

PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW on the Protection of Industrial Designs

No. 161-XVI of July 12, 2007

Monitorul oficial (Official Gazette) No. 136-140/577 of August 31, 2007

(English version *)

CONTENTS

**Chapter I
BASIC PROVISIONS**

- Article 1.** Scope and purpose of the Law
- Article 2.** Legal basis
- Article 3.** Basic concepts
- Article 4.** Legal protection
- Article 5.** National office

**Chapter II
SUBSTANTIVE LAW IN RELATION TO THE PROTECTION OF INDUSTRIAL
DESIGNS**

*Part 1
Conditions of protection of industrial designs*

- Article 6.** Subject matter of protection
- Article 7.** Novelty
- Article 8.** Individual character
- Article 9.** Composite products
- Article 10.** Disclosure
- Article 11.** Unprotectable industrial designs

*Part 2
Scope and term of protection*

- Article 12.** Scope of protection
- Article 13.** Term of protection
- Article 14.** Extension

* Courtesy translation provided by WIPO.

Part 3
Author of an industrial design.
Rights owner of an industrial design

- Article 15.** Right in an industrial design
Article 16. Service industrial designs
Article 17. Requesting a right in an industrial design
Article 18. Consequences of a court judgment on a new rights owner of a registered industrial design
Article 19. Author's rights

Part 4
Validity of the right in an industrial design

- Article 20.** Implementation of rights in an industrial design
Article 21. Limitation of rights in an industrial design
Article 22. Expiry of rights
Article 23. Right of prior use of a registered industrial design
Article 24. Preventive marking

Part 5
Rejection of a registration application. Invalidity

- Article 25.** Decision on the rejection of a registration application. Recognition of invalidity
Article 26. Grounds for the rejection of a registration application. Grounds for invalidation
Article 27. Consequences of invalidity

Part 6
Transfer of rights in an industrial design

- Article 28.** Transfer of rights
Article 29. Licensing agreement

Chapter III
REGISTRATION OF AN INDUSTRIAL DESIGN

Part 1
Industrial design registration application

- Article 30.** Filing of a registration application
Article 31. Representation
Article 32. Criteria which an application must satisfy
Article 33. Multiple registration application
Article 34. Application filing date
Article 35. Application amendments at the applicant's initiative
Article 36. Withdrawal of an application

Part 2
Priority

- Article 37.** Effect of the right of priority
Article 38. Right of priority
Article 39. Exhibition priority
Article 40. Requesting priority
Article 41. Transfer of the right of priority

Part 3
Registration procedure

- Article 42.** Examination of an application for compliance with formal filing requirements
Article 43. Publication of a registration application
Article 44. Third-party submissions
Article 45. Objections
Article 46. Examination of objections
Article 47. Substantive examination
Article 48. Decision on substantive examination results
Article 49. Appeals
Article 50. Examination of an appeal
Article 51. Annulment or withdrawal of a decision
Article 52. Registration of an industrial design and grant of a registration certificate
Article 53. Restoration of rights

Chapter IV
TERMINATION OF RIGHTS IN A REGISTERED INDUSTRIAL DESIGN

- Article 54.** Loss of a right
Article 55. Surrender of a right
Article 56. Invalidity

Chapter V
ENSURING OBSERVANCE OF RIGHTS

- Article 57.** Action for infringement of rights
Article 58. Action for declaration of non-infringement of rights
Article 59. Measures to secure evidence prior to the bringing of an action
Article 60. Securing evidence in urgent cases
Article 61. Invalidity of measures to secure evidence
Article 62. Provision and securing of evidence in the context of an action for infringement of rights
Article 63. Right to information
Article 64. Measures to secure an action for infringement of rights
Article 65. Remedies
Article 66. Ensuring enforcement of a court judgment
Article 67. Alternative measures
Article 68. Compensation for damage
Article 69. Publication of court decisions

Chapter VI GENERAL PROVISIONS

- Article 70.** Examination of disputes
Article 71. Filing of industrial design registration applications abroad
Article 72. Fees
Article 73. Rights of foreign natural and legal persons

Chapter VII FINAL AND TRANSITIONAL PROVISIONS

- Article 74.** Entry into force
Article 75. Applicability
Article 76. Organization of enforcement

Parliament shall adopt this organic Law.

CHAPTER I BASIC PROVISIONS

- Article 1.** Scope and purpose of the Law
- (1) This Law shall govern relations arising out of the creation, legal protection and use of industrial designs.
- (2) The purpose of this Law shall be the creation of a legal basis for the organization and functioning of a system of protection of industrial designs, and also to ensure the effective implementation of rights in industrial designs.

- Article 2.** Legal basis
- (1) The legal relations arising out of the creation, legal protection and use of industrial designs shall be governed by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and Innovations, the Customs Code, international treaties to which the Republic of Moldova is party, this Law and other normative acts.
- (2) If international agreements to which the Republic of Moldova is party have established rules other than those contained in this Law, the rules of the international agreements shall be applied.

Article 3. Basic concepts

For the purposes of this Law:

“*industrial design*” means the external appearance of a product or a part thereof, created in particular from the lines, contours, colors, form, texture and/or materials of said product and/or its ornamentation;

“*registered industrial design*” means an industrial design that is protected in accordance with this Law on the basis of a registration application filed under national or international procedure;

“*unregistered industrial design*” means an industrial design that is protected in accordance with this Law but without a registration application being filed;

“*patent attorney*” means a natural person licensed and registered, in accordance with established procedure, representing the interests of national or international natural and legal persons, and assisting them as necessary in the field of industrial property protection;

“*priority*” means the right of temporal priority granted to a registration application within the prescribed time limits;

“*product*” means any subject matter of industrial or handicraft production, including elements intended for the assembly of a composite product, packaging, formation, graphic symbols and typographical scripts, excluding computer software;

“*composite product*” means a product which consists of a large number of parts which may be replaced by dismantling and repeated assembling of the product.

Article 4. Legal protection

- (1) Legal protection of industrial designs shall include aspects relating to the existence, acquisition, field of application, maintenance in force of rights and to the means of their observance, and likewise to the implementation of acquired rights.
- (2) The following shall be recognized and protected on the territory of the Republic of Moldova:
 - (a) registered industrial designs, the rights in which shall be confirmed by the industrial design registration certificate (hereinafter *registration certificate*) in accordance with the Regulations under this Law;
 - (b) international industrial designs, registered in accordance with the Hague Agreement Concerning the International Registration of Industrial Designs of November 6, 1925 (hereinafter *Hague Agreement*);
 - (c) unregistered industrial designs, where they have become generally accessible in accordance with this Law;
- (3) Industrial designs protected under this Law shall also benefit from protection granted to that person or, with his consent, to another person in accordance with legislation on author’s rights, commencing from the date on which the industrial design was created or fixed in any form.
- (4) Recognition of the rights specified by this Law shall not cause damage and shall not exclude protection granted to that person or, with his consent, to another person by other legislative regulations on intellectual property, in particular regarding trade marks, geographical indications, patents on inventions, utility models, typographical scripts, topographies of integrated circuits, and also unfair competition.

Article 5. National office

- (1) The State enterprise “the State Agency for Intellectual Property” (*AGEPI*, hereinafter *the Agency*), is the national office in the field of intellectual property protection, and the single authority in the Republic of Moldova which grants legal protection to industrial designs under this Law.
- (2) The Agency shall:
 - (a) develop proposals for legislative and other normative acts relating to its field of activity, and ratify acts of a procedural nature which are essential for it to perform functions specified by legislation;
 - (b) accept registration applications and carry out examinations thereof, register and issue registration certificates on behalf of the State, publish official data in the Official Industrial Property Gazette of the Republic of Moldova (hereinafter *OBPS*);

- (c) maintain the Register of Industrial Design Registration Applications and the Register of Registered Industrial Designs according to the law, and shall establish and confirm the rules by which they are to be maintained;
 - (d) carry out an examination of international industrial design registration applications filed in accordance with the Hague Agreement;
 - (e) register licensing agreements, and assignment, pledge, and franchising agreements in relation to rights in industrial designs.
- (3) The Agency shall represent the Republic of Moldova in the World Intellectual Property Organization, and in other international, regional and intergovernmental organizations for the protection of intellectual property, and support cooperation with them in this field.

