

**REPUBLIC OF LITHUANIA**

**LAW**

**ON DESIGNS**

7 November 2002 No. IX-1181

Vilnius

(As amended on 1 July 2008 – No X-1659)

**CHAPTER I. GENERAL PROVISIONS**

**Article 1. Purpose of the Law**

1. This Law shall establish the procedure for legal protection, registration and use of an industrial design (hereinafter referred to as a “design”) in the Republic of Lithuania, as well as the maintenance of the Design Register of the Republic of Lithuania.

2. The provisions of this Law are in compliance with the legal acts of the European Union referred to in the Annex to this Law.

**Article 2. Main Definition of the Law**

1. “**Design**” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

2. “**Product**” means any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.

3. “**Complex product**” means a product which is composed of components which can be replaced permitting disassembly and reassembly of the product (collections of items, composition).

4. “**Person**” means a natural or legal person.

5. “**Application**” means a package of documents to be presented to the State Patent Bureau of the Republic of Lithuania (hereinafter referred to as the “State Patent Bureau”) according to the procedure prescribed by this Law by the applicant in order to have his design registered.

6. “**Designer**” means a natural person (author) who has created a design.

7. “**Applicant**” means a person or a group of persons in whose name the application for the registration of a design is filed.

8. “**Patent attorney**” means a natural person whose name appears on the Register of Patent Attorneys of the Republic of Lithuania according to the procedure established in the Patent Attorney Statute approved by the Government of the Republic of Lithuania.

9. “**Design holder**” means the holder of a design registered in the Republic of Lithuania in the manner laid down by this Law.

10. “**Licence**” means consent of the design holder (licenser) to another person (licensee) to use a registered design under the terms of a licensing contract.

11. “**Sublicence**” means the licensee’s consent to another person to use a design under the terms of a sublicensing contract.

12. “**International exhibition**” means an international exhibition which is official or officially recognised according to the Convention relating to International Exhibitions, adopted in Paris on 22 November 1928, as last revised on 30 November 1972.

13. “**International registration of designs**” means registration of a design in the International Register of the International Bureau of the World Intellectual Property Organisation (hereinafter referred to as “the International Bureau”) under the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs (hereinafter referred to as the “Geneva Act”), adopted at Geneva on 2 July 1999.

14. “**International application**” means an application for international registration filed in compliance with the requirements of the Geneva Act and Common Regulations Under the 1999 Act, the 1960 Act and the 1934 Act of the Hague Agreement (hereinafter referred to as the “Hague Agreement”) in accordance with the procedure laid down by these legal acts.

15. “**Paris Convention**” means the Paris Convention for the Protection of Industrial Property of 20 March 1883 (with all effective supplements and amendments).

16. “**Locarno Classification**” means the international classification for industrial designs under the Locarno Agreement Establishing an International Classification for Industrial Designs of 8 October 1968 (with all effective supplements and amendments).

17. “**Regulations**” means Regulations for the Registration of Designs approved by the Director of the State Patent Bureau.

18. “**Community design**” means a design in respect of which registration is applied for or which is registered pursuant to the Regulation on Community designs.

19. “**Regulation on Community designs**” means Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

### **Article 3. Scope of Application**

1. This Law shall apply to every design for which registration is sought in the application filed at the State Patent Bureau or which is registered in the manner prescribed by this Law.

2. A design which is the subject of international registration of the design, in effect in the Republic of Lithuania, shall be protected under the Geneva Act.

## **CHAPTER II. PROTECTION OF THE DESIGN**

### **Article 4. Protection Requirements**

1. The legal protection shall be granted to the design registered in the Design Register of the Republic of Lithuania, unless otherwise provided for in international treaties.

2. A design shall be registered and protected in the manner prescribed by this Law to the extent that it is new and has individual character.

3. A design registered under this Law shall also be eligible for protection under the law of copyright, provided it is fixed in any objective form.

### **Article 5. Novelty**

1. A design shall be considered new if no identical design has been made available to the public before the date of filing of the application or, if priority is claimed, the date of priority.

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

### **Article 6. Individual Character**

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 filing of the application for registration or, if priority is claimed, the date of priority.

2. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

**Article 7. Novelty and Individual Character of Component Parts of a Product**

1. A design of a component part of a complex product shall only be considered to be new and to have individual character:

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

2) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

2. Normal use within the meaning of subparagraph 1 of paragraph 1 shall mean use by the end user, excluding maintenance, servicing or repair work.

**Article 8. Disclosure**

1. A design shall be deemed to have been made available to the public if:

1) following registration it has been published in the Official Bulletin of the State Patent Bureau or any other publication, or exhibited;

2) it has been used in trade or otherwise disclosed.

2. The design for which protection is claimed shall not be deemed to have been made available to the public:

1) if under the circumstances specified in paragraph 1 of this Article it has not become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Community, before the date of filing of the application or, if priority is claimed, the date of priority;

2) if it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

3. The design for which protection is claimed shall not be deemed to have been made available to the public, if information relating to it has been disseminated during the 12-month period preceding the date of filing of the application or, when priority is claimed, the date of priority and if information has been disseminated:

1) by the designer, his successor in title, or a any other person as a result of information provided or action taken by the designer or his successor in title;

2) as a consequence of an abuse of the rights of the designer or his successor in title by the actions of another person.

## **Article 9. Grounds for Refusal of Registration of a Design or Invalidation of its Registration**

A design shall be refused registration, or, if the design has been registered, the registration shall be declared invalid:

- 1) if the appearance of a product may not be regarded as a design within the meaning of paragraph 1 of Article 2 of this Law;
- 2) if a design, its use or making available to the public is contrary to public policy or to accepted principles of morality;
- 3) if a design incorporates the official or traditional (abbreviated) State name of the Republic of Lithuania, armorial bearings, flag or other State heraldic objects, or any mark imitating them, also warranty signs and hallmarks, stamps, decorations or badges of awards, unless the authorization for their use in a design has been issued according to the established procedure by an institution authorised by the Government of the Republic of Lithuania;
- 4) if a design incorporates armorial bearings, flags or other official emblems of other states or international organisations the use of which has not been authorised by the competent authorities of such states or international organisations pursuant to Article 6<sup>ter</sup> of the Paris Convention.

## **Article 10. Other Grounds for Invalidation of Registration of a Design**

1. The registration of a design shall be declared invalid:
  - 1) if it does not fulfil the requirements of Article 4 to 8 of this Law;
  - 2) if the design is registered in the name of a person who is not entitled to it;
  - 3) the design is identical with a prior design which is registered or applied for registration and which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority;
  - 4) if a component of the design is a prior design which is registered or applied for registration;
  - 5) a trade mark, a name of a legal person the proprietor of which is another person, is incorporated in the design without the consent of such person;
  - 6) if the design constitutes the use of a work protected under the copyright law without the authorization of the author or his successor in title;
  - 7) if the features of appearance of a product are solely dictated by its technical function;
  - 8) if the features of appearance of a product are solely dictated by the necessity to reproduce the product in the exact form and dimensions in order to permit the product in which the design is

incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that the product so produced may perform its function.

2. For the purposes of subparagraphs 3 and 4 of paragraph 1 of this Article, a “prior design” shall mean:

1) a design the date of filing of application for registration in the Republic of Lithuania of which is prior to the date of filing of application for registration of the design specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that design;

2) a design the date of registration of which under the Geneva Act in respect of the Republic of Lithuania is earlier than the date of filing of application for registration of the design specified in paragraph 1 of this Article, or, if priority is claimed, earlier than the date of priority;

3) a Community design the date of filing of the application for which under the Regulation on Community designs is prior to the date of filing of the application for a design referred to in paragraph 1 of this Article or, if priority is claimed, the date of priority.

