

**ACT XXXVIII OF 1991
ON THE PROTECTION OF UTILITY MODELS**

Chapter I

SUBJECT MATTER OF AND RIGHTS CONFERRED BY UTILITY MODEL PROTECTION

Protectable utility models

Article 1

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

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

- (a) the aesthetic design of an article;
- (b) plant varieties.

Article 2

(1) A utility model shall be considered new if it does not form part of the state of the art.

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

(3) The content of any patent application or utility model application having an earlier date of priority shall also be considered as comprised in the state of the art, provided that it was published or announced in the course of the granting procedure at a date following the date of priority. The content of such a European patent application and international patent application shall only be considered as comprised in the state of the art on special conditions laid down in the Act on the protection of inventions by patents (hereinafter referred to as "the Patent Act"). For the purposes of these provisions, the abstract shall not be considered as comprised in the content of the application.

(4) For the purposes of paragraphs (1) and (2), a written description or public use that occurred no earlier than six months preceding the date of priority shall not be taken into consideration if it was made by or with the consent of the applicant or his predecessor in title, or if it was due to an abuse of the rights of the applicant or his predecessor in title.

Article 3

(1) The utility model shall be considered to involve an inventive step if, in regard to the state of the art, it is not obvious to a skilled craftsman.

(2) For the purposes of paragraph (1), the part of the state of the art referred to in Article 2(3) shall not be taken into consideration.

Article 4

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

Article 5

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

- (a) the utility model satisfies the requirements prescribed in Articles 1 to 4 of this Act and it is not excluded from utility model protection under paragraph (2) and Article 1(2);
- (b) the application complies with the formal requirements laid down in this Act.

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

Inventor of the utility model and right to utility model protection

Article 6

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

Article 7

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

(2) If two or more persons have created a utility model jointly, the right to utility model protection shall belong to them or to their successors in title jointly. If two or more persons have created the utility model independently of each other, the right to utility model protection shall belong to the inventor or his successor in title who filed the application with the earliest date of priority with the Hungarian Intellectual Property Office.

Article 8

The provisions on service and employee inventions shall apply *mutatis mutandis* to utility models created by persons working in employment or 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.

Article 9

In any other matters concerning the moral rights of the inventor of the utility model and the right to utility model protection, the provisions of the Patent Act on the moral rights of the inventor and the right to a patent shall apply *mutatis mutandis*.

Establishment and term of utility model protection

Article 10

Utility model protection shall begin on the date when protection is granted to the applicant, and it shall be effective retroactively from the date of filing of the application.

Article 11

(1) Utility model protection shall have a term of ten years beginning on the filing date of the application.

(2) Annual maintenance fees shall be paid during the term of utility model protection. The fee for the first year shall be due in advance on the filing date and the fees for the subsequent years shall be paid in advance on the anniversaries of the filing date. The annual fee which becomes due prior to the grant of the utility model protection may also be paid within a grace period of six months from the date on which the granting decision becomes final, while all other annual fees may also be paid within a grace period of six months from the due date.

Rights conferred by utility model protection, scope and limitations thereof

Article 12

Utility model protection shall afford the holder the exclusive right to exploit the utility model or to license another person to exploit it, as provided for by legislation. The exclusive right of exploitation shall

include the manufacture, use, importation of the subject matter of the utility model or putting it on the market within the framework of economic activity.

Article 13

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

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

(3) Entitlement to remuneration deriving from utility model protection shall not be affected if one or more characteristics of the claim are replaced in the product by improved characteristics made available to the licensee by the holder of the utility model protection or by the inventor of the utility model.

Article 14

Rights deriving from a utility model and from utility model protection, with the exception of the moral rights of the inventor, may be transferred, assigned and pledged.

Article 15

Under a contract of exploitation (utility model license contract), the holder of the utility model licenses the right to exploit the utility model and the person exploiting the utility model is required to pay royalties.

Article 16

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

(2) If a patented invention or a variety under plant variety protection cannot be exploited without infringing a protected utility model, a compulsory license shall be granted for the dominant utility model to the extent necessary for exploitation.