CHAPTER II SUBSTANTIVE LAW IN RELATION TO THE PROTECTION OF INDUSTRIAL DESIGNS

Part I Conditions of protection of industrial designs

Article 6. Subject matter of protection

- (1) The external appearance of a product or a part thereof, created in particular from the lines, contours, colors, form, texture and/or materials of said product and/or its ornamentation, may be protected as an industrial design.
- (2) The subject matter of protection may be two-dimensional (industrial design) or three-dimensional (industrial model), and also combinations thereof.
- (3) An industrial design shall be granted protection only where it is new and is individual in nature.

Article 7. Novelty

- (1) An industrial design shall be deemed to be new if an identical industrial design has not become publicly available;
 - (a) in the case of a registered industrial design, before the filing date of the registration or, where priority has been requested, before the priority date of the industrial design for which protection has been requested; or
 - (b) in the case of an unregistered industrial design, before the initial disclosure date of the industrial design for which protection has been requested.
- (2) Industrial designs shall be deemed to be identical for the purposes of paragraph (1) where their essential features differ only in unimportant details.

Article 8. Individual character

- (1) An industrial design shall be individual in nature if the general impression made by it on an informed user differs from the general impression made on such a user by any other industrial design which has become publicly available:
 - (a) in the case of a registered industrial design, prior to the filing date of the registration application or, where priority has been requested, prior to the priority date; or
 - (b) in the case of an unregistered industrial design, before the initial disclosure date of the industrial design for which protection has been requested.

- (2) In appraising individual character, the degree of freedom of the author in the creation of an industrial design, the nature of the product and its industrial or handicraft characteristics should be taken into account.

Article 9. Composite products

- (1) Where an industrial design, either applied or embodied in a product, is an element of a composite product, it shall be deemed to be new and to be individual in nature only where the following criteria are also satisfied:
- (a) the element included in the composite product remains visible in normal use of the product;
- (b) these visible features of the element of the composite product satisfy the requirements of novelty and individual character.
- (2) For the purposes of paragraph (1), “normal use” shall mean use of the product by the user.

Article 10. Disclosure

- (1) For the purposes of Articles 7 and 8, an industrial design shall be deemed to have become publicly available where it has been exhibited, published, used, sold, or disclosed in another way, excluding those cases where information on it could not become available on reasonable grounds in the course of normal business to natural or legal persons of the Republic of Moldova specializing in the appropriate area:
- (a) in the case of a registered industrial design, before the filing date of the registration application or, where priority has been requested, before the priority date; or
- (b) in the case of an unregistered industrial design, before the initial disclosure date of the industrial design.
- (2) An industrial design shall not be deemed to be publicly available where it has been disclosed to a third party on explicit or implicit condition of confidentiality.
- (3) In the case of a registered industrial design, disclosure shall be ignored for the purposes of Articles 7 and 8 where the industrial design in relation to which protection is sought, has been disclosed:
- (a) by the author, his successor-in-title, or by a third party as a result of information provided by the author, or an action undertaken by him or his successor-in-title, or as a result of abuse with respect to the author or his successor-in-title;
- (b) for 12 months preceding the filing date of the registration application or, where priority has been requested, the priority date.

Article 11. Unprotectable industrial designs

- (1) An industrial design defined exclusively by its technical function shall not be protected.
- (2) An industrial design shall not be protected where it must be reproduced according to compulsory procedure in identical shape and size, so that the product in which an industrial design is embodied or applied may be mechanically linked or placed in or around any other product or thereon, in order that every product may perform its function.
- (3) The provisions of paragraph (2) notwithstanding, a new industrial design of individual character shall benefit from protection where it serves the purpose of enabling multiple assembly or linking of substitutable elements in a modular system.
- (4) Industrial designs which contravene public order or accepted ethical norms shall not be subject to protection.

Part 2
Scope and term of protection

Article 12. Scope of protection

- (1) Protection granted to an industrial design shall extend to any industrial design which does not give an informed user a different overall impression.
- (2) In determining the scope of protection, the degree of freedom of the author in creating the industrial design shall be taken into account.
- (3) The scope of protection of a registered industrial design shall be determined by the sum of its features reflected in graphic images which have been included in the Register of Registered Industrial Designs and published in the OBPS. A description explaining the graphic images shall have no influence on the scope of protection of the industrial design.

Article 13. Term of protection

- (1) A registered industrial design shall be protected for five years from the application filing date. A registration certificate may be extended for several periods of five years each, up to a total of 25 years from the application filing date.
- (2) An unregistered industrial design shall be protected for three years from the date when the industrial design was first disclosed in the Republic of Moldova, in accordance with Article 10(1) and (2).

Article 14. Extension

- (1) In accordance with Article 13(1), a registration certificate shall be extended upon the application of the patent owner or any other person having the legal authority of the patent owner, on condition of payment of an extension fee.
- (2) A multiple registration certificate may be extended for parts of industrial designs.
- (3) An extension application shall be filed and the extension fee shall be paid during the last six months of the term of protection.
- (4) The time limit for filing an extension application and payment of an extension fee indicated in paragraph (3) may be extended for six months upon payment of a fee.
- (5) An extension shall enter into force as of the first day of expiry of the registration, a record of which shall be made in the Register of Registered Industrial Designs.
- (6) The Agency shall publish information regarding the extension in the OBPS.

Part 3
Author of an industrial design.
Rights owner of an industrial design

Article 15. Right in an industrial design

- (1) The right in an industrial design shall belong to an author and/or his successor-in-title.
- (2) The author of an industrial design shall be recognized as a natural person by whose creative work an industrial design was created.
- (3) Where an industrial design has been created jointly by several authors, the right in the industrial design shall belong to them all. The priority of the authors' use of their rights shall be determined by a contract between them.
- (4) Where an identical industrial design has been created by several authors independently of each other, the right in the registered industrial design shall belong to the

person whose application has the earlier date of filing or, where priority has been requested, the earlier date of priority.

- (5) Where two applications for the registration of an identical industrial design have the same date of filing, a preferential right in the industrial design shall belong to the person who has proved that he requested registration first.

Article 16. Service industrial designs

- (1) The right in an industrial design created by an employee in the course of employment or in the performance of a task received in writing from an employer (service industrial design) shall belong to the employer where the contract between them does not stipulate otherwise. Upon creation of a service industrial design, the author shall have the right to remuneration commensurate to the profit which is obtained or might be obtained by the employer for appropriate use of the industrial design. The remuneration shall be paid in an amount and according to conditions specified by a contract between the author and the employer.
- (2) Where an industrial design has been created on the basis of a scientific research or research and development contract, the right therein shall be determined by said contract. In this case, the author shall have the right to remuneration, the amount and conditions of payment of which shall be specified by the contract between the author and the employer.
- (3) In the case of a registered industrial design, the author of the service industrial design shall be obliged to notify the employer in writing thereof within a month of the date of creation. Where the employer, within 60 days of having been notified by the author of the creation of the service industrial design, has not filed an application and has not re-assigned his right to file an application to any other person, the author shall acquire the right to file an application and to register the industrial design in his own name. The employer shall in that case have a preferential right to be granted a non-exclusive license to use the industrial design.
- (4) Where the employer has obtained a registration certificate, the author shall have a preferential right to be granted free of charge a non-exclusive license to use the industrial design.
- (5) Where the parties have not reached agreement regarding the amount of the author's remuneration, or the price of the license, the remuneration or price shall be established by a court depending on the contribution of each party to the creation of the industrial design, and also on the commercial value of the industrial design.
- (6) The employer and author shall be obliged to inform each other in writing about the stage of development of the industrial design, and to abstain from disclosing any information detrimental to the implementation of the rights of either party. Any party infringing these obligations shall be obliged to make good the other party's losses, including any profit foregone, in accordance with current legislation.

Article 17. Requesting a right in an industrial design

- (1) Until proven otherwise, a person in whose name an industrial design has been registered (rights owner) or, prior to registration, on whose behalf a registration application for an industrial design has been filed (the applicant), shall be deemed to be the person having the right to conduct business with the Agency and with any other authorities.
- (2) Where an unregistered industrial design has been disclosed or requested by a person having no rights therein on the basis of Articles 15 or 16, or where a registered industrial design has been filed for registration or registered by said person, the person having rights therein on the basis of the aforementioned articles, may apply to be recognized as the lawful rights owner of said industrial design without prejudice to any other rights or acts.

