



PARLIAMENT OF THE REPUBLIC OF MOLDOVA

LAW

on the Protection of Industrial Designs

No. 161-XVI of July 12, 2007

(Unofficial translation from Romanian)

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As amended by:

the Law no. 101 of 26.05.2016

the Law no.162 of 30.07.2015

the Law no. 173 of 25.07.2014

Parliament hereby enacts this basic Law.

This law transposes Council Regulation (EC) no. 6/2002 of December 12, 2001 on Community designs (published in the Official Journal of the European Union no. L 3 of January 5, 2002).

Chapter I

BASIC PROVISIONS

Article 1. Scope and purpose of the Law

(1) This Law shall regulate relations arising in the process of creating, legally protecting and using industrial designs.

(2) The aim of this Law shall be to establish a legal basis for the organization and operation of the system of protection of industrial designs, and to guarantee the effective exercise of rights in industrial designs.

Article 2. Legal basis

(1) Legal relations arising in the process of creating, legally protecting and using industrial designs shall be regulated by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and Innovation, the Customs Code, international agreements to which the Republic of Moldova is a party, this Law and other normative acts.

(2) If standards different from those contained in this Law are established in international agreements to which the Republic of Moldova is a party, the standards contained in the international agreements shall be applied.

Article 3. Basic concepts

For the purposes of this Law, the following concepts shall be defined thus:

industrial design – the external appearance of an article or part thereof formed, inter alia, from the lines, curves, colors, shapes, textures and/or materials of the article itself and/or its decoration;

registered industrial design – industrial design protected under this Law on the basis of an application for registration filed under a national or international procedure;

unregistered industrial design – industrial design protected under this Law without an application for registration having been filed;

patent attorney – natural person, certified and registered under established procedure, representing the interests of domestic or foreign natural persons or legal entities and providing them with necessary assistance for the protection of intellectual property;

priority – right of precedence in time, granted for an established period to an application for registration;

article – any item of industrial or craft production, including elements for assembly into a composite article, packaging, decoration, graphical symbols or typefaces but not including computer programs;

composite article – article consisting of a number of elements which can be replaced by dismantling and reassembly of the article.

International Register - the official collection, maintained by the International Bureau of the World Intellectual Property Organization, which contains data on international registrations, whose registration is provided by the Hague Agreement Concerning the International Registration of Industrial Designs adopted on November 6, 1925 regardless of the medium on which such data are stored.

Article 4. Legal protection

(1) The legal protection of industrial designs shall include aspects relating to the existence, acquisition, scope of application and maintenance in force of rights and the means of compliance therewith, as well as relating to the exercise of rights acquired.

(2) The following shall be recognized and protected on the territory of the Republic of Moldova:

(a) registered industrial designs, rights in which are confirmed by an industrial design registration certificate (hereinafter registration certificate) under the provisions of this Law;

(b) international industrial designs registered under the Hague Agreement for the International Registration of Industrial Designs of November 6, 1925 (hereinafter Hague Agreement), under this law;

(c) unregistered industrial designs, where these have become publicly known in accordance with this Law.

(3) Industrial designs protected under this Law shall also be subject to the protection afforded to the same party – or, with that party’s consent, to another party – by copyright legislation, beginning from the date on which the industrial design was created or defined in any form.

(4) Recognition of the rights provided for under this Law shall not harm or exclude the protection granted to the same party – or, with that party’s consent, to another party – under other legislative provisions concerning intellectual property, particularly those regarding trademarks, geographical indications, patents, utility models, typefaces or integrated circuit topographies, or concerning unfair competition.

Article 5. National Office

(1) The State Agency on Intellectual Property (AGEPI, hereinafter the Agency) is the national office for intellectual property protection and shall be the only body on the territory of the Republic of Moldova providing legal protection for industrial designs under this Law.

(2) The Agency shall:

(a) draw up proposals for laws and other normative acts relevant to its area of activity and establish procedural acts necessary for it to fulfill its functions as defined by legislation;

(b) receive applications for registration, examine them, register them and issue registration certificates on behalf of the State, and publish official data in the Official Bulletin of Intellectual Property(hereinafter BOPI), which appears on paper carrier, in electronic format and is placed on the official webpage of AGEPI;

(c) maintain a National Register of applications for registration of industrial designs and the National Register of registered industrial designs in accordance with the law and according to the Regulation on the procedure of filing, examination and registration of industrial designs, approved by the Government (hereinafter Regulation).;

(d) examine applications for the international registration of industrial designs filed under the Hague Agreement;

(e) register licensing, assignment and franchising agreements relating to rights in industrial designs.

