

Legislative Decree No 95 of 2 February 2001.

Implementation of Directive 98/71/EC on the legal protection of designs.

THE PRESIDENT OF THE REPUBLIC

Having regard to Articles 76 and 87 of the Constitution;

Having regard to Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs;

Having regard to Law No 526 of 21 December 1999, Community law 1999, and in particular Articles 1 and 2 thereof and Annex A *thereto*,

Having regard to Chapter III of Title IX of Book V of the Civil Code;

Having REGARD TO Royal Decree No 1411 of 25 August 1940 laying down legislative provisions on patents for industrial models and subsequent amendments;

Having REGARD TO Law No 633 of 22 April 1941 laying down provisions for the protection of copyright and other rights related to its exercise, as amended;

Having regard to Law No 266 of 7 August 1997, and in particular Article 27(2) thereof;

Having REGARD TO the deliberation of the Council of Ministers adopted at its meeting on 2 February 2001;

On the proposal from the Minister for Community Policy and the Minister for Industry, Trade, Crafts and External Trade, in agreement with the Ministers for Foreign Affairs, Justice, the Treasury, the Budget and Economic Planning, Finance and Cultural Assets;

ISSUES

the following legislative decree:

TITLE I

Amendments to Royal Decree No 1411 of 25 August 1940 laying down legislative provisions on patents for industrial models.

Article 1,

1. Article 5 of Royal Decree No 1411 of 25 August 1940 is replaced by the following:

‘Article 5. — 1. Designs which are new and of an individual character may be registered.

2. A design means the appearance of the product itself or part thereof as it results, in particular, from the characteristics of the lines, contours, colours, shape, surface structure and/or materials of the product itself and/or its ornamentation.

3. A product means any industrial or artisanal object, including, *inter alia*, components which must be combined to form a complex product, packaging, presentations, graphic symbols and typefaces, excluding computer programs.

4. A complex product means a product made from several components which can be replaced, allowing for disassembly and reassembly of the product.’

Article 2.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article 5:

‘Article 5-bis. — 1. A design shall be new if no identical design has been disclosed before the date of filing of the application for registration or, where priority is claimed, before the date of the application for registration. Designs shall be deemed to be identical where their characteristics differ only in unimportant details.’

Article 3.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article 5-bis:

‘Article 5-ter. — 1. A design shall have an individual character if the overall impression which it

gives in the informed user differs from the gene impression created on that user by any design which has been disclosed before the date on which the application for registration was submitted or, where priority is claimed, before the date on which the application for registration was submitted.

2. When determining the individual character referred to in paragraph 1, account shall be taken of the degree of freedom enjoyed by the designer in creating the design.'

Article 4.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article 5-ter:

'Article 5-quater. — 1. For the purposes of Articles 5-a and 5-b, a design shall be deemed to have been disclosed if it has been made available to the public by registration or otherwise, or if it has been exhibited, marketed or otherwise made public, unless such events could reasonably have been known to the specialised circles of the sector concerned operating in the Community in the normal course of business before the date of submission of the application for registration or, where priority is claimed, before the date of the application for registration.

2. The design shall not be regarded as being made accessible to the public solely on the ground that it has been disclosed to a third party under an explicit or implicit restriction of confidentiality.

3. For the purposes of Articles 5-a and 5-b, a design shall not be deemed to be made available to the public by the designer or his successor in title or by any third party by virtue of information or acts carried out by the author or his successor in title during the 12 months preceding the date of submission of the application for registration or, where priority is claimed, during the 12 months preceding that date.

4. For the purposes of applying Articles 5-bis and 5-ter, it shall also not constitute disclosure if the disemblem or model has been made available to the public during the 12 months preceding the date of submission of the application or the date of priority, if this results, directly or indirectly, from an abuse committed against the author or his successor in title.'

Art. 5.

1. In Royal Decree No 1411 of 25 August 1940, the following *is inserted after Article 5-quater*:

'Article 5-quinquies. 1. The design applied or incorporated into the component part of a complex product fulfils the requirements of novelty and individual character only:

a) if the component, once incorporated into the complex product, remains visible during normal use, i.e. during use by the final consumer, excluding maintenance, servicing and repair, and

b) if the visible characteristics of the component in themselves meet the requirements of novelty and individual duality.'