- (3) The acts referred to in paragraph (2) may be undertaken within three years from the date of publication in the case of a registered industrial design, and from the date of disclosure in the case of an unregistered industrial design. This provision shall not apply where a person who does not have rights in an industrial design acted in bad faith when the relevant industrial design was presented, disclosed or entrusted to him.
- (4) In the case of a registered industrial design, the following shall be entered in the Register of Industrial Design Registration Applications and in the Register of Registered Industrial Designs:
- (a) a record of a filing of an action on the basis of paragraph (2);
 - (b) a court judgment or any other action by which the procedure has been concluded;
 - (c) any change of rights owner of a registered industrial design resulting from a court judgment or any other action by which the procedure has been concluded.
- (5) A person who has filed an action shall be obliged to notify the Agency of any court judgment within 10 days.

Article 18. Consequences of a court judgment on a new rights owner of a registered industrial design

- (1) Where, as a result of an action filed on the basis of Article 17(2), a complete change of rights owner of a registered industrial design occurs, licenses and other rights granted to the original rights owner shall be deemed invalid and shall be terminated upon entry of the new rights owner in the Register of Registered Industrial Designs.
- (2) Where prior to the entry in the Register of Registered Industrial Designs of a record of a filing of an action on the basis of Article 17(2), the rights owner of a registered industrial design or a licensee has begun to use the industrial design in the Republic of Moldova, or has made serious and effective preparations to this end, then he may continue the activity on condition that a non-exclusive license is requested from the new rights owner entered in the Register of Registered Industrial Designs within three months. The license shall be granted for an acceptable period and on acceptable conditions. This provision shall not apply where the rights owner of a registered industrial design or licensee acted in bad faith when use of the relevant industrial design or license commenced, or when preparations for use thereof were being made.

Article 19. Author's rights

- (1) In the case of a registered industrial design:
- (a) the author shall have the right to be named as such in Agency procedural documents, in the Register of Industrial Design Registration Applications, and in the Register of Registered Industrial Designs, and likewise in the registration certificate;
 - (b) where the industrial design has been created by several persons, they shall all be specified as co-authors;
 - (c) the author shall have the right to withhold his name in Agency procedural documents, in the Register of Industrial Design Registration Applications, in the Register of Registered Industrial Designs, and likewise in the registration certificate, or to annul records in the specified registers and registration certificate.
- (2) The author may defend his rights in a court against any infringer of his rights.
- (3) Conferral of authorship, coercion into co-authorship, and disclosure of the industrial design prior to the right request without the author's consent shall be recognized as an infringement of his rights and shall be punished in accordance with current legislation.

Part 4
Validity of the right in an industrial design

Article 20. Implementation of rights in an industrial design

- (1) In the case of a registered industrial design, the rights owner shall be granted the exclusive right to use the industrial design and to prohibit any third party from using it without the rights owner's consent. Use should be taken to mean, in particular, manufacturing, offering for sale, marketing, import, export, or personal use of the product in which the industrial design is embodied or to which it is applied, and likewise storing of such a product for the purposes mentioned.
- (2) In the case of an unregistered industrial design, its rights owner shall be entitled to prohibit the actions mentioned in paragraph (1) only where disputed use is a result of copying the protected industrial design. The disputed use shall not be deemed to emanate from copying the protected industrial design where it is the result of the author's independent creative work, regarding which it may be genuinely confirmed that he had not been familiar with the industrial design disclosed by its rights owner.
- (3) The provisions of paragraph (1) shall likewise temporarily apply in the case of publication of a registration application in accordance with Article 43(1), commencing from the date of publication until registration of the industrial design, except where the registration application is rejected or withdrawn.
- (4) Where there is more than one rights owner, relations on the use of a protected industrial design shall be determined by agreement between them. In the absence of such an agreement, each of the rights owners shall have the right to use the industrial design to the fullest extent at his own discretion, to file an action for infringement of his exclusive right against any person using the industrial design without the authorization of the other rights owners, but shall not be entitled without the consent to conclude licensing agreements and take any action to reassign rights or surrender rights in the industrial design without notifying the other rights holders.

Article 21. Limitation of rights in an industrial design

- (1) Rights in an industrial design shall not apply in the case of:
 - (a) acts performed for private, non-commercial purposes;
 - (b) acts performed for the purposes of carrying out an experiment;
 - (c) acts of reproduction for the purposes of training or citing a source;
 - (d) equipping vehicles registered in another country, where said vehicles are temporarily located on the territory of the Republic of Moldova;
 - (e) importation into the Republic of Moldova of spare parts and equipment for the repair of the vehicles specified in (d);
 - (f) carrying out repairs of the vehicles specified in (d);
 - (g) natural disasters, catastrophes, epidemics and other emergency situations.
- (2) The use specified in paragraph (1)(a), (b), (c) and (g) shall be permitted on condition that it does not differ unreasonably from the normal use of a protected industrial design, and does not unreasonably limit the legal interests of the rights owner of the industrial design, while taking into account the legal interests of third parties. Conversely, the rights owner may demand appropriate compensation for damages caused by unapproved use of the industrial design.
- (3) Acts of public authorities shall not constitute a violation of rights in an industrial design where they have acted in good faith in the application of this Law.

Article 22. Expiry of rights

Rights in a registered or unregistered industrial design shall not extend to actions concerning the product in which the industrial design is embodied or applied, which is included in the scope of protection of a registered or unregistered industrial design, where said product has been marketed on the territory of the Republic of Moldova by the rights owner of the registered or unregistered industrial design, or with his consent.

Article 23. Right of prior use of a registered industrial design

- (1) Any third party may enjoy the right of prior use where he is able to prove that prior to the application filing date or, where priority has been requested, prior to the priority date, he used in good faith in the Republic of Moldova an industrial design included in the scope of protection of a registered industrial design and which does not constitute a copy thereof, or intended to use it or made serious and effective preparations to this end.
- (2) The right of prior use shall enable a third party to use an industrial design free of charge in future for the purposes for which he commenced use or made preparations to use it prior to the application filing date or, where priority has been requested, prior to the priority date of the registered industrial design, without increasing production capacity or without payment of a royalty.
- (3) The right of prior use shall not enable a third party to grant a license for the use of the corresponding industrial design.
- (4) Where the third party is an enterprise, the right of prior use may be transferred only together with that part of a legal person's business in which the industrial design has been used, or preparations have been made to use it.

Article 24. Preventive marking

- (1) The rights owner may place preventive marking on the product in the form of the letter D enclosed in a circle, accompanied by the name or number of the registration certificate.
- (2) The absence of preventive marking shall not have legal consequences.

Part 5

Rejection of a registration application. Invalidity

Article 25. Decision on the rejection of a registration application. Recognition of invalidity

- (1) An industrial design registration application may be rejected by a decision of the Agency in accordance with Articles 48-50, or by a court judgment as a result of the Agency's decision being disputed.
- (2) A registered industrial design shall be recognized as invalid on the basis of an application for annulment filed at the Chişinău Appeals Chamber, or as a result of the bringing of a counter-claim relating to infringement of rights.
- (3) An industrial design may be recognized as invalid even after the loss or surrender of a right.
- (4) An unregistered industrial design shall be recognized as invalid on the basis of an annulment application filed at the Chişinău Appeals Chamber, or as a result of the bringing of a counter-claim relating to infringement of rights.

Article 26. Grounds for the rejection of a registration application. Grounds for invalidation

- (1) An industrial design registration application shall be rejected, and a registered or unregistered industrial design shall be recognized as invalid in cases where:

- (a) the industrial design does not constitute an industrial design pursuant to Article 6(1);
 - (b) the industrial design does not comply with the requirements of Articles 7-11;
 - (c) according to a court judgment, the applicant or rights owner does not have the right in the industrial design under Articles 15 and 16;
 - (d) the industrial design is in conflict with a prior industrial design which became generally available after the filing date of the application or, where priority has been requested, after the priority date, and which has been protected since the earlier date by registration or by the registration application;
 - (e) the industrial design includes a protected distinctive sign, and the owner thereof is entitled to prohibit its use;
 - (f) a work protected by legislation on authorship rights has been used in the industrial design without authorization;
 - (g) an industrial design illegally includes one of the elements listed in Article 6-ter of the Paris Convention for the Protection of Industrial Property of March 20, 1883 (hereinafter *the Paris Convention*).
- (2) An application for the annulment of an industrial design on the grounds specified in paragraph (1) may only be filed by an interested party.
- (3) A rejected industrial design or a registered industrial design recognized as invalid on the basis of paragraph (1)(b), (e), (f) or (g), may be correspondingly registered or maintained in force in a corrected form if in said form it complies with the conditions of protection and preserves the essential features of the industrial design. Registration or maintenance in force in a corrected form shall mean registration accompanied by partial surrender of the registered industrial design by the rights owner, or entry in the Register of Registered Industrial Designs of a court judgment recognizing the industrial design as partially invalid.