Article 17

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

(2) With respect to compulsory licenses of protected utility models and the limitations and exhaustion of utility model protection, the common provisions of the Patent Act on compulsory licenses, and the provisions on limitations and exhaustion of patent protection thereof shall apply *mutatis mutandis*.

(3) With respect to joint right to a utility model protection and joint utility model protection, the provisions of the Patent Act on joint right to a patent and joint patent shall apply *mutatis mutandis*.

Chapter II

INFRINGEMENT OF UTILITY MODELS AND UTILITY MODEL PROTECTION

Infringement of utility models

Article 18

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

Infringement of utility model protection

Article 19

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

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

(3) In case of infringement of utility model protection, the provisions of the Patent Act shall apply to the rights of the licensee authorized by the holder.

Decision on lack of infringement

Article 20

(1) Any person believing that proceedings for infringement of utility model 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 utility model 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 utility model protection in respect of the same product.

Chapter III

LAPSE OF UTILITY MODEL PROTECTION

Cases of lapse of utility model protection

Article 21

(1) Utility model protection shall lapse:

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

(2) Utility model protection shall be considered lapsed *ex tunc*, when a patent is granted by a final decision for a patent application

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

Restoration of utility model protection

Article 22

If utility model protection has lapsed by reason of failing to pay annual fees, the Hungarian Intellectual Property Office shall, on request, restore the protection if the failure occurred for a justifiable reason.

Surrender of utility model protection

Article 23

(1) The holder entered in the Utility Model Register may surrender utility model protection by a written declaration addressed to the Hungarian Intellectual Property Office. If the surrender affects the rights of third parties deriving from legislation, from rulings of an authority or from a license contract recorded in the Utility Model Register, or if a lawsuit is recorded in the Utility Model Register, it shall take effect only with the consent of the parties concerned.

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

Revocation of utility model protection

Article 24

(1) Utility model protection shall be revoked if

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

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

(c) the subject matter of the utility model protection extends beyond the content of the application as filed at the accorded filing date or – in the case of division – beyond the content of the divisional application.

(2) Where grounds for revocation exist only in part, the utility model protection shall be limited accordingly.

Reclaiming of royalties

Article 25

If utility model protection lapses *ex tunc*, only the portion of the royalties collected in good faith by the holder of the utility model protection or the inventor of the utility model that was not covered by the benefits derived from exploitation of the utility model may be reclaimed.

Chapter IV

PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN UTILITY MODEL MATTERS

Competence of the Hungarian Intellectual Property Office

Article 26

The Hungarian Intellectual Property Office shall have competence in the following utility model matters:

(a) grant of utility model protection;

(b) decision on lapse of utility model protection and restoration thereof;

(c) revocation of utility model protection;

(d) decision on lack of infringement;

(e) interpretation of utility model descriptions;

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

Application of the general rules of public administration procedures

Article 27

(1) The Hungarian Intellectual Property Office shall proceed in utility model matters – with the exceptions laid down in this Act – by applying the provisions of the Public Administration Procedures Act.

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

(3) Decisions of the Hungarian Intellectual Property Office taken in utility model matters shall be reviewed by the court in conformity with the provisions of Article 37.

(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 following matters only if a request for review is made and only until such request is transmitted to the court:

(a) grant of utility model protection;

(b) decision on lapse of utility model protection and restoration thereof;

(c) revocation of utility model protection;

(d) decision on lack of infringement.

(5) In the absence of a provision of the Patent 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 (4)(c) and (d) on the basis of a request for review only if it establishes that its decision infringes law or if the parties request unanimously the modification or withdrawal of the decision.

Article 28

(1) The general provisions of the Patent Act governing procedures before the Hungarian Intellectual Property Office shall apply *mutatis mutandis* to utility model matters before the Hungarian Intellectual Property Office.

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

(a) derived from the utility model application;

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

Utility model application

Article 29

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

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

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

(4) *[repealed]*

Derivation from patent application

Article 30

(1) Where the applicant has already filed a patent application at an earlier date, he may, in his declaration of priority filed within two months after the date of filing of a utility model application for the same subject matter, claim the filing date and the right of priority of the said patent application (derivation).

