure for division*

### **Article 54**

(1) The holder of the design protection may divide the design protection granted for several designs by separating the designs, or particular groups thereof.

(2) A request for division of design protection shall be filed in as many copies – in conformity with each other and with the manner of division – as the number of the parts is into which the initial design protection is to be divided.

(3) The request for division shall indicate the registration number of the original design protection; the provisions concerning the requirements for design applications [Article 36(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 55**

(1) If the request for division does not comply with the requirements laid down in Article 54(1) to (3), the requesting party shall be invited to rectify the irregularities.

(2) The request for division shall be refused if, even after rectification or comments, it does not comply with the requirements stated in the invitation. If the requesting party 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 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 56**

(1) If the request meets the requirements laid down in Article 54, the Hungarian Intellectual Property Office shall divide the design protection.

(2) The division of design protection shall be recorded in the Design Register (Article 34), and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 35).

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

### *Invalidation procedure*

### **Article 57**

(1) Any person may institute proceedings for invalidation of design protection against the holder of the design protection under Article 28, with the exception laid down in paragraph (2).

(2) Invalidation of design protection may only be requested under Articles 9 and 10 by the holder of an earlier conflicting right, and under Article 28(1)(d) by the person who is entitled to it under this Act.

(3) The request for invalidation shall be filed with the Hungarian Intellectual Property Office with a copy for each holder of the design protection and – in the case of a design protection granted for a service design – for each designer plus one additional copy. The request shall state the grounds on which it is based and documentary evidence shall be annexed.

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

(5) If the request for invalidation 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 rectify the irregularities shall result in the request for invalidation being considered withdrawn.

#### **Article 57/A**

In the case of a design protection granted for a service design, the Hungarian Intellectual Property Office shall send the request for invalidation to the designer informing him that he may be a party to the invalidation proceedings if a statement to this effect is submitted within thirty days from receipt of the request.

#### **Article 58**

(1) The Hungarian Intellectual Property Office shall invite the holder of the design protection and – in the case of a design protection granted for a service design – the designer to submit comments on the request for invalidation. Following the written preparatory work, it shall decide at a hearing on the invalidation, maintenance in an amended form, limitation of the design 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 invalidation, which was not stated as such within the said time limit. When delivering the final decision, the grounds so specified shall not be taken into consideration.

(2) The orders taken in the course of the 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 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.

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

(4) The decision shall be put in writing within 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 the date of putting it in writing.

(5) If there is more than one request for invalidation of the same design protection, they shall be dealt with in the same procedure if possible.

(6) If the request for invalidation is withdrawn, the procedure may be continued *ex officio*, except for the case when invalidation has been requested only under Article 10 or Article 28(1)(d). In such a 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.

(7) The losing party shall be required to bear the costs of the invalidation procedure. If the holder of the design protection has not provided any grounds for the invalidation procedure, and he

surrenders the design protection – in case of a design protection granted for several designs, at least with respect to the designs concerned – with retroactive effect to the date of filing prior to the expiration of the time limit for submitting comments under paragraph (1), the costs of procedure shall be borne by the person requesting invalidation.

(8) The invalidation, maintenance in an amended form or limitation of the design protection shall be recorded in the Design Register (Article 34) and relevant information shall be given in the official journal of the Hungarian Intellectual Property Office (Article 35).

#### **Article 58/A**

(1) At the request of any party, invalidation procedures shall be accelerated if proceedings were initiated for the infringement of a design protection or a request for provisional measures was filed before initiating an action and this fact is substantiated.

(2) For the request for accelerated procedure a fee determined by specific legislation shall be paid within one month from the filing of such 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 the 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) By way of derogation from the provisions of Articles 33(1) and 58, in the case of accelerated procedures

(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.

#### **Procedure for a decision on lack of infringement**

#### **Article 59**

(1) A request for a decision on lack of infringement shall be filed with the Hungarian Intellectual Property Office with a copy for each holder of the design protection plus one additional copy. The request shall contain the representation of the product exploited or intended for exploitation, as well as the representation of the design of the design protection involved. The product exploited or intended for exploitation shall be presented in one or more views corresponding to the representation of the design entered in the Design Register.

(2) A request for a decision on lack of infringement may be filed only in respect of one design protection and in respect of one product exploited or intended for exploitation.