3. The provisions of subparagraph 8 of paragraph 1 of this Article shall not apply, if a design subsists in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products.

### **Article 11. Priority**

1. The application may contain a request to grant priority on the basis of one or more first applications filed for the registration of the same design in the State which is a party to the Paris Convention or a member of the World Trade Organisation, if the applicant or his successor in title files an application to the State Patent Bureau within a period of six months from the date of filing of the first application or applications.

2. The application may contain a request to grant priority of the date on which the design was first exhibited at an international exhibition, if the application is filed with the State Patent Bureau within a period of six months from the date of the first display of the design at the exhibition.

3. An applicant who intends to benefit from the provisions of paragraphs 1 and 2 of this Article must submit before the State Patent Bureau a certified copy of the first application (applications) or a certificate issued by the administration of the international exhibition at which the design was first exhibited. These documents may be submitted together with other application documents or within three months from the date of filling of the application.

4. If the State Patent Bureau finds that the requirements under paragraph 3 of this Article have not been fulfilled, the request referred to in paragraphs 1 or 2 of this Article shall be considered not to have been made.

### **Article 12. Persons Entitled to the Design Right**

1. A designer who has created a design shall be entitled to personal moral rights and the right to register a design in his own name. The right to register a design may be inherited or transferred to third persons – successors in title.

2. The person in whose name a design has been registered shall be entitled to the exclusive design right.

3. The exclusive design right shall be held by:

1) a designer, provided that such a right has not been transferred;

2) a successor in title, provided that such a right has been inherited or transferred to him;

3) an employer or client when a design is a service design, unless otherwise provided for in the contract.

4. If a person who is not entitled to the design right under paragraph 3 of this Article, files an application for registration of a design or registers such a design in his own name, a designer or his successor in title shall have the right to request that the application for registration of the design or design itself be reregistered in his own name.

5. If two or more persons have jointly developed a design, they shall be considered to be co-authors and the right to the design shall vest in them jointly, unless otherwise agreed by them. A person who has rendered only material, technical or organisational assistance in the development of a design, shall not be considered to be a designer.

6. Where two or more designers have developed the same design independently of each other, the right to the design shall vest in the designer who first filed an application with the State Patent Bureau or who has earlier priority to this design as long as his application has not been later withdrawn or deemed to be withdrawn.

### **Article 13. Service Design**

1. A design shall be deemed to be a service design, if it has been developed under at least one of the following conditions:

1) during the execution of an employment contract which provides for the development of a design;

2) following concrete instructions (on order) under the contract in the course of designing, constructing, scientific research or creation of technologies;

3) when making use of the experience accumulated by an enterprise, agency or organisation, or its technologies and equipment.

2. The employee who developed a service design, must immediately inform the employer in writing. Until the filing of an application, the employer and the employee may not disclose the design.

3. Upon registration of a design in the name of the employer, he must pay remuneration to the designer. The amount of such remuneration shall depend on the economic value of the design and any benefit derived by the employer from the utilisation of this design. The conditions of remuneration and the payment thereof shall be established in a remuneration agreement which is signed by the employer and the designer, and which is concluded not later than within six months following the issuing of a certificate of registration of the design or within one year of the beginning of the use of the design, if the beginning of the use of the design is prior to the issuing of the certificate of registration of the design. If the employer fails to fulfil the contractual requirements or the said contract is not concluded within the aforementioned time limits, the designer shall be entitled to appeal to the court to be recognised as a design holder of a service design.

4. The provisions of paragraph 3 of this Article regarding the payment of remuneration shall not apply, if the employment contract provides for the development of a design.

5. If no agreement exists between the parties regarding the remuneration, the amount of remuneration shall be established by the court.

6. The rights and duties of the employer and the employee, related to service designs, with the exception of the payment of remuneration, shall expire when the registration of the design is declared invalid or after one year of the termination of labour relations.

7. When a design is developed in the enterprise, agency or organisation which carries out works related to scientific research, designing, constructing and other creative activities pursuant to the contract with the client who finances such works, an exclusive right to the design shall be established in the said contract. If the client withdraws the right to the design or fails to inform the designer within four months about his intention to exercise such right, the right to the design shall be transferred to the designer.



**Article 14. Designer's Personal Moral Rights**

1. The names of a designer or designers (if two or more persons have jointly developed the design) must be indicated in an application and a certificate of registration of the design.
2. The State Patent Bureau, in publishing data concerning the registration of a design, must mention the names of the designer or designers.
3. The designer shall enjoy the right to request to withhold his name. He must file a request to this effect with the State Patent Bureau. The State Patent Bureau must comply with this request.
4. A design may not be altered without the designer's consent, unless otherwise provided for in the contract.

**Article 15. Information on a Design**

A third person who uses a design for advertising, when marking goods or on their packages, or in any other form, must, at design holder's request, indicate immediately that the design is registered or submitted for registration, as well as the number of registration or an application.

**CHAPTER III. REGISTRATION OF DESIGN****Article 16. Filing of an Application**

1. An applicant who wishes to register a design must file an application to the State Patent Bureau. An application for registration of a service design shall be filed with the State Patent Bureau in the name of an employer or a client.
2. A representative of an applicant may also file an application. Natural persons of foreign states who are not permanent residents of the Republic of Lithuania or any other EU Member State and legal persons of foreign states who do not have a branch office or representative office registered in the Republic of Lithuania, or a registered office, a branch office or a representative office in any other EU Member State, shall file applications to the State Patent Bureau and perform all actions relating to the registration of the design with the State Patent Bureau, including also representation at the Appeals Division, through the patent attorney of the Republic of Lithuania whose name appears on the Register of Patent Attorneys of the Republic of Lithuania.
3. One application may request registration of more than one, but not more than one hundred of examples of the design of a product. A product, except ornamentation, the examples of the design

of which the application requests to register must belong to the same class of the Locarno classification.

4. An application for the registration of a design shall consist of:

- 1) a request for the registration of a design and issuance of a design registration certificate signed by the applicant or his representative;
- 2) photographs or graphic representations of a design;
- 3) a document certifying the payment of the fee fixed for filing of an application;
- 4) description of a design;
- 5) the power of attorney given to a person (where the application is filed by an authorised person);
- 6) a declaration concerning designer's authorship;
- 7) a document confirming the transfer of the design rights (where appropriate);
- 8) a request to be granted priority (where appropriate);
- 9) authorization granted by competent authorities under subparagraphs 3 or 4 of Article 9 of this Law (where appropriate);
- 10) consent of the design holder according to subparagraphs 5 or 6 of paragraph 1 of Article 10 of this Law (where appropriate);
- 11) a request concerning an earlier date of publication of a design (where appropriate);
- 12) a request for deferment of publication of a design (where appropriate).

5. A request for the registration of a design and issuance of a design registration certificate shall contain:

- 1) information identifying the applicant and his representative, set out in the Regulations;
- 2) name of a product;
- 3) the classes and subclasses of the Locarno classification;
- 4) information identifying the designer, set out in the Regulations;
- 5) reference to priority (where appropriate).

6. If registration of more than one example of a design is applied for, a fixed additional fee shall be payable for each additional example.

#### **Article 17. Date of Filing of Application**

1. The date of receipt by the State Patent Bureau of all the documents listed in subparagraphs 1 to 3 of paragraph 4 of Article 16 of this Law shall be considered the date of filing of the application.

2. In case of failure to submit at least one of the documents listed in subparagraphs 1 to 3 of paragraph 4 of Article 16 of this Law, a date of filing shall not be accorded to the application and the application documents shall be returned to the applicant with the grounds for the inadmissibility of the application indicated.