Article 27. Consequences of invalidity

- (1) Where an industrial design has been recognized as invalid, it shall be deemed that the rights stipulated by this Law were not valid from the very beginning.
- (2) The retroactive effect of recognition of the invalidity of an industrial design shall not influence:
 - (a) final court judgments made prior to the pronouncement of the decision on recognition of invalidity;
 - (b) agreements concluded and executed prior to the pronouncement of the decision on recognition of invalidity. In justifiable circumstances, reasonable compensation may be claimed for expenses incurred on the basis of an agreement.

Part 6
Transfer of rights in an industrial design

Article 28. Transfer of rights

- (1) Rights in an industrial design may be transferred in full or in part by means of assignment, a licensing agreement, and likewise by means of succession.
- (2) An industrial design may be the subject matter of measures of enforcement or property laws.
- (3) Rights transferred under an agreement on the basis of paragraphs (1) and (2) shall be valid in relation to third parties, and shall be conditional upon a change in legal status from

when the agreement is entered in the Register of Industrial Design Registration Applications and the Register of Registered Industrial Designs.

- (4) Information on the transfer of rights shall be published in the OBPS.

Article 29. Licensing agreement

- (1) Under a licensing agreement, the rights owner of an industrial design (licensor) shall transfer the right to use the industrial design to any other person (licensee), while reserving the right of ownership thereof. Licenses may be exclusive and non-exclusive.

- (2) Under an exclusive license, the licensor shall transfer to the licensee the exclusive right to use an industrial design, surrendering in so doing the right to issue licenses for said industrial design on said territory to third parties. The licensor may reserve the right to future use of the industrial design (partial license), or surrender all use thereof (full license).

- (3) Under a non-exclusive license, the licensor shall grant the right to use an industrial design (full or partial license), while reserving both the right to its independent use, and also the right to grant non-exclusive licenses to third parties.

- (4) A license may be issued with a request for the licensee to pay revenue to the licensor, or free of charge.

- (5) In accordance with current legislation, it is not permitted to include procedures or conditions in a licensing agreement which may lead to abuse of intellectual property rights, while having an unfavourable impact on competition in the relevant market, such as a condition of compulsory transfer of technical information from the licensee to the licensor, conditions preventing the disputing of validity, or a compulsory set of licensing conditions.

- (6) Without prejudicing the provisions of a licensing agreement, a licensee may not file an action for the infringement of rights in an industrial design other than with the consent of its rights owner. The owner of an exclusive license may file such an action where the rights owner of an industrial design has not himself commenced a similar action within an appropriate timeframe.

- (7) Any licensee shall be entitled to participate in a judicial examination of an action filed by a rights owner of an industrial design in relation to infringement of rights for the purposes of compensation for damage caused.

CHAPTER III REGISTRATION OF AN INDUSTRIAL DESIGN

Part I Industrial design registration application

Article 30. Filing of a registration application

- (1) An industrial design registration application shall be filed with the Agency by a person who owns the right in the industrial design in accordance with Articles 15 and 16 or who is covered by the provisions of Article 31.

- (2) The application shall be filed in Moldovan on a standard form approved by the Agency. Documentation accompanying the application shall be provided in Moldovan. Where accompanying documentation is filed in another language, a translation into Moldovan shall be provided within two months of the application filing date.
- (3) The registration application shall be filed in any manner prescribed by the Agency, in accordance with regulations approved by the Government.

Article 31. Representation

- (1) On condition the provisions of paragraph (2) are applied, nobody shall be obliged to have a representative in order to conduct business with the Agency.
- (2) Natural and/or legal persons who are not domiciled or do not have a place of business in the Republic of Moldova, or an industrial or commercial enterprise actually operating in the Republic of Moldova, shall have a representative in order to conduct business with the Agency on any procedure, with the exception of filing an application in accordance with paragraph (3) of this Article.
- (3) Representation of natural and/or legal persons specified in paragraph (2) in order to conduct business with the Agency in accordance with this Law may only be through a patent attorney, specifically in the field of protection of industrial designs.
- (4) A patent attorney shall conduct his activities in accordance with regulations approved by the Government.
- (5) Natural and/or legal persons who are either domiciled or have a place of business, or an industrial or commercial enterprise actually operating in the Republic of Moldova, may be represented by one of their own employees for the purposes of conducting business with the Agency.
- (6) A person representing the interests of an applicant or rights owner shall file with the Agency a power of attorney signed by the applicant or rights owner, which shall be filed.

Article 32. Criteria which an application shall satisfy

- (1) An industrial design registration application shall include:
 - (a) a registration request for the industrial design;
 - (b) details identifying the applicant;
 - (c) a graphical illustration of the industrial design which gives a fully detailed representation of the external appearance of the product and is capable of being reproduced;
 - (d) specification of the products in which the industrial design is intended to be embodied or applied.
- (2) An application for an industrial design may include:
 - (a) acknowledgement of the author, or a declaration for which the applicant is responsible regarding the author's surrender of the right to attribution;
 - (b) details identifying the patent attorney or other representative;
 - (c) information on priority;
 - (d) classification of the product in which the industrial design is intended to be embodied or applied, in accordance with the Annex to the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968 (hereinafter *the Locarno Classification*);
 - (e) a request for a delay in publication in accordance with Article 43(2).
- (3) The following shall accompany the application:
 - (a) a power of attorney, where the application is filed through a patent attorney or other representative;
 - (b) documentation confirming priority of an industrial design, where priority is sought;
 - (c) a description of the industrial design, where necessary;

- (d) a document confirming payment of fees or, where necessary, the reasons for granting preferential terms.
- (4) Other requirements for the compiling and filing of a registration application for an industrial design shall be determined by regulations approved by the Government.
- (5) An industrial design registration application containing the information specified in paragraph (1)(a)-(c) shall constitute a correctly filed application.
- (6) The information specified in paragraph (2) and the documentation specified in paragraph (3), except (b), shall be filed with the Agency at the same time as the application, or within two months of the filing date of a correctly filed application.

Article 33. Multiple registration application

- (1) Several industrial designs may be included in a single multiple registration application. A multiple registration application may include no more than 100 industrial designs.
- (2) With the exception of ornamental products, a multiple registration application may be filed where the products in which the industrial design is intended to be embodied or applied relate to the same class of the Locarno Classification.
- (3) An additional fee shall be prescribed for a multiple registration application.
- (4) Where a multiple registration application is filed, the applicants and authors, if there is more than one, shall be the same for all industrial designs included in the relevant application.
- (5) Each of the industrial designs in the multiple registration application may be examined independently of the others. An industrial design may, independently of the others, become the subject matter of an extension, use, licensing, enforcement measures, or other property rights.

Article 34. Application filing date

The filing date of a correctly filed application (application filing date) shall be deemed to be the date of filing with the Agency of the industrial design registration application which contains the information specified in Article 32(1)(a), (b), and (c).

Article 35. Application amendments at the applicant's initiative

- (1) Within two months of the date of filing of an application, the applicant shall be entitled to make amendments and clarifications to the application and accompanying documentation, which do not alter the essential features of the industrial design, without payment of an amendment fee.
- (2) Amendments and clarifications which do not alter the essential features of the industrial design may be made within the time limit specified in paragraph (1), but on condition of payment of a fee.
- (3) A multiple registration application or certificate of multiple registration may be divided up into several separate applications or separate registration certificates. The division criteria shall be determined by regulations approved by the Government.
- (4) Two or more applications which have the same filing date may be combined subject to the provisions of Article 33(1), (2) and (4).
- (5) Where there is more than one applicant, amendments and clarifications may only be made with the written consent of each of them.