(3) A fee determined by specific legislation shall be paid for the request for a decision on lack of infringement within two months from the filing of the request.

(4) If the request for a decision on lack of infringement does not comply with the requirements laid down by this Act, the requesting party shall be invited to rectify the irregularities; if the fee for the request has not been paid, that party shall be invited to make payment within the time

limit prescribed by this Act. Failing to rectify the irregularities shall result in the request for a decision on lack of infringement being considered withdrawn.

#### **Article 60**

(1) The Hungarian Intellectual Property Office shall invite the holder of the design protection to submit comments on the request for a decision on lack of infringement. Following the written preparatory work, it shall decide at a hearing whether the request shall be admitted or refused. The order terminating the procedure may also be taken without a hearing.

(2) The requesting party shall bear the costs of the procedure for a decision on lack of infringement.

(3) Article 58(2) to (4) shall apply *mutatis mutandis* in procedures for a decision on lack of infringement.

(4) Article 58/A shall apply *mutatis mutandis* in procedures for a decision on lack of infringement.

### **PART III**

#### **PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS AND THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

##### **Chapter VIII/A**

#### **PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS**

##### *General provisions*

#### **Article 60/A**

For the purposes of this Act:

(a) *Community Design Regulation*: Council Regulation (EC) No 6/2002 on Community designs;

(b) *Community design*: a design, protected with or without registration, as defined in Article 1(1) of the Community Design Regulation;

(c) *Community design application*: an application for the registration of a Community design, filed in accordance with the Community Design Regulation.

##### *Forwarding Community design applications*

#### **Article 60/B**

(1) Where a Community design 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 35(2) of the Community Design Regulation.

(2) If the fee for forwarding the Community design 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 design application after the payment of the fee.

*Community design as a ground for refusal*

**Article 60/C**

Article 9(2) shall apply to registered Community designs.

*Legal consequences of the infringement of a Community design*

**Article 60/D**

To the infringement of a Community design the same legal consequences shall apply – in accordance with the provisions of, and in the cases referred to in, Articles 88 to 90 of the Community Design Regulation – as to the infringement of a design protection granted by the Hungarian Intellectual Property Office on the basis of this Act.

*Community design court*

**Article 60/E**

(1) In Hungary the Metropolitan Court of Justice shall proceed at first instance, in the composition laid down in Article 63(2), as the Community design court referred to in Article 80(1) of the Community Design Regulation.

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

**Chapter VIII/B**

**PROVISIONS CONCERNING INTERNATIONAL INDUSTRIAL DESIGN APPLICATIONS**

*General provisions*

**Article 60/F**

For the purposes of this Act international industrial design application shall mean an industrial design application filed under the Geneva Act of 2 July 1999 of the Hague Agreement of 1925 Concerning the International Deposit of Industrial Designs (hereinafter referred to as ‘the Agreement’).

**Article 60/G**

The provisions of this Chapter shall apply *mutatis mutandis* to international deposits made under the Hague Act of 28 November 1960 of the Hague Agreement of 1925 Concerning the International Deposit of Industrial Designs.

**Article 60/H**

(1) Where this Act refers to the application of the Agreement, it shall be construed as meaning also the application of the Common Regulations under the Acts of the Agreement referred to in Articles 60/F and 60/G.

(2) Unless otherwise provided in the Agreement, the provisions of this Act shall apply to international industrial design applications with the exceptions laid down in this Chapter.

**Article 60/I**

*[repealed]*

*International industrial design applications filed through the Hungarian Intellectual Property Office*

**Article 60/J**

(1) For the forwarding of international industrial design applications under the Agreement, the Hungarian Intellectual Property Office shall proceed with respect to international industrial design applications in which Hungary is indicated as the applicant's Contracting State.

(2) For the forwarding of the international industrial design application a transmittal fee determined by specific legislation shall be paid to the Hungarian Intellectual Property Office, and in connection with the international industrial design application a fee determined by the Agreement shall be paid within the time limit and in the manner prescribed by the Agreement.

*International industrial design applications designating Hungary*

**Article 60/K**

(1) An international industrial design application designating Hungary shall have the same effect from the date of the international registration as a design application duly filed with the Hungarian Intellectual Property Office (Article 37).