(3) The Agency shall represent the Republic of Moldova at the World Intellectual Property Organization and at other international, regional and intergovernmental organizations dealing with intellectual property protection and shall maintain cooperative relationships with them in this area.

[Art. 5(2), letter e) modified by the Law no.173 of 25.07.14, in force from 08.11.2014]

[Art. 5(1),(2) modified by the Law no.101 of 26.05.16, in force from 24.06.2016]

Chapter II

SUBSTANTIVE LAW CONCERNING THE PROTECTION OF INDUSTRIAL DESIGNS

Part 1. Conditions for the protection of industrial designs

Article 6. Subject matter of protection

(1) An industrial design that may be protected shall consist of the external appearance of an article or part thereof formed, inter alia, from the lines, curves, colors, shapes, textures and/or materials of the article itself and/or its decoration.

(2) The subject matter of protection may be two-dimensional (an industrial drawing) or three-dimensional (an industrial design) or a combination of the two.

(3) An industrial design shall be granted protection only if it is novel and unique.

Article 7. Novelty

(1) An individual design shall be considered novel if no identical industrial design has become publicly known within the meaning of Article 10:

(a) in the case of a registered industrial design – before the filing date of the application for registration or, if priority is being claimed, before the date of priority of the industrial design for which protection is requested; or

(b) in the case of an unregistered industrial design – before the date of first disclosure of the industrial design for which protection is requested.

(2) For the purposes of paragraph (1), industrial designs shall be deemed identical if their significant features differ only in non-essential details.

Article 8. Individuality

(1) An industrial design shall be deemed to be individual if the general impression that it presents to an informed user is different from the general impression that would be presented to such a user by any other industrial design already publicly known within the meaning of Article 10:

(a) in the case of a registered industrial design – before the filing date of the application for registration or, if priority is being claimed, before the date of priority; or

(b) in the case of an unregistered industrial design – before the date of first disclosure of the industrial design for which protection is requested.

(2) In assessing individuality, account shall be taken of the degree of the author's freedom in creating the industrial design, given the nature of the article and the specifics of the industrial or craft sector in question.

Article 9. Composite articles

(1) If an industrial design, employed or embodied in an article, forms a component of a composite article, it shall be considered novel and individual only if all the following conditions are satisfied:

(a) once introduced into the composite article, the component remains visible during ordinary use;

(b) these visible features of the component in the composite article themselves meet the requirements of novelty and individuality.

(2) For the purposes of paragraph (1), "ordinary use" shall mean the use of the article by the consumer.

Article 10. Disclosure

(1) For the purposes of Articles 7 and 8, an industrial design shall be deemed to have become publicly known if it has been exhibited, published, used, sold or otherwise disclosed, except in cases where natural persons or legal entities in the Republic of Moldova specializing in the relevant area could not reasonably have become aware of it in the course of their ordinary business:

(a) in the case of a registered industrial design – before the filing date of the application for registration or, if priority is being claimed, before the date of priority; or

(b) in the case of an unregistered industrial design – before the date of first disclosure of the industrial design.

(2) An industrial design shall not be deemed publicly known if its disclosure to a third party was in explicit or implicit confidence.

(3) In the case of a registered industrial design, disclosure shall not be taken into account for the purposes of Articles 7 and 8 if the industrial design for which protection is requested has been disclosed:

(a) by its author, the author's successor or a third party, as a result of information provided by the author or actions undertaken by the author or the author's successor, or as a result of misuse by the author or the author's successor;

(b) within 12 months prior to the filing date of the application for registration or, if priority is claimed, the date of priority.

Article 11. Unprotectable industrial designs

(1) No industrial design shall be protected if it is defined only by its technical function.

(2) No industrial design shall be protected if it has to be reproduced in exactly the same form and dimensions, so that the article embodying or using the industrial design may be mechanically joined to, or housed in, around or on, some other article, in order for each of the articles to fulfill its function.

(3) As an exception to the provisions of paragraph (2), a novel, individual industrial design shall be eligible for protection if it serves the purposes of enabling repeated assembly or the combination of interchangeable parts in a modular system.