Article 36. Withdrawal of an application

- (1) An applicant shall be entitled to withdraw an application at any time, but no later than the date of a decision being taken on the registration of an industrial design or on the rejection of a registration application.
- (2) In the case of a multiple application, withdrawal may be effected in relation to all or only some of the industrial designs included in the application.
- (3) Where there is more than one applicant, an application may only be withdrawn with the written consent of each of them.

Part 2
Priority

Article 37. Effect of the right of priority

The effect of the right of priority shall be that the date of priority shall be deemed to be the application filing date pursuant to Articles 7-10, 23, Article 26(1)(d), and Article 43(2).

Article 38. Right of priority

- (1) A person who has filed an industrial design or utility model registration application in one of the countries which is party to the Paris Convention or the Agreement Establishing the World Trade Organization, or a successor-in-title to said person, shall enjoy upon filing of the registration application for the industrial design with the Agency for that same industrial design or for that same utility model, the right of priority for six months from the filing date of the initial application; the filing day shall not be included in this period.
- (2) The basis for the origin of the right of priority shall be recognized as any filing of an application valid as a correctly registered national filing of an application in accordance with the national legislation of the relevant country, or with bilateral or multilateral agreements in this field.
- (3) A correct national filing of an application shall mean any filing which is sufficient to establish a filing date of the application in the relevant country, whatever the subsequent fate of said application.
- (4) Where the initial application is filed in a country which is not party to the Paris Convention or the Agreement Establishing the World Trade Organization, paragraphs (1)-(3) shall be applied exclusively where, according to published genuine facts, and on the basis of the filing of an application at an office, said country grants the right of priority in accordance with conditions and consequences analogous with those specified by this Law.
- (5) The initial application, the filing date of which serves as the first day of counting of the period of priority, shall be deemed to be the subsequent application filed with the Agency for the same industrial design or the same utility model as the preceding application, where, on the filing day of the subsequent application, said preceding application has been withdrawn, suspended, or rejected, not having been available for public inspection, and also provided that in relation thereto, no rights continued to exist and it no longer served as the basis for claims to the right of priority. The preceding application may not, therefore, serve as the basis of claims to the right of priority.
- (6) Priority may be established on the basis of several previously filed applications, each of which shall be subject to the time limit and conditions specified in paragraph (1).
- (7) A multiple registration application which does not satisfy the filing criteria specified in Article 33 may be divided into several applications by the applicant, by distributing the industrial designs presented in the multiple application according to such

applications. The separate applications shall retain the filing date and, where appropriate, the priority date of the multiple application.

- (8) An applicant may also at his own initiative divide a multiple application into several applications by distributing the industrial designs presented in the multiple application according to such applications. The separate applications shall retain the filing date and, where appropriate, the priority date of the multiple application.

Article 39. Exhibition priority

- (1) Where an applicant has exhibited products in which an industrial design is embodied or applied at an international exhibition, then upon filing of the registration application of such an industrial design, he may request the right of priority from the date of the initial exhibiting of the products at the exhibition, provided that filing of the registration application is within six months of the date of exhibiting the relevant products.
- (2) An exhibition shall be deemed to be international where it has been officially organized and manufacturers from several countries have taken part in it, and also where information on said exhibition has been brought to the public's attention in an appropriate manner.
- (3) Exhibition priority shall not extend the period of priority prescribed in Article 38(1).

Article 40. Requesting priority

- (1) An applicant who wishes to benefit from the right of priority on the basis of a previous application shall be obliged to request said priority and to provide documentation confirming the competence for requesting priority, and an accompanying translation into Moldovan.
- (2) An applicant who wishes to benefit from the right of exhibition priority shall be obliged to request said priority, and to provide a confirmation issued by the competent authority that the product in which an industrial design is embodied or applied has been exhibited, and an accompanying translation into Moldovan.
- (3) Documentation confirming the competence for requesting priority on the basis of a previous application, and a translation into Moldovan, or a confirmation of exhibiting of products in which an industrial design is embodied or applied, and a translation thereof into Moldovan shall be provided within three months of the application filing date.

Article 41. Transfer of the right of priority

- (1) The right of priority may be the subject matter of an assignment agreement.
- (2) Where an applicant requests the right of priority which belongs to another person, an agreement of assignment of said right or any other document which confirms that the applicant is entitled to request priority under the initial application shall accompany the registration application for the industrial design. A person filing an application and assigning the right of priority to another person shall thereby be deprived of the right of priority under the initial application.
- (3) An agreement on the assignment of the right of priority shall be provided in writing simultaneously with a priority request, or within three months of the date of the request. Otherwise, the priority sought shall not be recognized.

Part 3
Registration procedure

Article 42. Examination of an application for compliance with formal filing requirements

- (1) Within two months of the date of receipt of the application, the Agency shall assess the application and accompanying documentation for compliance with formal filing requirements.
- (2) The application examination procedure includes an assessment of the following:
 - (a) that the application satisfies the criteria necessary to establish an application filing date, in accordance with Article 32(1)(a)-(c);
 - (b) the application's compliance with the other conditions specified in Articles 30 and 31, Article 32(1)(d) and (2)-(4), Article 33 and in part 2 of this Chapter.
- (3) Where an application complies with the conditions regarding the establishment of an application filing date in accordance with Article 34, the Agency shall enter information on said application in the Register of Registration Applications for Industrial Designs, and shall notify the applicant of the application's acceptance for examination.
- (4) Where, as a result of the examination specified in paragraph (2), it is established that the application and/or accompanying documentation have been filed with infringements which may be removed, then the Agency shall propose to the applicant to remove them.
- (5) Where the infringements relate to conditions referred to in Article 32(1)(a)-(c), and where the applicant removes them within three months of the application filing date with the Agency, then the application filing date shall be established as the date of removal of the identified infringements. In this case, the Agency shall enter information on said application in the Register of Registration Applications for Industrial Designs, and shall notify the applicant of the application's acceptance for examination. Where the infringements are not removed within the specified time limit, and unless the applicant applies for an extension to the prescribed time limit, but for not more than three months, with the payment of a fee, then the application shall be deemed not to have been filed and the applicant notified accordingly.
- (6) Where the infringements relate to conditions referred to in Articles 30 and 31, Article 32(1)(d), (2)(a), (b) and (d), and (4), and Article 33, and where an applicant removes them within three months of the date of notification by the Agency, the registration application shall be published in the OBPS in accordance with Article 43. Where the infringements are not removed within the specified time limit, and unless the applicant applies for an extension to the prescribed time limit, but for not more than three months, with the payment of a fee, then the application shall be deemed to have been withdrawn and the applicant notified accordingly.
- (7) Where a product classification is absent from or incorrectly specified in an application, the Agency shall classify the product in which an industrial design is intended to be embodied or applied in accordance with the Locarno Classification.
- (8) Where the requirements of a multiple registration application have not been satisfied, the applicant shall be obliged within three months of the date of notification to divide the multiple registration application into separate applications according to each group of industrial designs which comply with the conditions specified in Article 33. Where the applicant fails to divide the application within the prescribed time limit, and fails to apply for an extension to the prescribed time limit, but for not more than three months, with the payment of a fee, the Agency shall only carry out an examination of the first group of industrial designs and reject the others.
- (9) Where infringements relate to requesting priority and may be removed, but the applicant fails to remove them within the time limits prescribed in paragraph 2 of this Chapter, the right of priority for the application shall not be recognized.

Article 43. Publication of a registration application

- (1) A registration application entered in the Register of Registration Applications for Industrial Designs shall be published in the OBPS within six months of the application filing date provided that the requirements specified in Articles 30-33 are satisfied, and that, where necessary, a publication fee is paid. The information published shall be determined by regulations approved by the Government.
- (2) At the request of the applicant, the publication specified in paragraph (1) may be deferred for no longer than 30 months from the application filing date, or the date of requested priority.

Article 44. Third-party submissions

- (1) Within three months of the publication date of the registration application in the OBPS, third parties may, without payment of a fee, furnish justified submissions to the Agency in writing with respect to the registration of an industrial design.
- (2) Justified submissions of third parties shall be taken into consideration during the substantive examination.