(2) The priority and filing date of the patent application shall apply by derivation to the utility model application if the derived utility model application is filed with the Hungarian Intellectual Property Office

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

(b) within three months from the date on which the decision declaring the patent revoked for lack of novelty or lack of inventive activity becomes final.

(3) The derivation of a utility model application shall be admissible only within 10 years from the filing date of the patent application.

Article 31

[repealed]

Description

Article 32

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

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

Unity of utility model

Article 33

A utility model application may seek protection for one utility model only.

Examination of the utility model application

Article 34

(1) The Hungarian Intellectual Property Office shall examine the utility model application whether the requirements of Article 29(2) to (4) have been met.

(2) *[repealed]*

Article 35

The Hungarian Intellectual Property Office shall carry out a substantive examination of the utility model application with regard to the following points:

- (a) whether the subject matter of the application is a utility model;
- (b) whether the subject matter of the application is susceptible of industrial application;
- (c) whether the subject matter of the application is not excluded from utility model protection under Article 5(2);
- (d) whether the description meets the legal requirements (Article 32);
- (e) whether the utility model meets the requirement of unity;
- (f) whether priority for the utility model has been claimed duly.

Procedure in utility model matters

Article 36

(1) For the priority, filing date, examination, amendment, division and withdrawal of utility model applications, declaration of lapse, restoration, revocation of utility model protection, as well as the interpretation of utility model descriptions and decision on lack of infringement, the provisions of the Patent Act shall apply *mutatis mutandis*.

(2) *[repealed]*

(3) For the grant of utility model protection, the provisions of the Patent Act on the grant of patents shall apply. After the publication of the grant of utility model protection, any person may inspect the utility model application and may ask for copies of its files on payment of a fee.

(4) In utility model matters the provisions of the Patent Act on the effects of the European patent application shall apply *mutatis mutandis*. The European patent application may be converted into a national utility model application by applying the provisions of the Patent Act *mutatis mutandis*.

(5) Where the applicant designates, in compliance with Article 43 of the Patent Cooperation Treaty, that his international application tends to obtain utility model protection in Hungary as designated or an elected country, for the procedure of the Hungarian Intellectual Property Office as a designated or an elected office, the provisions of the Patent Act shall apply *mutatis mutandis*.

Chapter V

COURT PROCEEDINGS IN UTILITY MODEL MATTERS AND LITIGATION

Review of decisions taken by the Hungarian Intellectual Property Office

Article 37

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

- (a) decisions referred to in Article 27(4);
- (b) decisions suspending the procedure or furnishing a basis for entries in the Utility Model Register;
- (c) orders excluding or limiting the inspection of files against which independent legal remedy is 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 submitted a request for the commencement of the 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 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 or the revocation of a utility model protection may be requested by the public prosecutor under Article 5(2). Any other participant to the procedures before the Hungarian Intellectual Property Office may submit, 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 party 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 continuation of the procedure or 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 continuation of the procedure or the request for *restitutio in integrum* was filed to avert the consequences of 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 utility model file, to the court within fifteen days except for

the case provided for in paragraph (10). Where an opposing party has taken part in the procedure, the Hungarian Intellectual Property Office shall simultaneously notify the opposing 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 questions and shall forward it, together with the request for review and the documents of the utility model 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*.

(13) In any other matters, the provisions on court proceedings for the review of decisions of the Hungarian Intellectual Property Office in patent matters shall apply *mutatis mutandis* in court proceedings for the review of decisions of the Hungarian Intellectual Property Office in utility model matters.

Utility model litigation

Article 38

(1) Utility model litigation:

(a) litigation concerning the grant, modification or cancellation of a utility model compulsory license;

(b) *[repealed]*

(c) litigation concerning the existence of the right of prior use;

(d) litigation concerning infringement.

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

(3) In any other utility model litigation not mentioned in paragraph (1), the court of justice shall proceed by applying the rules governing patent litigation.

Chapter VI

FINAL PROVISIONS

Article 39

With respect to the grounds for revocation of a utility model protection granted with a filing date before 1 January 2003, the provisions in force at the date of filing shall be decisive.

Article 40

[repealed]

Article 41

[repealed]

Entry into force

Article 42

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

(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 utility model applications.