3. An applicant shall acquire the right of seniority of a design from the date of filling of the application or, if priority is claimed, the date of priority. From the said date to the date of issuance of a certificate of registration of the design, temporary legal protection shall be afforded for the design, during which claims may be invoked to another person, warning him about the possible infringement of the rights provided for in Article 36 of this Law.

4. If an applicant has withdrawn his application or the design has not been registered, or it has been removed from the Register at the request of the holder of the design, or its registration is opposed by another person, the temporary legal protection provided for in paragraph 3 of this Article shall be deemed not to have been afforded for the design.

#### **Article 18. Examination of Application**

1. The State Patent Bureau shall conduct, within one month from the receipt of the application, a formal examination of the application documents: check whether or not the documents specified in subparagraphs 1 to 3 of paragraph 4 of Article 16 of this Law have been filed and whether they comply with the formal requirements.

2. The State Patent Bureau shall recognise an application as having been filed and shall accord to it a date of filing and a number, provided that the documents specified in subparagraphs 1 to 3 of paragraph 4 of Article 16 of this Law have been filed and all the formal requirements have been complied with.

3. Having performed the actions specified in paragraph 2 of this Article, the State Patent Bureau shall supply the applicant or his representative with a notice of acceptance of the application wherein the date of filing of the application and the number accorded to it shall be indicated.

4. Having accorded the application a date of filing, the State Patent Bureau shall check whether or not all the documents specified in paragraph 4 of Article 16 of this Law have been filed, whether they comply with the requirements of this Law and the Regulations.

5. Having ascertained that not all the documents specified in paragraph 4 of Article 16 of this Law have been filed or that the documents do not comply with the requirements of this Law and the Regulations, the State Patent Bureau shall notify the applicant or his representative thereof in writing,

pointing out the deficiencies and which deficiencies must be remedied. If the deficiencies in the application are not remedied or lacking documents are not submitted within three months from the sending of the notification, the State Patent Bureau shall recognise the application as having not been filed and shall notify the applicant or his representative thereof in writing.

6. Having accorded the application a date of filing, a certified copy of the application may be issued, if the applicant submits a request and a document confirming that fixed fee has been paid.

### **Article 19. Examination of a Design**

1. Having conducted an examination of the application, the State Patent Bureau shall carry out an examination of the design with a view to ascertaining whether or not there are grounds for refusal of registration of a design, referred to in Article 9 of this Law.

2. Where, under Article 9 of this Law, a design is not registrable, the State Patent Bureau shall adopt a decision to refuse the registration of the design. The decision must indicate grounds and reasons for the refusal of the registration of the design. Such decision shall be sent to the applicant or his representative within ten calendar days (hereinafter referred to as “days”) from the adoption thereof.

3. The applicant or his representative shall have the right to submit to the State Patent Bureau within three months from the day of sending of the decision to refuse registration a written request for a re- examination.

4. Having received a request for a re-examination and upon examining the arguments submitted by the applicant, the State Patent Bureau shall conduct a re-examination and adopt one of the following decisions:

- 1) to declare the previous decision invalid and to register the design;
- 2) to leave valid the decision to refuse registration of the design.

5. The State Patent Bureau shall send the decision adopted pursuant to paragraph 4 of this Article to the applicant or his representative within ten days from the adoption thereof.

6. Having established that the design is assigned to the wrong class of the Locarno classification or that a class is not indicated, the State Patent Bureau shall assign the design to an appropriate class or designate it, and shall notify the applicant or his representative about it in writing.

### **Article 20. Filing of Appeal**

1. An applicant or his representative who objects to the decision adopted by the State Patent Bureau to refuse registration of a design, shall have the right to file with the Appeals Division of the State Patent Bureau (hereinafter referred to as the “Appeals Division”), within three months from the day of sending of the decision, a written appeal with a substantiated request for a review of the findings of the examination and a document certifying the payment of the fixed fee.

2. Following the examination of the appeal, the Appeals Division shall adopt one of the following decisions:

1) to grant the appeal and to adopt a decision to register the design in respect of all or some of the design examples;

2) to dismiss the appeal and to uphold the decision to refuse the registration of the design.

3. Where the applicant or his representative objects to the decision of the Appeals Division, he shall have the right to appeal against that decision to the Vilnius Regional Court within six months from the date of adoption thereof.

#### **Article 21. Registration of a Design**

1. Upon ascertaining that there are no grounds for refusal of registration of the design, referred to in Article 9 of this Law, or when the appeal is granted pursuant to the procedure established by Article 20 of this Law, the State Patent Bureau shall adopt a decision to register the design and shall, within ten days from the date of adoption of the decision, send to the applicant or his representative this decision and instruction to pay the fee fixed for registration, publication of the design, and the issuance of a registration certificate.

2. After the applicant or his representative presents a document certifying the payment of the fixed fee, the design shall be entered in the Design Register of the Republic of Lithuania. Information about the entry of the design in the said Register shall be published in the Official Bulletin of the State Patent Bureau.

3. The design shall be registered and published not earlier than after 6 months from the date of filing of the application. At the request of the applicant or his representative, a design may be registered and published prior to the expiration of this period of time.

4. At the request of the applicant or his representative, publication in the Official Bulletin of the State Patent Bureau of information about the entry of a design in the Design Register of the Republic of Lithuania may be deferred for a period of up to 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.

**Article 22. Withdrawal and Separation of the Application**

1. If the applicant or his representative fails to pay the fixed fee within three months from the day of sending of the decision to register the design, the application shall be deemed withdrawn on the decision of the State Patent Bureau.

2. Within ten days from the adoption of the decision that the application shall be deemed withdrawn the State Patent Bureau shall send the decision to the applicant or his representative.

3. The applicant or his representative shall have the right to withdraw his application or decrease the number of design examples contained therein at any stage of examination of the application or the design.

4. The applicant or his representative shall have the right, at any stage of examination of the application containing more than one design example or examination of the design, to submit a request to separate the design examples into several independent applications. The filing date of the initial application shall be established for each independent application and, if priority is claimed or has been granted, the priority date of the initial application.

5. A fee shall be paid for each independent application as for a newly filed application.

**Article 23. Opposition to Registration of a Design**

1. Within a period of three months following the publication of the registered design in the Official Bulletin of the State Patent Bureau, the persons specified in Article 44 of this Law may, on the grounds of Articles 9 and (or) 10 of this Law, oppose the registration of the design by submitting to the Appeals Division a justified written opposition.

2. The filing of opposition shall be subject to the payment of the fixed fee.

3. The Appeals Division shall verify within fourteen days from the day of receipt of the opposition whether the opposition complies with the requirements of paragraphs 1 and 2 of this Article. Where the opposition is filed according to the procedure laid down in this Law and the Regulations and complies with the aforementioned requirements, the Appeals Division shall accept the opposition as admissible and shall communicate one copy of the opposition to the design holder against which the opposition is filed or his representative.

4. The design holder against whom opposition is filed or his representative must within three months from the date of sending of the opposition file a justified reply to the opposition. Failure to file a justified reply to the opposition shall be considered as refusal of the design holder or his

representative to participate in the consideration of the opposition and this not prevent the Appeals Division from considering the opposition.

5. Following the examination of the opposition, the Appeals Division shall adopt one of the following decisions:

1) to satisfy the opposition and to make a decision to declare invalid the registration of the design in respect of all or some of the design examples;

2) to reject the opposition and leave the registration of the design valid.