(2) *[repealed]*

(3) The Hungarian Intellectual Property Office shall carry out the substantive examination of the international industrial design application. The substantive examination shall ascertain whether the design meets the requirements of Articles 1 to 5 and whether it is not excluded from design protection under Articles 6 to 8.

(4) If the international industrial design application does not comply, in part or in whole, with the requirements examined under paragraph (3) the Hungarian Intellectual Property Office shall notify the International Bureau accordingly within six months from the date prescribed by the Agreement.

(5) The notification shall specify the grounds on which it is based and the applicant shall be invited to submit comments within the time limit fixed by the notification. When making a decision on the refusal of the effects of the international registration, the comments of the applicant shall be taken into consideration.

(6) If the applicant does not reply to the invitation within the fixed time limit or the international industrial design application still does not comply with the examined requirements in spite of the comments filed within the fixed time limit, the Hungarian Intellectual Property Office shall refuse the effects of the international registration in the territory of Hungary.

(7) Where on the basis of the comments of the applicant the Hungarian Intellectual Property Office considers that the content of the notification referred to in paragraph (4) is unfounded in part or in whole, it shall withdraw the notification in part or in whole. The Hungarian Intellectual Property Office shall notify the International Bureau after the decision on the withdrawal has become final.

(8) Where the Hungarian Intellectual Property Office withdraws – in part or in whole – its notification under paragraph (7), the international registration or its part affected by the withdrawal shall have the same effect as a design protection granted by the Hungarian Intellectual Property Office from the date of the decision on the withdrawal.

(9) Where the Hungarian Intellectual Property Office does not make any notification under paragraph (4), the international registration shall have the same effect as a design protection granted by the Hungarian Intellectual Property Office from the day following the expiration of the time limit prescribed for the notification.

**PART IV****COURT PROCEEDINGS IN DESIGN MATTERS***Chapter IX***REVIEW OF DECISIONS OF THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE***Request for review***Article 61**

- (1) Upon request, the court may review the Hungarian Intellectual Property Office's
- (a) decisions referred to in Article 32/A(3);
  - (b) decisions suspending the procedure or furnishing a basis for entries in the register of design applications or the Design Register;
  - (c) orders excluding or limiting the inspection of files against which independent legal remedy shall be admissible under the provisions of the Public Administration Procedures Act;
  - (d) orders denying persons the legal status as a party to the procedure apart from those who have filed a 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 a 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) by any person whose legal status as a party to the procedure has been denied.
- (5) Review of a ruling on the registration or the invalidation of a design protection may be requested by the public prosecutor under Article 7 and 8. 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 date of 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 service 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 design 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 on such question and shall forward it, together with the request for review and the documents of the design 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*.

#### *Other rules governing court proceedings*

### **Article 62**

The provisions on court proceedings for the review of decisions taken by the Hungarian Intellectual Property Office in patent matters shall apply *mutatis mutandis* in court proceedings for the review of decisions taken by the Hungarian Intellectual Property Office in design matters provided that the reference in Article 100(3) of the Patent Act to Article 81(1) of the Patent Act shall be construed as reference to Article 58(1) of this Act.

## **Chapter X**

### **DESIGN LITIGATION**

#### *Rules governing design litigation*

### **Article 63**

(1) Court proceedings concerning the infringement of a design or a design protection, the existence of the right of prior and continued use [Article 65(8)], as well as court proceedings instituted for the prohibition of the use of a Community design under Article 110a(4) of the Community Design Regulation [Article 60/A(a)] shall constitute design litigation.

(2) The provisions on patent litigation shall apply *mutatis mutandis* to design litigation.

(3) In any other design litigation not mentioned under paragraph (1), the court of justice shall proceed by applying *mutatis mutandis* the rules governing patent litigation.

## **PART V**

### **FINAL PROVISIONS**

## **Chapter XI**

### **ENTRY INTO FORCE; MISCELLANEOUS, TRANSITIONAL AND AMENDING PROVISIONS**

#### *Relationship to copyright protection*

### **Article 64**

The protection granted to a design under this Act shall be without prejudice to the copyright protection under specific legislation of the design as an artistic work.



*Rules establishing provisions concerning the entry into force of this Act and transitional provisions***Article 65**

(1) This Act shall enter into force on 1 January of 2002; its provisions shall apply – with the exceptions and conditions set out in paragraphs (2), (6) to (7) and (9) to (10) – only in procedures that started after its entry into force.