Article 45. Objections

- (1) Within three months of the publication date of the registration application in the OBPS, interested parties shall be entitled to file a justified objection to the registration of an industrial design on the following grounds:
 - (a) the industrial design does not comply with the requirements of Article 6, or conflicts with public order or accepted ethical standards;
 - (b) a work protected in accordance with legislation on authorship rights has been used without authorization in the industrial design, or any other protected industrial property subject matter has been used;
 - (c) the applicant was not the first to file a registration application.
- (2) Justified objections shall be filed in writing with the Agency. An objection shall be deemed to have been filed only after the payment of a fee.

Article 46. Examination of objections

- (1) In examining an objection, the Agency shall verify whether the conditions for filing an objection specified in Article 45 have been satisfied, and whether the applicant has expressed his point of view, and shall evaluate each party's arguments.
- (2) Examination of an objection may be suspended:
 - (a) where the reason is an industrial design registration application on which a final decision has yet to be taken;
 - (b) where the invalidity of the opposing industrial design is in the process of being recognized, but a final decision has yet to be taken;
 - (c) at the reasonable request of one of the parties.
- (3) Where, as a result of an examination of an objection, it is established that all industrial designs or part thereof shall not be subject to registration, the objection shall be upheld in relation to the relevant industrial designs. The objection shall otherwise be rejected.

Article 47. Substantive examination

- (1) In conducting a substantive examination, the Agency shall verify whether the grounds for rejection of the application specified in Article 26(1) are present, taking into account the results of the examination of the objections.
- (2) The Agency shall be entitled to request from the applicant any additional information which it considers necessary in order to identify the applicant or author, to file the application correctly, and to ensure compliance with the conditions of protection. Information shall be provided by the applicant within three months of the date of request, and shall not alter the essential features of the industrial design. Where the applicant fails to fulfill this condition within the prescribed time limit, and fails to file a request to extend the prescribed time limit, but for no more than three months, with the payment of a fee, the application shall be deemed to have been withdrawn provided that it is impossible to carry out a substantive examination, and the applicant shall be notified accordingly within one month of the date of the decision being taken.
- (3) Where an industrial design complies with the provisions of Article 26(1)(a), and is not subject to Article 11, the Agency shall verify whether the industrial design conflicts with a previous industrial design for the same purpose according to Article 26(1)(d).
- (4) The conditions for verifying an industrial design's compliance with the other requirements specified in Article 26(1), and the time limits for conducting a substantive examination shall be determined by regulations approved by the Government.
- (5) A registration application may not be rejected without granting the applicant the opportunity to withdraw or amend the application, or to provide arguments in favour of registering the industrial design within two months of the date of notification of information obtained during the substantive examination.
- (6) The results of a substantive examination shall be presented in an examination report of an industrial design registration application.

Article 48. Decision on substantive examination results

- (1) As a result of a substantive examination and on the basis of a registration application examination report, the Agency shall take one of the following decisions:
 - (a) regarding the registration of an industrial design, where it has been established that the industrial design complies with the conditions for grant of protection;
 - (b) regarding the rejection of an application on the grounds referred to in Article 26(1).
- (2) Where, in a multiple registration application, only part of the industrial designs comply with the conditions of grant of protection, a decision shall be taken on the registration of said part, while a decision shall be taken on rejecting those industrial designs which do not comply with the conditions of grant of protection.
- (3) The Agency's decisions shall be justified. They shall be based exclusively on reasons or evidence on which the parties have been granted the opportunity to state their opinion.
- (4) The Agency shall inform the applicant of its decision either to register the industrial design, or to reject the application, within a month of the date of taking it, and shall publish it in the OBPS.

Article 49. Appeals

- (1) Decisions regarding registration applications for industrial designs may be challenged with the Agency Board of Appeals, whose remit includes extra-judicial examination of disputes in the field of intellectual property. An appeal shall be lodged by the parties within two months of the effective date of the decision, or within 30 days of publication of the information by third parties. An appeal shall have a suspensory effect.
- (2) An appeal shall be lodged in writing and shall be justified; it shall be deemed to have been lodged on condition of payment of a fee.

Article 50. Examination of an appeal

- (1) In examining an appeal, the Board of Appeals shall, as necessary, give the parties the opportunity to provide their comments for the other party or the Board of Appeals within a prescribed time limit. Where discrepancies of a normative nature arise, the Board of Appeals shall be guided by the rules of the Code of Civil Procedure.
- (2) As a result of the examination of the appeal, the Board of Appeals shall pass one of the following judgments:
 - (a) to leave the disputed judgment in force;
 - (b) a full or partial annulment of the disputed judgment;
 - (c) a review of the disputed judgment;
 - (d) on any other action arising from the examination procedure.
- (3) The Board of Appeals may transfer the matter in order to repeat the examination, having prescribed a time limit for reporting of the results of the repeat examination.
- (4) Where significant circumstances have emerged which were not known at the time of the examination of the appeal by the Board of Appeals, an interested party may, within a prescribed procedural time limit, appeal to the Board of Appeals more than once. Parties who did not know or who could not know of the examination of the first appeal shall also have such a right, as shall parties whose rights and interests have been affected by the judgment of the Board of Appeals, and who have at their disposal reasons that are significant for an objective settlement of the matter.
- (5) Decisions of the Board of Appeals shall enter into force as of the date they are taken, and may be challenged in court within time limits prescribed by civil procedure legislation.
- (6) The effect of judgments of the Board of Appeals, which are challenged in court, may be suspended in accordance with the Law on the Administrative Court.

Article 51. Annulment or withdrawal of a decision

- (1) Prior to the grant of a registration certificate, the Agency shall annul a decision:
 - (a) on the basis of a court judgment;
 - (b) on the basis of a Board of Appeals judgment.
- (2) Prior to the grant of a registration certificate, the Agency may on its own initiative withdraw a decision taken, where significant circumstances arise which impede the grant of the registration certificate.

Article 52. Registration of an industrial design and grant of a registration certificate

- (1) After taking a decision regarding the registration of an industrial design, where appeals have not been lodged against the registration according to Article 49(1), or where the appeals lodged have been rejected, the Agency shall enter registration information in the Register of Registered Industrial Designs, and upon payment of a fee, shall grant a registration certificate to the rights owner within three months of the date of registration, notification of which shall be published in the OBPS.

(2) Where there is more than one rights owner, the registration certificate shall only be granted, unless otherwise indicated, to one of them- the first listed- while the others shall have the right to obtain a copy of the registration certificate.

(3) Where the rights owner and author are different persons, the author shall have the right to obtain a copy of the registration certificate.

Article 53. Restoration of rights

(1) In the case of expiry of time limits for an Agency procedure, which involves loss of rights in a registration application or registration certificate, the applicant or rights owner may, at his request, have his rights restored. The provisions of this Article shall not be applicable in relation to the time limits specified in paragraph (2) of this Article, Article 38(1), Article 39(1) and Article 45(1).

(2) At the request of the applicant or rights owner, the Agency shall permit the restoration of rights where it has been established that infringement of the time limits occurred despite taking all measures dictated by circumstances in good faith, or as a result of force majeure. Rights shall be restored provided a request is filed within 12 months of the expiry date of the deadline for performing the relevant action, paying a fee, carrying out a missed procedure and providing documentation corroborating force majeure. Rights shall not be restored where prior to the appeal for restoration, another party had already acquired the right in an identical industrial design pursuant to Article 7(2). In the absence of a request to extend a registration certificate, or non-payment of the extension fee for an additional six-month period, as specified in Article 14(4), it shall be deducted from the 12-month period (restoration of registration certificate).

(3) In the case of restoration of rights, the applicant or rights owner may not bring a claim for the infringement of his rights against third parties who, in the period from the loss of rights in the application or registration of the industrial design, up to the publication of information on the restoration of said rights, marketed in good faith the product in which the industrial design is embodied or applied, which is included in the scope of protection of the industrial design, the rights in which have been restored.

(4) A third party who is subject to paragraph (3) may lodge an appeal against a decision to restore the rights of an applicant or rights owner of an industrial design within two months of the publication date of information on the restoration of rights on condition of payment of a fee.