6. The design holder against which opposition is filed or his representative, or the person who filed the opposition or his representative, who did not attend the opposition examination proceedings, shall be within one month from the day of making of the decision communicated the decision in writing with a copy of decision attached to the communication.

7. The decision made by the Appeals Division may be appealed against to the Vilnius Regional Court within six months from the day of adoption thereof.

8. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

#### **Article 24. Procedure for Examination of Appeals and Opposition at the State Patent Bureau**

Appeal or opposition proceedings conducted by the Appeals Division shall be public. The applicant, the person specified in Article 44 of this Law, the design holder against which opposition has been filed or the representatives of the aforementioned persons shall have the right to take part in the appeal or opposition proceedings at the Appeals Division. Appeal and opposition examination procedure shall be set forth in the Regulations for Appeal and Opposition Examination approved by the Director of the State Patent Bureau.

#### **Article 25. Certificate of Registration of a Design**

1. The State Patent Bureau shall issue a registration certificate to the holder of a registered design or his representative, if opposition has not been filed in accordance with the procedure laid down in Article 23 of this Law or if opposition has been rejected or registration of the design in respect of some of the design examples has been declared invalid pursuant to paragraph 5 of Article 23 of this Law.

2. The form of the certificate of registration of a design and the data recorded therein shall be established by the State Patent Bureau.

3. The certificate of registration of a design shall be a legal document certifying the entry of the design in the Design Register of the Republic of Lithuania and the exclusive rights of the design holder to the registered design.

4. If the design holder loses the certificate of registration of a design, he shall be issued a duplicate of the certificate at his request and upon the payment of a fixed fee.

#### **Article 26. Design Register of the Republic of Lithuania**

1. The Design Register of the Republic of Lithuania is a state register. The Register shall be administered by the State Patent Bureau.

2. The procedure for collecting, amassing, processing, systemising, storing, using, and providing documents and data relating to designs shall be established by the Statute of the Design Register of the Republic of Lithuania approved by the Government.

#### **Article 27. Data of the Design Register of the Republic of Lithuania**

1. The following data shall be recorded and gathered in the Design Register of the Republic of Lithuania:

- 1) date of filing of the application and its file number;
- 2) name of a design product and its class (subclass) according to the Locarno classification;
- 3) reproduction of a design and the number of examples;
- 4) date of registration of the design and its file number;
- 5) the applicant's name or personal name, surname and address (headquarters);
- 6) personal name, surname and address (headquarters) of the designer;
- 7) name or personal name, surname and address (headquarters) of the design holder;
- 8) date of expiry of registration;
- 9) priority date, first application file number, code of the state, provided that priority has been given under paragraph 1 of Article 11 of this Law;
- 10) name of the exhibition, date of display of the design, provided that priority has been given under paragraph 2 of Article 11 of this Law;
- 11) personal name, surname, address (headquarters) of the representative (where he has been appointed);
- 12) other data relating to the registration, use and protection of the design;



13) grounds for and date of changing the data.

2. All natural and legal persons shall have the right to use the data of the Design Register of the Republic of Lithuania according to the procedure laid down by the Statute of the Design Register of the Republic of Lithuania.

3. The State Patent Bureau shall issue extracts from the Design Register of the Republic of Lithuania at the request of any person who has paid the fixed fee.

### **Article 28. Inspection of Application Files**

1. Design application files and data pertaining to the claimed design shall not be made available to the public prior to the publication of the design in the Official Bulletin of the State Patent Bureau in the manner prescribed by Article 21 of this Law.

2. The provisions of paragraph 1 of this Article shall not apply if:

1) the applicant gives a written consent to a third person to inspect the application files and data;

2) information on the filed applications is requested by the court and other State institutions which are entitled to obtain restricted information in the manner prescribed by legal acts;

3) if opposition has been filed against the registration of a design on the basis of a prior design application, and the holder of the design against which the opposition has been filed submits a written request to disclose the documents and data pertaining to the earlier application.

3. Where an application is, in accordance with Article 18 of this Law, deemed not to have been filed or is, in accordance with paragraphs 1 to 3 of Article 22, deemed to have been withdrawn, inspection of it shall be possible only upon written consent of the person who has filed such application.

### **Article 29. Recording of Changes in the Application and in the Design Register of the Republic of Lithuania**

1. The applicant, the design holder or his representative must notify the State Patent Bureau of:

1) changes in the name or personal name, surname or address (headquarters) of the designer, the applicant or the design holder;

2) changes of the representative of the applicant or design holder, or his address (headquarters);

3) an amended form of the design applied for registration or of the registered design, if the design registration has been declared invalid pursuant to Article 9 of this Law, and, in the opinion of the State Patent Bureau, in that form the design complies with the requirements laid down in this Law and the identity of the design is retained;

4) limitation of the list of design examples;

5) the full or partial change of the applicant or the design holder;

6) the need to correct technical errors.

2. Requesting for change to be recorded in the application or in the Design Register of the Republic of Lithuania, the applicant, the design holder or their representative shall submit the following documents:

1) request for recording changes in the application or in the Design Register of the Republic of Lithuania;

2) documents substantiating the request where the recording of the changes specified in subparagraphs 5 or 6 of paragraph 1 of this Article is requested;

3) a document certifying the payment of the fixed fee.

3. Following the receipt of the documents specified in paragraph 2 of this Article, the State Patent Bureau shall verify them within one month from the date of receipt and record the change in the application or in the Design Register of the Republic of Lithuania, provided that they meet the requirements laid down by this Law and the Regulations.

4. The change shall become valid from the day of its recording. A notice of the change in the Design Register of the Republic of Lithuania shall be published in the Official Bulletin of the State Patent Bureau.

5. Technical error made by the State Patent Bureau shall be corrected free of charge.

6. When registering an amended form of the design, specified in subparagraph 3 of paragraph 1 of this Article, it shall be indicated in the Design Register of the Republic of Lithuania that the change is entered:

1) on the initiative of the design holder;

2) upon withdrawal of part of the rights by the design holder;

3) by a court decision.

### **Article 30. Removal of a Design from the Register**

1. A design shall be removed from the Design Register of the Republic of Lithuania if:

1) the Appeals Division declares the registration of the design invalid according to the procedure laid down in Article 23 of this Law;

2) the registration of the design is declared invalid by a court decision;

3) the registration of the design has not be renewed according to the procedure laid down in Article 35 of this Law;

4) the design holder requests for the design to be removed from the Register.

2. The State Patent Bureau shall remove the design from the Design Register of the Republic of Lithuania following the receipt of one of the following documents:

1) effective court decision to declare the registration of the design invalid;

2) a written request of the design holder.

3. After the Appeals Division takes a decision to declare the registration of a design invalid, or in case of failure to renew the registration of the design according to the procedure laid down in Article 35 of this Law, the design shall be removed from the Register on the initiative of the State Patent Bureau.

4. A notice of removal of the design from the Register shall be published in the Official Bulletin of the State Patent Bureau.

### **Article 31. Requirements for the Documents Filed to the State Patent Bureau**

1. Documents must be filed to the State Patent Bureau in the state language. If the documents, except for the application for the registration of a design and for the issuance of a certificate of registration of a design, are filed in a language which is not the state language, the applicant, the design holder or his representative must within three months from the day of filing of the documents submit the documents translated into the state language.

2. The power of attorney to represent the applicant or the design holder must be issued in writing and shall not be subject to notarial verification. Where the application for registration of a design is filed by a representative of the applicant who, however, fails to submit the power of attorney together with the documents listed in subparagraphs 1-3 of paragraph 4 of Article 16 of this Law, the power of attorney must be submitted within three months from the date of filing of the application.