(2) The provisions relating to *restitutio in integrum* shall also apply *mutatis mutandis* to pending matters.

(3) Where a contract of remuneration of the designer or a design license agreement was concluded or a service design was utilised before the entry into force of this Act, the provisions effective at the time of the conclusion of the contract or of the utilisation shall apply.

(4) Exploitation commenced before the entry into force of this Act shall be subject to the previously applicable provisions with respect to the rights conferred by and the scope, limitations and infringement of the design protection to the extent of the exploitation at the date of the entry into force of this Act.

(5) Renewal of a design protection valid at the date of entry into force of this Act shall be subject to the provisions of this Act. This provision shall apply *mutatis mutandis* if the date of expiration of the term of design protection is not earlier than six months prior to the date of entry into force of this Act and no request for renewal has been filed under the previously applicable provisions until the entry into force of this Act.

(6) If a design protection extended before the entry into force of this Act is renewed after the entry into force thereof, the provisions of this Act shall apply to the invalidation of design protection, provided that in the case of invalidation the design protection shall lapse with retroactive effect to the date of expiration of the extended design protection.

(7) The provisions of paragraph (6) shall also apply *mutatis mutandis* if a design protection valid at the date of entry into force of this Act without extension is renewed for a second time, provided that in the case of invalidation the design protection shall lapse with retroactive effect to the date of expiration of the firstly renewed design protection.

(8) If a design protection extended under the previously applicable provisions lapsed by reason of expiration within five years prior to the entry into force of this Act, the holder of the design protection may request, by applying *mutatis mutandis* the provisions on renewal and within six months following the entry into force of this Act, that the Hungarian Intellectual Property Office re-establish the design protection with an effect from the entry into force of this Act and for the remaining part of the period fixed by Article 19(3). The initial term of the re-established design protection shall be the time by which the remaining part of the period fixed by Article 19(3) exceeds ten years; in such cases the fee for the request for renewal shall be reduced proportionally. Re-establishment of a design protection and a renewal thereof may be requested together, if the initial term of the re-established design protection does not exceed one year. A right of continued use shall belong to any person who has started or continued the exploitation of the design in the period between the lapse of the design protection and the entry into force of this Act; with respect to this right, the provisions of the Patent Act concerning the right of continued use shall apply *mutatis mutandis*.

(9) Invalidation of a re-established design protection shall be subject to the provisions of this Act except that in the case of invalidation the design protection shall lapse with retroactive effect to the date of entry into force of this Act.

(10) With respect to the conditions of invalidation of a design protection valid at, or lapsed before, the date of entry into force of this Act, the provisions applicable at the date of priority shall be decisive. Such design protection renewed or re-established after the entry into force of this Act shall be invalid with retroactive effect to the date of filing, if invalidation is admissible under the provisions applicable at the date of priority. In such cases the provisions laid down in paragraphs (6)–(7) and (9) shall not apply.

(11) Any mention of industrial design or industrial design protection in legislation shall mean design or design protection.

**Article 66**

[repealed]

*Transitional provisions*

**Article 67**

(1) [repealed]

(2) Where a contract of remuneration was concluded or a service invention was utilized before the entry into force of this Act, the provisions effective at the time of the conclusion of the contract or of the utilization shall apply.

(3) With respect to the conditions of invalidation of a utility model protection effective at the date of entry into force of this Act, the provisions applicable at the date of priority shall be decisive.

(4) [repealed]

**Article 67/A**

(1) With respect to the conditions of invalidation of a design protection granted with a filing date before 1 May 2004, the provisions in force at the date of filing shall be decisive.

(2) In respect of

a) the rights conferred by, the scope of, and the infringement – with the exception of the exhaustion of the rights – of the design protection, in case the exploitation commenced before 1 May 2004, and to the extent of the exploitation on 1 May 2004,

b) the exhaustion of the rights conferred by design protection in case of exploitations implemented before 1 May 2004  
provisions of this Act in force on 30 April 2004 shall be decisive.

*Authorizations*

**Article 68**

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 design applications.

*Compliance with the law of the European Union*

**Article 69**

(1) This Act serves compliance with Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

(2) This Act lays down the rules required for implementing Council Regulation 6/2002 (EC) of 12 December 2001 on Community Designs.