Article 6.

1. In Royal Decree No 1411 of 25 August 1940, Article 6 is replaced by the following:

'Article 6. — 1. A single application may be applied for registration in respect of no more than one hundred designs provided that they are intended to be implemented or incorporated into objects included in the same class as the International Design Classification, formed in accordance with the provisions of the Locarno Agreement of 8 October 1968, as subsequently amended, ratified by Law No 348 of 22 May 1974.

2. Without prejudice to the provisions of paragraph 1 and Article 8, an application for several registrations or for one registration for several models shall not be allowed. If the application is not admissible, the Patent and Trade Mark Office shall, pursuant to and for the purposes of Article 29 of Royal Decree No 1127 of 29 June 1939, as amended, invite the person concerned to limit the application to the eligible party.

3. The registration of several models or designs within the meaning of this Article may be restricted at the request of the proprietor pursuant to and for the purposes of Article 59-quater of Royal Decree No 1127 of 29 June 1939, as amended.

4. Registration in respect of a design which does not meet the requirements for validity may, at the request of the holder, take place in an amended form if the design retains its identity and fulfils the conditions of validity in that form. The amendment may also result from a partial waiver by the holder or from the entry on the certificate of the right to a judgment declaring the registration in part invalid.'

Art. 7.

1. In Royal Decree No 1411 of 25 August 1940, Article 7 is replaced by the following:
'Article 7. — 1. Exclusive rights to designs shall be granted by registration.
2. The right to registration lies with the designer and its successors in title.
3. Unless otherwise agreed, registration of designs, whether by employees, as part of their duties, is the responsibility of the employer, without prejudice to the right of the employee to be recognised as the author of the design and to have his name included in the certificate of registration.
4. Where a judgment which has the force of *res judicata* establishes that the right to registration of the design rests with a person other than the person submitting the application, that person may, if the registration has not yet been made and within three months of the date of *res judicata* of the judgment, at his choice:
 - a) to take up the application for registration in his own name and to take up the status of applicant in full;
 - b) to lodge a new application for registration which runs from the date of filing or priority of the initial application which ceases to have effect;
 - c) the application should be rejected.
5. If the registration was made in the name of a person other than the entitled person, he or she may choose to:
 - a) obtain by judgment, with retroactive effect, the transfer on his behalf of the certificate of registration;
 - b) to invoke the nullity of the effective registration in the name of those who were not entitled to it.'

Art. 8.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article 7:
'Article 7a. — 1. It is not possible to register as a design any characteristic of the appearance of the product which is determined by the technical function of the product.
2. The characteristics of the appearance of the product which must necessarily be reproduced in their exact shapes and dimensions in order to be able to consent to the product in which the design is incorporated or to which it is applied to be merged or mechanically connected with, or be incorporated into, or around or in contact with the product in such a way that each product can fulfil its function, may not be registered by design. However, designs which meet the requirements of novelty and individual character may be registered where they are intended to permit the combination or multiple connection of interchangeable products in a modular system.'

Art. 9.

1. In Royal Decree No 1411 of 25 August 1940, Article 8 is replaced by the following:
'Article 8. — 1. If a design is registrable within the meaning of Article 5 and at the same time increases the usefulness of the object to which it relates, a utility design patent and design registration may be applied for at the same time, but both protection cannot be combined under one title.
2. If the application for registration includes an object the shape or design of which confers on it a new and individual character and at the same time increases its usefulness, Article 29 of Royal Decree No 1127 of 29 June 1939, as amended, shall apply.'

Article 10.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article 8:
"Art. i-bis. — 1. The registration of a design shall confer on the holder the exclusive right to use it and to prohibit third parties from using it without his consent.
2. In particular, the manufacture, offer, marketing, import, export or use of a product in which the design is incorporated or to which it is applied, or the possession of such a product for such purposes,

shall constitute acts of use.

3. The rights conferred by the registration of the design shall not extend to:

- a) acts carried out in the private sphere and for non-commercial purposes;
- b) acts carried out for the purpose of testing;
- c) acts of reproduction necessary for quotations or for educational purposes, provided that they are compatible with the principles of professional correctness, do not unduly prejudice the normal use of the design and indicate the source.