3. Documents filed to the State Patent Bureau shall be exempt from all legalisation.

4. Specific requirements of the application and other documents shall be established by the Regulations.

5. A document shall be deemed not to have been filed and the act shall be deemed not to have been performed if the applicant, the design holder or his representative fails to submit the documents within the time limit set in this Law or the documents have been executed not in accordance with the requirements.

### **Article 32. Time Limit**

1. Following the filing of a written request and payment of the fixed fee by the applicant or his representative, the time limits provided for in paragraph 5 of Article 18, paragraph 3 of Article 19, paragraph 1 of Article 20, paragraph 1 of Article 22, paragraph 4 of Article 23, paragraph 1 of Article 31 may be renewed once, but for not longer than two months from the day of expiry of the initial time limit.

2. Upon payment of the fee for the renewal of the time limit, the applicant, the design holder or his representative may, not later than within 2 months from the date of expiry of the initial time limit, submit an application for the renewal of the missed time limit. The time period shall be renewed on the decision of the State Patent Bureau.

3. The time limit, fixed in paragraph 1 of Article 22, which has been missed by the applicant may be reinstated upon filing the following documents:

- 1) a substantiated request to reinstate the missed time limit;
- 2) a document stating the grounds of missing of the time limit;
- 3) a document certifying the payment of the fee fixed for the reinstatement of the time limit.

4. Reinstatement specified in paragraph 3 of this Article shall be granted, if the documents are submitted within 2 months from the moment the circumstances on the grounds whereof the applicant failed to timely pay the fixed fee and (or) present a document confirming the payment of the fee, ceased to exist, but not later than within one year from the end of the time limit which had to be observed. Reinstatement of the time limit shall be granted on the decision of the Director of the State Patent Bureau.

5. Refusal to renew or reinstate the time limit may be appealed to the court in the manner prescribed by law.

### **Article 33. Fees**

The amount of fees, specific actions for which fees are payable, the procedure for paying the fees shall be established by the Law of the Republic of Lithuania on Fees for the Registration of Industrial Property Objects.

### **CHAPTER III<sup>1</sup>**

#### **INTERNATIONAL REGISTRATION OF A DESIGN**

#### **Article 33<sup>1</sup>. Validity of International Registration of a Design**

1. International registration of a design, which designates the Republic of Lithuania, shall, from the date of registration pursuant to paragraph 2 of Article 10 of the Geneva Act, have the same legal protection as a design in respect of which registration is applied for in accordance with the procedure laid down by this Law.

2. Where following the provisions of paragraph 1 of Article 33<sup>2</sup> of this Law, validity of the international registration of a design in the Republic of Lithuania has not been refused or where such refusal has been later withdrawn, the international registration of a design shall, from the date indicated in paragraph 1 of this Article, have the same legal protection as a design which has been registered pursuant to the provisions of this Law.

3. Data concerning the international registration of a design shall be published in the International Designs Bulletin of the International Bureau.

4. The State Patent Bureau shall record in the Design Register of the Republic of Lithuania the data concerning the international registration of a design, in which the Republic of Lithuania is designated.

#### **Article 33<sup>2</sup>. Invalidation of International Registration of a Design**

1. Where all or part of examples of a design that is the subject of the international registration do not meet the requirements of Article 9 of this Law or where an opposition to the international registration of a design is filed in accordance with the procedure laid down by this Law, the State Patent Bureau shall, within a period and in a manner prescribed by the Regulations under the Hague Agreement, communicate to the International Bureau a notification of refusal of the validity of the international registration of a design in the Republic of Lithuania, stating all the grounds on which the refusal is based. Such a refusal may be withdrawn, in part or in whole, at any time by the State Patent Bureau.

2. Where the international registration in respect of all or part of examples of a design in the Republic of Lithuania has been declared invalid, the State Patent Bureau shall notify the International Bureau about this.

3. The international registration of a design shall be invalid in the Republic of Lithuania from the date of its declaration invalid in the Republic of Lithuania.

### **Article 33<sup>3</sup>. Filling of an International Application**

1. An applicant who satisfies the requirements of Article 3 of the Geneva Act shall be entitled to file an international application through the State Patent Bureau or directly with the International Bureau. The Republic of Lithuania may be designated in the international application among the states in which protection is applied for.

2. An international application shall be filed in compliance with the requirements and in the manner prescribed by the Geneva Act and the Regulations under the Hague Agreement.

3. Where an international agreement is filed through the State Patent Bureau, it shall enter the date of filing the international application and shall communicate the international application to the International Bureau. The State Patent Bureau shall not conduct examination of an international application.

4. The procedure for filling an international application through the State Patent Bureau shall be laid down by the Regulations.

### **Article 33<sup>4</sup>. Special Provisions Applied to the International Registration of a Design**

1. If the holder of the international registration of a design opposes the decision of the State Patent Bureau to refuse to validity of the international registration of the design in the Republic of Lithuania on the grounds that all or part of the examples of the design do not satisfy the requirements of Article 9 of this Law, he shall be entitled to request a re-examination of the design within five months from the day of taking of the decision. If he fails to file the request within the prescribed time limit, the decision of the State Patent Bureau shall be deemed final.

2. If the holder of the international registration of a design opposes the decision taken by the State Patent Bureau in the course of the re-examination of the design, he shall be entitled to file, within three months from the day of transmittal of the decision, an appeal to the Appeals Division. The said appeal shall be accepted, considered and appealed against according to the procedure laid down by Article 20 of this Law.

3. The interested persons or their representatives must file an opposition to the international registration of a design within three months from the day of publishing of the data on the international registration of the design in the International Designs Bulletin of the International Bureau. The opposition must meet the requirements of paragraphs 1 and 2 of Article 23 of this Law.

4. The holder of the international design registration to which an opposition has been filed or his representative appointed in the manner laid down in paragraph 2 of Article 16 of this Law shall, within five-month from the date indicated in a notification to the International Bureau of refusal of the validity of the international registration of the design in the Republic of Lithuania, present a justified reply to the opposition. Failure to present a justified reply to the opposition shall be considered as a refusal to take part in the consideration of the opposition and shall not prevent the Appeals Division from considering the opposition in the absence of the holder (or his representative) of the international design registration to which the opposition has been filed. If the holder of the international design registration to which the opposition has been filed fails to appoint his representative, the decision taken by the Appeals Division shall not be communicated to the holder of the international registration of the design.

5. A license issued by the holder of the international registration of a design shall not be valid in the Republic of Lithuania for third parties if the data of the licensing contract have not been recorded in the Design Register of the Republic of Lithuania in accordance with the procedure laid down by Article 41 of this Law.

6. Changes concerning the international registration of a design, renewal of the registration, transfer of the rights and other data relating to the international registration of the design shall be recorded by the International Bureau in compliance with the procedure laid down by the Geneva Act. Requests shall be presented directly to the International Bureau.

7. All fees prescribed in the Geneva Act and the Regulations under the Hague Agreement shall be paid directly to the International Bureau.

#### **CHAPTER IV. DURATION OF REGISTRATION OF A DESIGN**

##### **Article 34. Duration of Registration of a Design**

1. An initial period of validity of the registration of a design shall be 5 years from the date of filing of the application.

2. The term of the registration of a design may be renewed up to a total term of 25 years in the manner prescribed by Article 35 of this Law.

### **Article 35. Renewal of Registration of a Design**

1. Following the expiry of the period specified in paragraph 1 of Article 34 of this Law, the registration of a design may be renewed four times for a period of five years each, up to a total term of 25 years from the date of filing of an application.