CHAPTER IV
TERMINATION OF RIGHTS IN A REGISTERED INDUSTRIAL DESIGN

Article 54. Loss of a right

Where a registration certificate has not been extended in accordance with Article 14, or where the 25-year time limit has expired, commencing from the application filing date, the Agency shall enter a note in the Register of Registered Industrial Designs regarding the termination of registration of said industrial design from the expiry date of the most recent five-year period of protection, and shall publish this in the OBPS.

Article 55. Surrender of a right

- (1) A right owner may surrender fully or partially a right in a registered industrial design by filing a surrender application with the Agency. The surrender application shall be deemed to have been filed upon payment of a fee.
- (2) The Agency shall register the surrender of a right in a registered industrial design, and shall publish information to that effect in the OBPS within four months of the surrender application filing date. The surrender shall take effect after its entry in the Register of Registered Industrial Designs.
- (3) Where one of the rights owners fully surrenders his right in a registered industrial design, the effect of the registration certificate shall not be terminated and it shall remain under the ownership of the remaining rights owners.
- (4) Where all the rights owners fully surrender their right in a registered industrial design, they shall simultaneously be obliged to notify the author of the surrender by filing a surrender application with the Agency. In this case, the author shall have a preferential right to obtain a registration certificate in his name where he applies for such within three months of being notified of the surrender by the rights owner.
- (5) The provisions of this Article shall likewise be applicable to applications for which a decision on the registration of the industrial design has been taken, but for which a registration certificate has yet to be granted.
- (6) An industrial design may be the subject matter of a partial surrender as per Article 26(3) provided in a corrected form it complies with the conditions of protection and retains the essential features of the industrial design.
- (7) The surrender of a right may be entered in the Register of Registered Industrial Designs exclusively with the consent of the rights owner, as entered in said Register. Where there is a license entered in the Register of Registered Industrial Designs, the surrender may be entered therein only after the rights owner has provided proof that he has notified the license owner of his intention to surrender his right. A record shall be entered in the Register of Registered Industrial Designs before the expiry of the time limit specified in regulations approved by the Government.
- (8) (8) Where an action has been brought regarding the request of a right in a registered industrial design in accordance with Articles 15 and 16, any surrender applied for in this period shall be entered in the Register of Registered Industrial Designs only with the consent of the person bringing the action.

Article 56. Invalidity

- (1) An interested person may file an application to annul a registered industrial design with the Chişinău Appeals Chamber on the grounds specified in Article 26.
- (2) An annulment application shall be provided in writing and shall be justified. An annulment application shall be deemed to have been filed only upon payment of a fee.
- (3) A decision on the recognition of the invalidity of an industrial design shall be entered in the Register of Registered Industrial Designs as soon as it becomes legally enforceable.

CHAPTER V ENSURING OBSERVANCE OF RIGHTS

Article 57. Action for infringement of rights

- (1) Any natural or legal person, and also other interested parties who have a claim relating to the use of an industrial design, shall be entitled to bring a court action in defence of their rights and legal interests.
- (2) The following persons shall be entitled to bring an action for infringement of exclusive rights or legal interests arising therefrom:
 - (a) the rights owner of a registered or unregistered industrial design;
 - (b) any person who has the right to use an industrial design, in particular licensees;
 - (c) other natural or legal persons who have the right to represent the rights owner.

Article 58. Action for declaration of non-infringement of rights

- (1) Any person using an industrial design protected on the territory of the Republic of Moldova, or who has made serious and effective preparations to use it, shall be entitled to apply to the rights owner to define his position on the subject of infringement of his protection document by such use. The rights holder shall be obliged to respond to the relevant person.
- (2) Where the position of the rights owner, as specified in paragraph (1), fails to satisfy the person, or where the right owner fails to define his position within three months, the interested party shall be entitled to bring an action in a competent court to establish non-infringement of rights.
- (3) An action for a declaration of non-infringement of rights may not be brought by one and the same person in respect of one and the same subject matter where a court has previously already pronounced judgment on the infringement or non-infringement of rights.

Article 59. Measures to secure evidence prior to the bringing of an action

- (1) Any competent person who has provided sufficient evidence to confirm the infringement of his rights may request a court or other competent authority prior to the filing of an action against illegal acts to take temporary measures to secure relevant evidence provided that the confidentiality of the information is safeguarded, and on condition that a sufficient deposit is lodged or a guarantee of equivalent value is provided, necessary to compensate any damages caused to the defendant where no infringement is confirmed.
- (2) In order to adopt measures to secure evidence, the court shall have the right to:
 - (a) request a detailed description of actions which are assumed to have been infringed;
 - (b) seize the disputed products;
 - (c) seize materials and equipment used in the production process and/or distribution of the disputed products;
 - (d) demand the provision of relevant documents.
- (3) The procedure for applying measures to secure evidence shall be performed by a court or other competent authority in accordance with the Code of Civil Procedure. Measures to secure evidence shall be implemented with the assistance of a bailiff, accompanied where necessary by a representative of the Agency and a police officer.

Article 60. Securing evidence in urgent cases

- (1) Measures to secure evidence may be prescribed without the knowledge of the defendant where a delay could cause irreparable harm to the rights owner or where there is a risk of evidence being destroyed. The affected parties shall be promptly informed of the court's decision.
- (2) An affected party shall be entitled to demand a review of the decision on securing evidence.

Article 61. Invalidity of measures to secure evidence

- (1) Measures to secure evidence shall be deemed worthless or invalid:
 - (a) where within 20 working days the plaintiff fails to bring an action on infringement of rights in court;
 - (b) as a result of any guilty actions or inaction of the plaintiff;
 - (c) upon the establishment of the absence of infringement, or attempts to infringe rights;
 - (d) in other cases specified by current legislation, by court decision.
- (2) Where damage is caused by measures to secure evidence recognized as worthless or invalid, the plaintiff shall pay the defendant appropriate compensation.

Article 62. Provision and securing of evidence in the context of an action for infringement of rights

- (1) Where a party presents arguments as a basis for his claims, and also information that specific evidence is available to the opposing party, the court shall order that this evidence is produced in a sufficient and reasonable quantity, provided that confidentiality of the information is ensured. In the case of an infringement of rights in a commercial field, the court may additionally order the parties to provide bank, financial or trade documentation.
- (2) Where one of the parties to proceedings unreasonably refuses access to necessary information or in bad faith delays providing such information, thereby hindering settlement of the dispute, the court shall make a judgment on whether or not to accept the statement of claim on the basis of information provided, including the appeal or claim of the party adversely affected by the refusal to grant access to the information, on condition that the parties are granted the opportunity of a hearing as regards their claims or evidence.

Article 63. Right to information

- (1) Where upon examination of a dispute it has been established that rights in an industrial design have been infringed, a court may obtain on demand information regarding the provenance and distribution channels of goods infringing the right in the industrial design from the infringer and/or any other person:
 - (a) in whose possession counterfeit goods intended for sale were discovered;
 - (b) who has been discovered using for commercial purposes services with counterfeit production;
 - (c) who has been discovered providing for commercial purposes services used in activities infringing rights; or
 - (d) identified as the person mentioned in (a)-(c) as a person involved in the production, manufacture or distribution of the goods, or in the provision of services.
- (2) The information specified in paragraph (1) shall include where necessary:
 - (a) the names and addresses of the producers, distributors, suppliers and previous owners of the goods, and also of proposed wholesalers and retailers;
 - (b) information on the quantity of goods produced, supplied, obtained or ordered, and also on their price.

- (3) Paragraphs (1) and (2) shall be applied without detriment to legislative and regulatory rules, which shall:
- (a) enable the patent owner to obtain more detailed information;
 - (b) govern use of information provided in accordance with this Article in civil or criminal cases;
 - (c) determine responsibility for abuse of the right to information;
 - (d) give the opportunity to refuse to provide information which might force the person identified in paragraph (1) to recognize his own participation or that of close relatives in the infringement of rights in the industrial design; or
 - (e) govern the safeguarding of confidentiality of information sources or the processing of personal data.