4. The exclusive rights conferred by the registration of the design shall not be exercised in respect of:

- a) the furnishing and installations of vessels and aircraft registered in other countries temporarily entering the territory of the State;
- b) the importation into the State of pieces of bio-embroideries and accessories intended for the repair of the means of transport referred to in point (a);
- c) the execution of repairs on the abovementioned means of transport.'

Art. 11.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article *i-bis*:

"Art. *i-ter*. The exclusive rights conferred by the design shall extend to any design which does not produce a different overall impression in the informed user.

2. In determining the extent of protection, account shall be taken of the author's margin of freedom in the design of the design.'

Art. 12.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article *i-ter*:

"Art. *i-quater*. — The rights conferred by registration by a design shall not extend to acts relating to goods in which a registered design falling within the scope of their protection is incorporated or applied, where the products themselves have been put on the market in the Community by the holder of the design or with its meaning.'

Art. 13.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article *i-quater*:

"Art. *i-quinquies*. — 1. In the event of refusal of the registration of a design or of a declaration of invalidity of the registration of a design, pursuant to Article *i-sexies*, the design may be registered or maintained in an amended form if in that form it satisfies the conditions for protection and its identity is maintained. The registration or maintenance in an amended form may include registration accompanied by partial surrender by the holder of the design or registration in the register of designs of the judgment declaring the right to the design or design to be partially invalid.'

Art. 14.

1. In Royal Decree No 1411 of 25 August 1940, the following is inserted after Article *i-quinquies*:

"Art. *i-sexies*. — 1. The registration is void:

- a) if the design is not registrable in accordance with Articles 5, 5-a, 5-ter, 5-quater, 5-quinquies, 7 and 8;
- b) if the design is contrary to public policy or to morality;
- c) if the holder of the registration was not entitled to obtain it and the author did not make use of the right to request the transfer on his behalf of the certificate of registration;
- d) if the design conflicts with an earlier design which has been made known after the date of submission of the application or, where priority is claimed, after the date of the application but the exclusive right of which takes effect from an earlier date as a result of Community or national

registration or as a result of the relevant application;

e) if the design is such that its use would constitute an infringement of a distinctive sign or a work of the intellectual protected by copyright;

f) if the design constitutes an improper use of one of the elements listed in Article *b-ter* of the Paris Convention for the Protection of Industrial Property, or of signs, emblems and coat of arms other than those referred to in that article and which are of particular public interest in the State.'

Art. 15.

1. In Royal Decree No 1411 of 25 August 1940, the following is *inserted after Article ^ -sexies*:

'Art. *i-septies*. — 1. The invalidity of the registration effected in breach of Article 7 may be invoked only by the person entitled.

2. The invalidity of the registration of a design which is the subject of earlier rights may be brought solely by the holder of those rights or his successors in title.

3. The invalidity of the registration of a design which constitutes an improper use of one of the elements listed *in Article 6b* of the Paris Convention or of signs, emblems and coat of arms which are of particular public interest in the State may be relied on only by the person concerned.'

Art. 16.

1. In Royal Decree No 1411 of 25 August 1940, Article 9 is replaced by the following:

'Article 9. — 1. The utility model patent lasts ten years from the date of submission of the application.

2. The registration of the design or model lasts five years starting from the date of submission of the application. The holder may be extended for one or more periods of five years up to a maximum of 25 years from the date of submission of the application for registration.'

Art. 17.

1. The following paragraph is added to Article 10 of Royal Decree No 1411 of 25 August 1940:

'The provisions of Article *21-ter* of Royal Decree No 1127 of 29 June 1939, as amended, shall not apply to applications for registration of designs.'

Art. 18.

1. In Royal Decree No 1411 of 25 August 1940, Article 11 is replaced by the following:

'Article 11. — 1. Utility model patents are subject to the following fees:

- a)* application fee;
- b)* concession fee.

2. Design registrations are subject to the following fees:

- a)* application fee;
- b)* five-year concession fee;
- c)* five-year extension fee.

3. The tariff annexed to Presidential Decree No 641 of 26 October 1972, as amended, shall indicate the amount of the fees provided for in that decree.'