2. The registration of a design shall be renewed on the decision of the State Patent Bureau provided that the following documents have been submitted to the State Patent Bureau:

1) the request for renewal of the registration of a design in respect of all or part of the examples;

2) document certifying the payment of the fixed fee.

3. Documents specified in paragraph 2 of this Article must be filed by the design holder or his representative within six months prior to the expiry of registration of the design, with the exception of the case provided for in paragraph 4 of this Article.

4. Upon having paid for the renewal of the registration of a design the surcharge increased by 50 per cent, the design holder or his representative may, within 6 months from the day of the expiry of the validity of registration of the design, submit the documents specified in paragraph 2 of this Article. In this case it shall be considered that the registration of the design has not ceased to be valid.

5. Information relating to the renewal of the registration of a design shall be recorded in the Design Register of the Republic of Lithuania and published in the Official Bulletin of the State Patent Bureau.

6. If the design holder or his representative fails to submit the documents specified in paragraph 2 of this Article within the period specified in paragraphs 3 and 4 of this Article, the registration of the design shall not be renewed and the design shall be removed from the Design Register of the Republic of Lithuania according to the procedure laid down in Article 30 of this Law.

## **CHAPTER V. RIGHTS CONFERRED BY DESIGN REGISTRATION**

### **Article 36. Rights of the Design Holder**

1. The holder of a registered design shall enjoy the exclusive right to use it and to allow or prevent any other persons not having his consent from making, offering for sale, selling, putting on the



market, importing, exporting, stocking and using any products or their parts, if the overall impression their design produces on an informed user differs from that produced on him by the registered design.

2. When establishing the rights conferred by the registration of a design, the freedom of the designer in developing the design shall be taken into consideration.

### **Article 37. Limitation of the Rights Conferred by the Design Right**

1. The provisions of Article 36 of this Law may not apply in order to prevent any third party from doing the acts set out in Article 36 of this Law, provided they are:

- 1) done to meet personal needs and for non-commercial purposes;
- 2) done for experimental purposes;
- 3) acts of reproduction of a design for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not prejudice the normal exploitation of the design, and that mention is made of the source.

2. The provisions of paragraph 1 of this Article may apply only when the aforementioned acts are compatible with fair trade or commercial practice and do not unduly prejudice the lawful interests of the design holder.

3. In addition to the acts provided for in paragraph 1 of this Article, the design holder shall not have the right to prevent any third party from doing the following acts:

- 1) to use a design on ships, aircrafts and other means of transport registered in foreign countries, and in the equipment thereof, when these temporarily enter the territory of the Republic of Lithuania;
- 2) to import in the Republic of Lithuania spare parts and accessories for the purpose of repairing the means of transport specified in subparagraph 1 of this paragraph;
- 3) to execute repairs on the means of transport specified in subparagraph 1 of this paragraph;
- 4) to exercise the right of prior use.

### **Article 38. Right of Prior Use**

1. Persons who have in good faith used or have been completely prepared to use the design, which has not been copied, but has been developed independently from a registered design of another person, before the date of filing of the application, or, if a priority is claimed, before the date of

priority, shall have the right in their enterprise and for the purposes of the activities thereof to continue such use or to use the design as envisaged during the preparations.

2. The person who enjoys the right of prior use may not grant a licence to another person to use the design.

3. The right of prior use cannot be transferred except along with that part of the business in the course of which design was used or the preparations were made for the use thereof.

### **Article 39. Exhaustion of rights**

The rights conferred by registration of a design shall be exhausted, when the products the design of which is protected in the manner prescribed by this Law, have been put by the holder of the design or with his consent on the European Community market.

## **CHAPTER VI. TRANSFER OF THE RIGHT TO A DESIGN, LICENSING AND RIGHTS IN REM**

### **Article 40. Transfer of the Right to a Design Applied for or a Registered Design**

1. The right to a design applied for or a registered design may be transferred, under agreement, together with or separately from other rights of the design holder, related to his business. Unless the agreement provides otherwise, the transfer of business shall include the transfer of the right to a design.

2. The right to a design applied for or to a registered design may be transferred in respect of a part of the design examples.

3. The transfer of a right to a design applied for or a registered design shall be recorded in the Design Register of the Republic of Lithuania upon the request of one of the parties to the transfer, provided the following documents have been submitted to the State Patent Bureau:

- 1) a request to record the transfer;
- 2) a document certifying the transfer;
- 3) a document certifying the payment of a fixed fee;
- 4) the power of attorney issued to the representative (where appropriate).

4. The State Patent Bureau shall examine the submitted documents within a month's period from the day of receipt of the documents specified in paragraph 3 of this Article and, provided that the

documents meet the requirements of this Article, shall record the data relating to the transfer of the applied for or registered design in the Design Register of the Republic of Lithuania.

5. A transfer of the right to an applied for or registered design shall become effective from the date of recording of the data relating to the transfer of the right to the applied for or registered design in the Design Register of the Republic of Lithuania. The data relating to the transfer of the right to a registered design shall be published in the Official Bulletin of the State Patent Bureau.

#### **Article 41. Licensing**

1. The design holder shall enjoy the right to issue to a third party an exclusive or non-exclusive licence for using a design within the whole or part of the Republic of Lithuania.

2. The licensing contract data shall be recorded in the Design Register of the Republic of Lithuania upon the request of one of the parties to the licensing contract. The following documents shall be submitted to the State Patent Bureau alongside with the request:

1) a document certifying the conclusion of the licensing contract signed by both parties or a notarised extract from the licensing contract;

2) a document certifying the payment of a fixed fee;

3) the power of attorney issued to a representative (where appropriate);

3. The following must be indicated in the document certifying the conclusion of a licensing contract or in an extract from the licensing contract:

1) the name or the personal name, surname and address (headquarters) of the design holder;

2) the name or the personal name, surname and address (headquarters) of the licensee;

3) registration number of the design for which the licence is granted;

4) type of the licence;

5) the time period of the validity of the licence;

6) the territory in which the licence is valid.

4. The State Patent Bureau shall examine the received documents within one month from the date of receipt of the documents specified in paragraph 3 of this Article and, upon ascertaining that the documents meet the requirements of this Article, shall record the data relating to the conclusion of the licensing contract in the Design Register of the Republic of Lithuania.

5. A licensing contract shall have effect *vis-à-vis* third parties after entry in the Design Register of the Republic of Lithuania. The entered data relating to the licensing contract shall be published in the Official Bulletin of the State Patent Bureau.

6. The design holder may invoke the rights provided for by Article 36 of this Law against a licensee who contravenes any of the provisions in his licensing contract.

7. The provisions of paragraphs 1-6 of this Article shall also apply *mutatis mutandis* to the sublicensing contract.

#### **Article 42. Rights in Rem**

1. The right to a design may be given as security or seized (temporary restriction of the right to use, administer or dispose of the design) according to the procedure laid down by the laws of the Republic of Lithuania.

2. Having been notified by the keeper of the Register of Mortgages or the Register of Property Seizure Acts about the right to a design given as security or seized, the State Patent Bureau shall enter the relating data in the Design Register of the Republic of Lithuania and publish a notice to the effect in the Official Bulletin of the State Patent Bureau.

### **CHAPTER VII. INVALIDATION OF REGISTRATION OF A DESIGN**

#### **Article 43. Invalidation of Design Registration**

1. Upon request by the persons specified in Article 44 of this Law, the registration of a design may be invalidated by the court on the grounds laid down in Articles 9 and (or) 10 of this Law.

2. Having received an effective court's decision declaring the invalidity of the design registration, the State Patent Bureau shall remove the design from the Design Register of the Republic of Lithuania according to the procedure laid down in Article 30 of this Law.