Article 64. Measures to secure an action for infringement of rights

- (1) Having established actual or unavoidable infringement of rights in an industrial design, a court may, upon the application of the rights owner, take measures to secure an action on infringement of rights in relation to the infringer and/or intermediaries, such as:
- (a) taking a decision on the temporary prohibition of specific acts which are an infringement of the rights in an industrial design, or permitting such acts on condition that a deposit is lodged which is sufficient to compensate the rights owner for damages sustained;
 - (b) the sequestration of property suspected in the infringement of rights in an industrial design in order to prevent their use in commercial trade;
 - (c) the sequestration of any of the infringer's property, including freezing of bank accounts, and the provision of bank, financial or commercial documentation, where the infringement has been committed in the commercial arena and there is a risk of failure to compensate for damages sustained.
- (2) Measures for ensuring maintenance of rights may be prescribed according to Article 60 without the defendant's knowledge, where a delay could cause irreparable harm to the rights owner, or where there is a risk that evidence will be destroyed. The affected parties shall be promptly informed of the court's decision.

Article 65. Remedies

- (1) Having established that an infringement of rights has taken place, a court may, upon the plaintiff's application, order measures to be taken in relation to the goods infringing rights in an industrial design, and in appropriate cases in relation to materials and equipment which were used for creating and manufacturing such goods. In particular, such measures are:
- (a) temporary withdrawal of the goods from trade;
 - (b) final and complete withdrawal of the goods from trade; or
 - (c) destruction, where the industrial design cannot be removed from the article without destroying it, and likewise where removal of the industrial design is insufficient to exclude an infringement of rights.
- (2) The measures specified in paragraph (1) shall be implemented at the expense of the defendant, except when there are important reasons preventing this.
- (3) Upon examination of an application for remedies, a court shall be guided by the principle of fairness, by proportionality of the seriousness of the infringement committed and prescribed means of protection, and shall also take into account the interests of third parties.

Article 66. Ensuring enforcement of a court judgment

Where a court passes judgment on infringement of a right in an industrial design, the court may, upon the rights owner's request, take measures to ensure the infringer fulfills the judgment, in accordance with which the infringer shall be warned regarding the prohibition of any actions which infringe the rights owner's rights. For this purpose, the court may oblige the infringer to lodge a sufficient deposit or provide a guarantee of equivalent value. The rights owner may also request the application of such measures to intermediaries whose services are used by third parties in infringing his rights in the industrial design.

Article 67. Alternative measures

Where the infringement of rights in an industrial design has caused, unintentionally or carelessly, material damage, a court may, upon the request of an interested party, oblige an infringer to pay financial compensation instead of taking the measures for securing rights specified in this chapter. In order to determine the amount of financial compensation, the amount of the royalty which the rights owner could have received for approved use of the industrial design shall be taken into account.

Article 68. Compensation for damage

- (1) At the request of an aggrieved party, a person who deliberately infringed, or who had reasonable grounds to recognize that the rights in an industrial design had been infringed, shall compensate the rights owner for the actual damage caused by the infringement of his rights. In determining the amount of damages:
 - (a) all material circumstances shall be taken into account, such as negative economic consequences, including profit foregone by the aggrieved party, income obtained illegally by the defendant, and in relevant cases, other aspects as well, such as the moral damage which the infringement has caused to the rights owner;
 - (b) as an alternative, a single lump sum may be determined, calculated based upon, at the very least, the royalties or remuneration which would have been due to the rights owner had the defendant requested authorization to use the relevant industrial design.
- (2) Where the infringer has committed an infringement unwittingly or did not have reasonable grounds to be aware of said infringement, he shall compensate the rights owner for profit foregone or damage caused, as prescribed in accordance with current legislation.

Article 69. Publication of court decisions

- (1) In the context of actions for infringement of protected rights in an industrial design, at the request of the plaintiff and at the expense of the infringer, a competent judicial authority may prescribe appropriate measures for the distribution of information relating to a court decision, including displaying it in public places, and also partial or full publication of the decision.
- (2) The competent judicial authority may prescribe additional publicity measures, including mass-marketing, appropriate to the specific circumstances.

CHAPTER VI GENERAL PROVISIONS

Article 70. Examination of disputes

- (1) Disputes of natural and legal persons concerning the application of this Law shall be examined by the Agency Board of Appeals, the Chişinău Chamber of Appeals, or by specialist arbitration.
- (2) The Board of Appeals shall resolve the following appeals:
 - (a) regarding registration of an industrial design, or rejection of a registration application.
 - (b) relating to the establishment of priority or its non-recognition;
 - (c) regarding the extension of a registration certificate;
 - (d) regarding the division of a registration application;
 - (e) concerning loss of rights;
 - (f) in relation to the withdrawal of a registration application or surrender of a right;
 - (g) regarding restoration of rights.
- (3) The Chişinău Chamber of Appeals shall examine appeals lodged against decisions of the Board of Appeals, and shall resolve the following disputes:
 - (a) regarding the authorship of the industrial design;
 - (b) concerning the establishment of the person entitled to a right in an industrial design;
 - (c) regarding the conclusion and execution of a licensing agreement;
 - (d) relating to the right of prior use;
 - (e) regarding the payment of remuneration by an employer to an author;
 - (f) concerning an infringement of an exclusive right (counterfeit actions);
 - (g) in relation to invalidity;
 - (h) regarding other infringements of rights in an industrial design.

Article 71. Filing of industrial design registration applications abroad

- (1) Industrial designs may be registered abroad by filing an application directly with the office of the country in which registration of an industrial design has been requested, or by the procedure of filing an application in accordance with international conventions, to which the Republic of Moldova is party.
- (2) Applications for international registration in accordance with the Hague Agreement shall be filed directly with the World Intellectual Property Organization, or via the Agency.

Article 72. Fees

- (1) Fees shall be levied for filing and examining an industrial design registration application, lodging an objection and an appeal, publishing and delaying a publication, registering industrial designs and granting a registration certificate, extending a registration certificate, transferring rights, surrendering rights, restoring rights, extending procedural time limits, granting a priority certificate, issuing a copy or duplicate registration certificate, verifying and forwarding an application for international registration in accordance with the Hague Agreement, and likewise for undertaking other actions of legal significance.
- (2) The actions for which fees shall be levied and the size of said fees shall be prescribed by the Government.
- (3) Fees shall be paid by an applicant, rights owner and also by other interested natural or legal persons.

- (4) A fee for the registration of an industrial design and the grant of a registration certificate which has not been paid within the prescribed time limit may be paid within six months of the missed deadline with a 50 per cent surcharge.
- (5) With the exception of fees for filing a registration application, a paid fee shall be returned at the request of the person who paid it where the procedure for which the fee was paid has yet to be initiated.
- (6) An under-paid fee shall be taken into consideration upon payment of the missing amount, and the procedure shall be performed upon payment of the whole fee.
- (7) Where a request is made to undertake procedures urgently, the fee shall be increased by 100 per cent, while the timeframe for carrying out the relevant work shall be halved.
- (8) Objections and appeals of central and local public authorities shall be examined free of charge where they are acting accordingly in the interests of the State or administrative-territorial units.

Article 73. Rights of foreign natural and legal persons
Natural and legal persons of States parties to international treaties to which the Republic of Moldova is party, shall enjoy rights granted by this Law on an equal footing with natural and legal persons of the Republic of Moldova.

CHAPTER VII FINAL AND TRANSITIONAL PROVISIONS

Article 74. Entry into force

- (1) This Law shall enter into force three months from its publication date.
- (2) The Law on Protection of Industrial Designs No.991-XIII of October 15, 1996 shall be recognized as superseded from the date of entry into force of this Law.

Article 75. Applicability

- (1) Industrial design registration applications in the Republic of Moldova, prosecution of which is not complete by the date of entry into force of this Law, shall be examined in accordance with the procedure prescribed by this Law. In this regard, compliance of an industrial design with the conditions of protection shall be determined according to legislation in force as at the application filing date.
- (2) Registration certificates granted in the Republic of Moldova prior to the entry into force of this Law shall be on the same legal footing as registration certificates granted in accordance with this Law.
- (3) Disputes arising prior to the entry into force of this Law and in the process of examination shall be resolved in accordance with the rules of the previous Law where provisions applicable to a specific dispute contradict the provisions of this Law.

Article 76. Organization of enforcement

In the three-month period from the date of entry into force of this Law, the Government shall:

- (a) present Parliament with proposals on bringing current legislation into compliance with this Law;
- (b) bring its normative acts into compliance with this Law.

CHAIRMAN OF PARLIAMENT

Marian LUPU

Chişinău, July 12, 2007.

No.161-XVI.