Art. 19.

1. In Royal Decree No 1411 of 25 August 1940, Article 12 is replaced by the following:

'Article 12. — 1. The grant fee for utility model patents can be paid either in a single solution, or in two quinquennial instalments.

2. The grant and extension fee for textile designs may be paid in annual instalments.'

Art. 20.

1. All normative expressions, also contained in regulations, which refer to 'patents for ornamental models' or 'patent applications for ornamental models' shall be deemed to be replaced by 'design registers' or 'application for registration of designs'.

TITLE II

Amendments to the Civil Code

Art. 21.

2. The heading of Chapter III of Title IX of Book V of the Civil Code is replaced by the following: 'The patent right for utility models and registration rights for designs'.

3. Article 2593 of the Civil Code is replaced by the following:

'Article 2593 (*Models and drawings*). Any person who has obtained a registration for a new design of an individual character shall have the exclusive right to use it and to prohibit third parties from using it without his consent, in accordance with special laws.'

4. Article 2594 of the Civil Code is replaced by the following:

'Article 2594 (*Applicable rules*). Articles 2588, 2589 and 2590 shall apply to the rights of breeches and registrations provided for in this Chapter. The conditions and arrangements for granting the patent and registration, the exercise of the rights deriving therefrom and their duration shall be governed by special laws.'

TITLE III

Amendments to Law No 633 of 22 April 1941 on the protection of copyright and other rights related to its exercise.

Art. 22.

1. In Article 2(1) of Law No 633 of 22 April 1941, the following amendments are made:

a) in point (4), the following sentence is deleted: 'even if they are applied to industry, provided that their artistic value is separable from the industrial character of the product to which they are associated';

b) the following shall be added after point 9: "10) Works of industrial design which in themselves have a creative character and artistic value."

Art. 23.

1. The following is inserted after Article 12-*tó* of Law No 633 of 22 April 1941:

'Article 12-*ter*. — Unless otherwise agreed, where an industrial design work is created by the employee in the performance of his duties, the employer shall have exclusive rights of economic use of the work.'

TITLE IV

Transitional and final provisions

Art. 24.

1. Patent applications for an ornamental design *and* applications for transcription filed before the date of entry into force of this decree shall be dealt with in accordance with the provisions contained therein. However, as regards formal regularity, they are subject to the previous rules.

Art. 25.

1. Patents for ornamental designs which cease before the date of entry into force of this decree,

provided that they have not expired or expired on the date of entry into force of this decree, may be extended up to a maximum of 25 years from the date of filing of the patent application.

2. The concession fees paid in a single solution apply to the first two extensions.

Art. 26.

1. Patents for ornamental designs which ceased before the date of entry into force of this decree are subject, in so far as the grounds for invalidity, the earlier legal provisions and the effects of the declaration of invalidity to the rule referred to in Article 59-bis of Royal Decree No 1127 of 29 June 1939.

Art. 27.

1. Until Directive 98/71/EC on the legal protection of designs is amended on a proposal from the Commission pursuant to Article 18 of the Medema Directive, exclusive rights to the components of a complex product may not be invoked to prevent the manufacture and sale of the components for the repair of the complex product in order to restore its original appearance.

2. The implementation of this Decree shall not result in new or increased burdens borne by the State budget.

This decree, bearing the seal of the State, shall be included in the Official Collection of Standard Acts of the Italian Republic. It is the duty of those who are responsible to observe it and to make it observed.

Given in Rome, 2 February 2001

CIAMPI

BELOVED, President of the Council of Ministers

MATTIOLI, Minister for Community Policies

READ, Minister for Industry, Trade and Crafts and Trade with Foreign Affairs

DINI, Minister for Foreign Affairs

FASSINO, Minister for Justice

Mr Visco, Minister for the Treasury, Budget and Economic Programme

DEL TURCO, Minister for Finance

MELANDRI, Minister for Cultural Heritage and Activities

See, 17 Seals: FASSINO

NOTES

WARNING:

The text of the notes published here was drawn up by the competent authority in accordance with Article 10(2) and (3) of the consolidated text of the provisions on the promulgation of laws, on the implementation of the decrees of the President of the Republic and non official publications of the Italian Republic, approved by Presidential Decree No 1092 of 28 December 1985, for the sole purpose of facilitating the reading of the legal provisions amended or to which the reference is made. The value and effectiveness of the legislative acts transcribed here remain unchanged.