3. After the registration of a design has been declared invalid, the issued registration certificate shall also be declared invalid.

4. Registration of a design may be declared invalid even after it has lapsed or has been surrendered by the design holder.

#### **Article 44. Persons Entitled to Request to Declare Registration of a Design Invalid**

The following persons shall be entitled to request to declare registration of a design invalid:

1) a person whose rights are directly infringed by the use of such design, or officers of competent authorities – on the grounds laid down in subparagraphs 3 and 4 of Article 9 of this Law;

2) a person who is entitled to the design right – on the ground laid down in subparagraph 2 of paragraph 1 of Article 10 of this Law;

3) a person who is a design holder of a prior design which has been registered or applied for registration – on the grounds laid down in subparagraph 3 or 4 of paragraph 1 of Article 10 of this Law;

4) a proprietor of a trade mark, a business name of a legal person or any other distinctive sign of business of that legal person – on the ground laid down in subparagraph 5 of paragraph 1 of Article 10 of this Law;

5) an author or his successor in title – on the ground laid down in subparagraph 6 of paragraph 1 of Article 10 of this Law;

6) any person concerned – on the grounds laid down in subparagraphs 1 and 2 of Article 9, and subparagraph 1 of paragraph 1 of Article 10 of this Law.

**Article 45. Decision regarding Refusal of Registration or Invalidation of Registration of a Design only in respect of some Design Examples**

Where a decision is taken to refuse registration or to invalidate registration in respect of only some of the design examples, the decision regarding the refusal of registration or invalidation shall cover those design examples only.

**CHAPTER VIII. DISPUTE SETTLEMENT. ENFORCEMENT OF RIGHTS**

**Article 46. Institutions having Jurisdiction in Disputes relating to Designs**

1. The Appeals Division shall deal with disputes referred in Article 23 of this Law.
2. Vilnius County Court shall deal with disputes relating to:
  - 1) decisions of the Appeals Division;
  - 2) invalidation of registration of a design;
  - 3) enforcement of the rights of the design holder;
  - 4) a Community design under the provisions of Article 79-92 of the Regulation on Community designs.

**Article 47. Enforcement of Rights**

1. The applicant, the design holder or their successors in title, when enforcing their rights, and the licensees of exclusive licences, when protecting the rights granted to them, shall be entitled to apply to the court in accordance with the procedure laid down by the law and to seek:

- 1) recognition of the rights;
- 2) an injunction intended to terminate the continuation of infringing activities;
- 3) prohibition to carry out activities by reason of which the rights may be actually infringed or the prejudice suffered;
- 4) compensation for the material damage, including lost income and other incurred expenses;
- 5) application of other remedies set out by this Law and other laws.

2. In order to ensure enforcement of an injunction intended to forbid the continuation of infringing activities, as well as an injunction intended to prevent activities by reason of which the rights may be actually infringed or the prejudice suffered, the court may, upon request of the persons referred to in paragraph 1 of this Article, order an infringer to lodge adequate assurance intended to ensure compensation for any possible prejudice.

3. Where there is no fault in the activities, in connection with the infringement of the rights established by this Law, of a person in respect of whom an injunction intended to terminate the continuation of infringing activities or the corrective measures specified in Article 47<sup>4</sup> are applied, the court may, at the request of this person, order him to pay pecuniary compensation to the injured party, if execution of the measures referred to in this paragraph of the Article would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonable and satisfactory.

4. The persons referred to in paragraph 1 of this Article, when enforcing their rights, shall be entitled to apply to the court for an injunction against intermediaries whose services are used by a third party to infringe the rights established by this Law. Such an injunction shall include the suspension of communication of information related to the infringement of the rights established by this Law or, if an intermediary is capable of performing this technically, the elimination of information infringing the said rights, or prohibition to obtain information infringing these rights. Such compliance with the judicial decision shall not exempt an intermediary from the responsibility for any act or omission related to keeping or communication of such information, which was the case before coming into effect of this decision.

5. When hearing a case of infringement of the rights of the design holder, the defendant shall be entitled to file a counterclaim for invalidation of the registration of a design.

6. The design holder shall be entitled to apply to the court for an injunction against the use of a Community design within the territory of the Republic of Lithuania pursuant to the provisions regarding the Community design of Annex II: *List referred to in Article 20 of the Act of Accession. 4. Company law. C. Industrial property rights* of the 16 April 2003 Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

#### **Article 47<sup>1</sup>. Right of information**

1. When hearing a case concerning an infringement of the rights established by this Law, the court, in response to a justified request of the claimant, may, in the context of proceedings, order the persons to immediately provide information on the origin and distribution networks of the products (goods) which infringe the rights established by this Law, particularly:

1) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the products (goods) infringing the rights established by this Law, as well as the wholesalers and retailers for whom the indicated products (goods) have been intended;

2) information on the quantities of the produced, manufactured, delivered, received or ordered products (goods) which infringe the rights established by this Law, as well as the price which has been obtained or ought to have been obtained for those products (goods).

2. The infringers of the rights established by this Law, other persons who were in possession on a commercial scale of the products (goods) infringing the rights established by this Law, who were using on a

commercial scale the services infringing the rights established by this Law or who were providing on a commercial scale the services which a third party used to infringe the rights established by this Law, as well as those who were indicated by the said persons as being involved in the production, manufacture or distribution of the products (goods) infringing the rights established by this Law or the provision of the services infringing the rights established by this Law may be ordered to provide information referred to in paragraph 1 of this Article.

### **Article 47<sup>2</sup>. Evidence**

1. On application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the court of such party may, in accordance with the procedure laid down by the Code of Civil Procedure, order that such evidence be presented by the opposing party, subject to the protection of confidential information. A reasonable sample of a substantial number of products or goods shall be considered by the court to constitute reasonable evidence of the infringement of the rights established by this Law.

2. In the case of an infringement of the rights established by this Law, which has been committed on a commercial scale and under the conditions specified in paragraph 1 of this Article, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, order that banking, financial or commercial documents be communicated by the opposing party, subject to the protection of confidential information. In the event of failure to present such evidence without strong reasons within the time limit set by the court or where the use of the evidence is denied, the court shall have the right to take a decision on the grounds of the evidence presented to it.

### **Article 47<sup>3</sup>. Provisional measures and measures for preserving evidence**

1. Application of provisional measures and measures for preserving evidence shall be regulated by the Code of Civil Procedure and this Law.

2. If there are sufficient grounds to suspect that the rights established by this Law have been infringed, the court may, in accordance with the procedure laid down by the Code of Civil Procedure, apply provisional measures necessary to prevent imminent infringing activities, to promptly terminate infringing activities and to enforce a final decision of the court, that is:

- 1) to forbid persons to commit an imminent infringement of the rights established by this Law;
- 2) to order persons to temporarily terminate an infringement of the rights established by this Law;



3) to forbid an intermediary to provide services to a third party who uses such services by infringing the rights established by this Law;

4) to seize products (goods), prevent their entry into or remove them from the channels of commerce, if it is suspected that they may infringe or are infringing the rights established by this Law;

5) to seize the property of the persons suspected of infringing the rights established by this Law, which is possessed by the said persons or a third party, including the accounts of banks and other credit institutions; also to order the communication of bank, financial or commercial documents, or appropriate access to these documents in the case of an infringement committed on a commercial scale;

6) to apply other measures laid down by the Code of Civil Procedure.

3. If the provisional measures which are referred to in subparagraphs 1 and 2 of paragraph 2 of this Article and which have been applied are being infringed and the infringement continues, the court may order the persons suspected of committing an infringement to lodge adequate assurance intended to ensure that a person who has applied for provisional measures will be compensated for a possible prejudice.