For EEC Directives, the publication reference is given in the Official Journal of the European Communities (OJEC).

Notes to the premises:

Article 76 of the Constitution provides that the exercise of the legislative function *may* only be delegated to the Government with the determination of guiding principles and criteria and only for a limited period of time and for defined purposes.

Article 87 of the Constitution confers, *inter alia*, on the President of the Republic the power to enact laws and to enact decrees having the force of law and regulations.

Directive 98/71/EC is published in OJ L 289 of 28 October 1998.

— Law No 526 of 21 December 1999 states: ‘Provisions for the loss of obligations arising from Italy’s membership of the European Communities — 1999 Community Law’. Article 1 of Law No 526 of 21 December 1999 provides:

‘Article 1. (*Delegation to the Government for the implementation of Community directives*). — 1. The Government is empowered to issue, within one year of the date of entry into force of this Law, the legislative decrees laying down the rules necessary to implement the directives included in the lists in Annexes A and B.

2. The legislative decrees adopted, in compliance with Article 14 of Law No 400 of 23 August 1988, on a proposal from the President of the Council of Ministers or the Minister for Community Policies and the Minister with primary institutional competence in this field, in agreement with the Ministers for Foreign Affairs, Justice and Treasury, budgets and economic planning and with the other Ministers concerned with regard to the subject-matter of the Directive.

3. The draft legislative decrees implementing the directives listed in Annex B shall be forwarded to the Chamber of Deputies and the Senate of the Republic for their opinions within 40 days of the date of transmission to the Chamber of Deputies and the Senate within 40 days of the date of transmission. After that period, the decrees were issued even in the absence of that opinion. If the period laid down for the Commission’s opinion expires within 30 days of the expiry of the time-limits laid down in paragraph 1 or later, the latter shall be extended by 90 days.

4. Within two years of the date of entry into force of this Law, in compliance with the guiding principles and criteria laid down by it, the Government may, in accordance with the procedure set out in paragraphs 2 and 3, adopt supplementary and corrective provisions to the legislative decrees issued pursuant to paragraph 1.

5. The deadline for exercising the delegation for the implementation of Directive 97/5/EC shall be six months.’

Article 2 of that law provides:

‘Article 2 (*General criteria and guiding principles for the legislative delegation*). — 1. Without prejudice to the specific guiding principles and criteria laid down in the following Articles and in addition to those contained in the directives to be implemented, the legislative decrees referred to in Article 1 will be informed of the following general principles and criteria:

a) the administrations directly concerned will implement the legislative decrees with the ordinary administrative structures;

b) in order to avoid confusion with the existing disciplines for the individual sectors covered by the legislation to be implemented, the necessary amendments or additions to those disciplines will be introduced;

c) without prejudice to the application of the criminal rules in force, where necessary to ensure compliance with the provisions of the legislative decrees, administrative and penal sanctions will be provided for infringements of the provisions of the decrees. Criminal penalties, within the limits, respectively, of a fine of up to ITL 200 million and of the remainder of up to three years, will be provided for, alternatively or jointly, only in cases where the infringements affect or expose the general interests of national law to danger. In such cases, provision will be made for: the penalty of an alternative fine to arrest for infringements which endanger or harm the protected interest; the penalty of arrest in conjunction with that of the fine for infringements which cause particularly serious harm. This is without prejudice to the provision of alternative penalties or substitutes for the custodial sentence referred to in Article 10(1)(a) of Law No 205 of 25 June 1999. The administrative penalty for payment of a sum not less than ITL 50 000 and not exceeding ITL 200 million will be provided for infringements affecting or endangering interests other than those mentioned above. Within the minimum and maximum limits set out above, the penalties set out above will be determined in their scale, taking into account the different potential detrimental to the protected interest that each infringement has in the abstract, of specific qualities for the offender’s members, including those imposing particular duties of prevention, control or supervision, and of the financial advantage that the infringement may bring to the culprit or to the person or entity in whose interest he is acting. In any event, by way of derogation from the limits set out above, for infringements of the provisions of the legislative decrees, criminal or administrative penalties will be provided for the same as those already imposed by the laws in force for infringements which are homogeneous and equally offensive with respect to misconduct;

d) any expenditure which is not covered by the laws in force and which does not relate to the ordinary activity of the State or regional authorities may be provided only within the limits necessary for the fulfilment of the obligations to implement the directives; in so far as it is not possible to meet the funds already allocated to the competent authorities, the relevant cover will be extended to grandmother under Articles 5 and 21 of Law No 183 of 16 April 1987, also observing the provisions of Article 11-ter(2) of Law No 468 of 5 August 1978, introduced by Article 7 of Law No 362 of 23 August 1988;

e) the implementation of directives amending earlier directives already implemented by law or legislative decree shall be carried out, if the amendment does not entail an extension of the regulated matter, by making the corresponding amendments to the law or legislative decree implementing the amended directive;

f) the legislative decrees will in any event ensure that, in the areas covered by the directives to be implemented, the rules laid down are fully in line with the requirements of the directives, taking into account any changes which may be made, until the exercise of the delegation;

g) Article 9 of Law No 86 of 9 March 1989, the first paragraph of Article 6 of Presidential Decree No 616 of 24 July 1977 and Article 2 of Legislative Decree No 112 of 31 March 1998 will be complied with in matters falling within the competence of the regions with special statutes and the autonomous provinces of Trento and Bolzano.

— . In implementing Community legislation, the costs of pre-stations and controls to be carried out by public offices in application of those regulations shall be borne by the parties concerned in relation to the actual cost of the service, if this does not conflict with Community rules. The tariffs referred to in the preceding period shall be predetermined and public.

— Annex A to Law No 526/1999 lists the directives to be implemented by Legislative Decree.

— Chapter III of Title IX of Book V of the Civil Code shall contain: ‘Patent law ^{or} utility models and mental models and designs’.

— Royal Decree No 1411 of 25 August 1940 states: “Text of the legislative provisions on patents for industrial models”.

— Law No 633 of 22 April 1941 states: ‘Protection of copyright and other rights related to its exercise’.

— Law No 226 of 7 August 1997 states: “Urgent action for the economy”. Paragraph 2 of Article 27 of that law provides:

'2. The term of legal protection of copyright in respect of works of industrial design, within the meaning of Royal Decree No 1411 of 25 August 1940, may not exceed 15 years until the Community directive on the patentability of industrial designs has been transposed.'

Note to Article 1:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 2:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 3:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 4:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 5:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 6:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

— Law No 348 of 22 May 1974 states: 'Ratification and implementation of the Agreement establishing an International Classification of Industrial Designs, signed at Locarno on 8 October 1968'.

— Royal Decree No 1127 of 29 June 1939 states: 'Text of the legislative provisions on patents for industrial inventions'. Article 29 of the Royal Decree provides:

'Article 29 (Article 26(1) and (2) of Royal Decree No 1602) of 13 September 1934. — Each application must have as its object only one invention.

If the application includes several inventions, the Central Patent Office will invite the person concerned, with a time limit, to limit the application to a single invention, with the right to submit, in respect of the remaining inventions, as many applications, which shall take effect from the date of the original application.

Appeals to the Board laid down in that decree shall suspend the time-limit set by the office.'

Article 59-*quater* of the Royal Decree of 29 June 1939 provides:

'Article 59-*quater*. — The patent may be limited at the request of the proprietor to whom the description and the modified drawings must be joined.

If the office accepts the application, the applicant will have to pay the fee referred to in point (3) of Article 44 again if the original patent has already been printed.

An application for limitation may not be granted if a patent invalidity judgment is pending and the relevant judgment has become final. Nor can it be accepted in the absence of the consent of the persons referred to in Article 59-*ter*(2).

The Office shall publish in the bulletin the notice of the limitation of the patent.'

Note to Article 7:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 8:

— As regards Royal Decree No 1411 of 25 August 1940, see footnotes to the premises.

Note to Article 9:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

— As regards Article 29 of Royal Decree No 1127/1939, see footnotes to Article 6.