4. The court shall have the right to require the person who applies for provisional measures to provide any reasonably available evidence in order to satisfy the court with a sufficient degree of certainty that the said person or the person in whose interest provisional measures are applied for is the holder or user of the rights established by this Law and that the applicant's right is being infringed, or that such infringement is imminent.

5. The court may, on application by a person who has presented reasonably available evidence to support his claims that the rights established by this Law have been infringed or are about to be infringed, may apply provisional measures or measures for preserving evidence, subject to the protection of confidential information, thus preserve relevant evidence in respect of the alleged infringement, that is:

1) to describe in detail the goods infringing the rights established by this Law and to seize them, or only to describe them;

2) to seize the products infringing the rights established by this Law and, in appropriate cases, the materials and implements used in the production and/or distribution of these products as well as the documents relating thereto;

3) to apply other prompt and effective provisional measures provided for in the Code of Civil Procedure.

6. Provisional measures and measures for preserving evidence may be applied without the defendant having been notified or heard, in particular where any delay would cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Where provisional measures are applied

without the defendant having been notified and heard, the defendant must be given notice without delay, i.e. after the execution of such measures at the latest. At the request of the parties, including a right to be heard, the provisional measures and measures for preserving evidence may be reviewed with a view to deciding, within a reasonable period after the notification of application of the measures, whether such measures must be modified, revoked or confirmed.

7. Where the applied provisional measures or measures for preserving evidence are revoked by the court or where they lapse due to any act or omission by the person who applied for them, or where a decision of the court establishing that there has been no infringement or threat of infringement of the rights established by this Law comes into effect, or where the person, who has applied for provisional measures or measures preserving evidence, does not institute proceedings within a period determined by the court, the defendant shall be entitled to request compensation for any injury caused by application of those measures.

#### **Article 47<sup>4</sup>. Corrective measures**

1. The persons specified in paragraph 1 of Article 47 of this Law shall be entitled to apply to the court and request that products (goods) be recalled, removed from the channels of commerce in such a manner as to avoid any harm being caused to the said persons and to ensure the protection of their rights (e.g. to remake the infringing goods into other goods or to apply similar measures), or to request that the products (goods), which the court has found to be infringing the rights established by this Law and, in appropriate cases, the materials and implements principally used in the creation or manufacture of the specified objects be destroyed.

2. The measures referred to in paragraph 1 of this Article shall be applied regardless of other requirements of a person, applying for these measures, for compensation of the prejudice suffered as a result of the infringement of his rights. Such measures shall be carried out at the expense of the infringer, without compensating and taking into account proportionality between the seriousness of the infringement and the measure applied as well as the legitimate interests of third parties.

#### **Article 48. Recovery of material damage**

1. The procedure for recovery of material damage shall be regulated by the Civil Code and this Law.

2. When assessing the amount of the actual damage (losses) suffered as a result of the infringement of the rights established by this Law, the court shall take into account the substance of the infringement, the amount of the inflicted damage, lost income, incurred expenses, and other

important circumstances. Profit made by the infringer may, at the request of the persons specified in paragraph 1 of Article 47 of this Law, be recognized as losses. Goods infringing the rights established by this Law may be transferred to the holders of those rights upon their request.

3. The amount of income lost by the persons specified in paragraph 1 of Article 47 of this Law shall be set by taking into account the amount of income which would have been made if the design protected under this Law had been used legally (i.e. taking account of the royalties which are usually paid for the legal use of the design), as well as the concrete circumstances which might have created conditions for making income (works performed by the right holders, implements used, negotiations for conclusion of contracts concerning the use of the design, etc.).

4. Instead of the recovery of the damage (losses) actually suffered by reason of the infringement of the rights established by this Law, the persons specified in paragraph 1 of Article 47 of this Law may claim the payment which would have been due if the infringer had used the design legally (i.e. had acquired permission), and where the infringement has been committed intentionally or through gross negligence – the said persons may claim up to twice the amount of such payment.

5. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing the rights established by this Law (i.e. there is no fault in his actions), the court may, upon request of the persons specified in paragraph 1 of Article 47 of this Law, order the recovery of profit made by the infringer. A total that the infringer has saved and/or made by infringing the rights established by this Law shall be regarded as the profit made by the infringer. The profit made by the infringer shall be ascertained and recovered regardless of whether or not the right holder would have made the same profit as the infringer. When ascertaining the profit made by the infringer, the right holder must provide only the evidence that would confirm the gross income received by the infringer; the amount of net profit of the infringer (after deducting the expenses) must be proved by the infringer.

#### **Article 48<sup>1</sup>. Publication of judicial decision**

The court which takes a decision on the infringement of the rights established by this Law may, at the request of the persons specified in paragraph 1 of Article 47 of this Law, order the infringer to disseminate at his own expense the information concerning the adopted decision, including disseminating the decision in full or in part in the mass media or by any other means. A judicial decision or information concerning an adopted decision may be announced after the coming into effect of the decision, unless otherwise established by the court. The manner and extent of dissemination of a judicial decision shall be laid down in this judicial decision. The persons specified in paragraph 1 of Article 47 of this Law may request that the

infringer pay in advance into the bank account, indicated by the court, a sum of money necessary to disseminate the information concerning an adopted judicial decision or an adopted judicial decision itself.

**Article 49. Application of customs supervision measures**

Customs supervision measures determined by legal acts of the European Union and the Republic of Lithuania must be applied to the products, goods and/or their parts the import of which from third countries to the Republic of Lithuania or the export of which from the Republic of Lithuania to third countries should be regarded as an infringement of the rights of the design holder.

**CHAPTER IX. FINAL PROVISIONS**

**Article 50. Transitional Provisions**

1. A design applied for registration prior to the entry into force of this Law shall be registered under the Law of the Republic of Lithuania on Industrial Design.

2. The design holder's rights to a design registered prior to the entry into force of this Law shall be protected under this Law.

**Article 51. Proposal to the Government**

The Government shall by 1 January 2003 harmonise the legal acts relating to the provisions of this Law.

**Article 51<sup>1</sup>. Application of the Regulation on Community Designs**

1. The State Patent Bureau shall be a central industrial property office under the Regulation on Community design.

2. The State Patent Bureau shall approve legal acts related to the application of the Regulation on Community designs.

3. Fees for the actions carried out by the State Patent Bureau after the filing through the State Patent Bureau of an application for the registration of a Community design shall be paid in accordance with the procedure laid down by the Law of the Republic of Lithuania on Law on Fees for the Registration of Industrial Property Objects and the Regulation on Community designs.

**Article 52. Entry into Force of the Law**

1. This Law, except for Article 51, shall enter into force on 1 January 2003.
2. The provisions of paragraph 2 of Article 3 of this Law shall become effective from the moment the international treaty specified in paragraph 2 of Article 3 becomes effective.
3. Upon entry into force of this Law, the following shall become invalid:
  - 1) the Law of the Republic of Lithuania on Industrial Design;
  - 2) the Law of the Republic of Lithuania Amending Article 5 of the Law on Industrial Design;
  - 3) the Law of the Republic of Lithuania Supplementing the Law on Industrial Design with Article 26<sup>1</sup>.

*I promulgate this Law enacted by the Seimas of the Republic of Lithuania.*

**PRESIDENT OF THE REPUBLIC**

**VALDAS ADAMKUS**

Annex to  
Law of the Republic of Lithuania  
on Designs

#### **EU LEGAL ACTS IMPLEMENTED BY THE LAW ON DESIGNS**

1. The Law of the Republic of Lithuania on Designs is in 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. Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.
3. Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.