Note to Article 10:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 11:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 12:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 13:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 14:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 15:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 16:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Note to Article 17:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

— The text of Article 10 of Royal Decree No 1411 of 25 August 1940, as amended by this Decree, reads as follows:

‘Article 10. — The Central Patent Office shall make available to the public the utility model application with a description and any drawings or samples, in accordance with Article 4 of Royal Decree No 1127 of 29 June 1939, as amended.

The Central Patent Office shall make available to the public the application for an ornamental design with reproductions or samples and any descriptions after filing, provided that the applicant has not excluded accessibility in the application for a period not exceeding 12 months from the date of filing or the date of priority.

In cases where, in the preceding paragraphs, the Central Patent Office fails to publish in print as referred to in the second paragraph of Article 38 of Royal Decree No 1127 of 29 June 1939, as amended.

The provisions of Article 27-ter of Royal Decree No 1127 of 29 June 1939, as amended, shall not apply to applications for registration of designs.’

Article 27-ter of Royal Decree No 1127 of 29 June 1939 provides:

‘Article 27-ter. — If the persons referred to in the preceding article reside in the territory of the State, they may not, without the authorisation of the Ministry of Industry and Trade, lodge their applications for patents with the offices of foreign States or lodge them with those offices before six days have elapsed from the date of filing in Italy, or those of filing an application for authorisation.

The Ministry provides for authorisation applications, after hearing that of the defence. After the sixty-day period without a refusal, the authorisation must be deemed to have been granted.

Unless the act constitutes a more serious offence, the infringement of the provisions of the first subparagraph shall be punishable by a fine of not less than ITL 150 000 or by arrest.

If the infringement is committed when the authorisation has been refused, the arrest shall apply to an extent of not less than one year.

Notes to Article 18:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

— Decree No 641 of the President of the Republic of 26 October 1972 states: “Rule of taxes on government concessions”.

Note to Article 19:

— As regards Royal Decree No 1411 of 25 August 1940, see notes to the premises.

Notes to Article 22:

— Law No 633 of 22 April 1941 states: ‘Protection of copyright and other related rights in its exercise’. The current wording of Article 2(1) of the abovementioned Law, as amended by this paragraph, reads as follows:

— Article 2. — In particular, the following are included in the protection:

- 1) literary, dramatic, scientific, didactic, religious works, whether in written or oral form;
- 2) musical works and compositions, with or without words, dramatic-musical works and musical variations constituting, in themselves, an original work;
- 3) choreographic and pantomimic works, of which the tracks recorded in writing or otherwise;
- 4) works of sculpture, painting, drawing, engraving and similar figurative arts, including scenography;
- 5) drawings and works of architecture;
- 6) works of cinematographic art, whether mute or sound, provided that they are not merely protected documents within the meaning of Chapter Five of Title II;
- 7) photographic works and those expressed by a process similar to that of photography, provided that it is not merely a photograph protected within the meaning of Chapter V of Title II;
- 8) computer programs, in any form expressed as original as the result of intellectual creation of the author. The ideas and principles underlying any element of a programme, including those underlying its interfaces, are excluded from the protection afforded by this Law. The term programme also includes preparatory material for the design of the programme.
- 9) The databases referred to in the second paragraph of Article 1, understood as collections of works, data or other independent elements systematically or methodically arranged and individually accessible by electronic or other means. The protection of databases does not extend to their content and is without prejudice to existing rights over such content.

10) *works of industrial design that in themselves have a creative character and artistic value.*

Note to Article 23:

— For Law No 633 of 22 April 1941, see notes to Article 22.

Note to Article 26:

— For Royal Decree No 1127 of 29 June 1939, see footnotes to Article 6. Article 59-*bis* of the Royal Decree provides:

'Article 59-*bis*. — The declaration of invalidity of the patent shall have retroactive effect, but shall not affect:

a) acts of enforcement of judgments of infringement which have become *res judicata*;

b) contracts for invention concluded before the judgment declaring null and void in so far as they have already been executed. In such a case, however, the court may, having regard to the circumstances, grant a fair refund of sums already paid in performance of the contract.'

Note to Article 27:

As far as Directive 98/71/EC is concerned, see footnotes.

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