(4) No industrial design shall be protected if it infringes ordre public or accepted moral standards.

Part 2

Scope and duration of protection

Article 12. Scope of protection

(1) The protection afforded to industrial designs shall extend to any industrial design that does not present a unique overall impression to an informed user.

(2) In determining the scope of protection, the degree of the author's freedom in creating the industrial design in question shall be taken into account.

(3) The scope of protection of a registered industrial design shall be determined by the sum total of its features, represented in graphical form, as entered in the International and National Registers of registered industrial designs. Any description explaining the graphical images shall have no effect on the scope of protection of the industrial design.

Article 13. Duration of protection

(1) A registered industrial design shall be protected for five years from the filing date of the application. The validity of a registration certificate may be extended for several periods of five years each, up to a total of 25 years from the filing date of the application.

(2) An unregistered industrial design shall be protected from the date on which it was first disclosed in the Republic of Moldova under Article 10, paragraphs (1) and (2).

Article 14. Extension of validity

(1) The registration of an industrial design may be extended by the right holder or any other party expressly authorized by the right holder, on payment of the extension fee. Other conditions for extension of validity shall be set in the Regulation.

(2) A registration certificate for multiple designs may be extended for any of the industrial designs that it contains.

(3) The extension may be requested within the last 6 months before expiry of validity term of the industrial design registration.

(4) The period laid down in paragraph (3) may be extended by six months on payment of a fee.

(4¹) Where it is established that the industrial design meets the requirements for extension, the decision on the extension of the industrial design registration shall be approved. Otherwise, the request for extension of the industrial designs registration shall be rejected.

(5) The extension shall be valid from the day on which the registration expires; this shall be noted accordingly in the National Register of registered industrial designs.

(6) The Agency shall publish information on the extension of validity in BOPI.

Part 3

Authors of industrial designs

Right holder in industrial designs

Article 15. The right in an industrial design

(1) The right in an industrial design shall belong to the author and/or the author's successor.

(2) The natural person who produced the industrial design through his/her creative labor shall be recognized as its author.

(3) If an industrial design is created jointly by several authors, the right in the industrial design shall belong to them all. The procedure for the use by the authors of their rights shall be determined by an agreement reached among them.

(4) If an identical industrial design is created by several authors independently of each other, the right in the registered industrial design shall belong to the person whose application has the earliest filing date or, if priority is being claimed, the earliest date of priority.

(5) If two registration applications for identical industrial designs are filed on the same date, prior right in the industrial design shall belong to the person who can prove him/herself to have filed for registration first.

Article 16. Service industrial designs

(1) The right in an industrial design created by an employee in the course of his/her official duties or in carrying out an order received in writing from his/her employer (service industrial design) shall belong to the employer unless otherwise stipulated in a contract concluded between them. On creating a service industrial design, an author shall be entitled to remuneration commensurate with the benefit that will or may be derived by the employer from the appropriate use of the industrial design. This remuneration shall be paid at rates and under conditions set out in a contract between author and employer.

(2) If an industrial design is created under a scientific research or prototype development contract, the right in it shall be determined by that contract. In such a case, the author shall be entitled to remuneration paid at rates and under conditions set out in the contract between him/her and the employer.

(3) In the case of a registered industrial design, the author shall notify the employer accordingly in writing of the service industrial design within a month of the date of its creation. If the employer has not filed an application or transferred the right to file an application to some other party within 60 days of receiving notification from the author regarding the creation of a service industrial design, the author shall be entitled to file an application and to register the industrial design in his/her own name. In this case, the employer shall have a priority right to a non-exclusive license for the use of the industrial design.

(4) If the registration certificate is obtained by the employer, the author shall have a priority right to a non-exclusive license without remuneration for the use of the industrial design.

(5) If the parties fail to reach agreement concerning the rate of remuneration to the author or the price of the license, these shall be established by a court on the basis of the contribution made by each party to the creation of the industrial design and also of its commercial value.

(6) The employer and the author shall keep each other informed in writing with regard to the state of completion of an industrial design, and shall refrain from disclosing any information that could harm either party in the exercise of their rights. If either party infringes these obligations, it shall compensate the other for its losses, including loss of earnings, in accordance with current legislation.

Article 17. Claiming the right in an industrial design

(1) Unless proven otherwise, the party in whose name an industrial design is registered (the right holder) or, before registration, in whose name a registration application for an industrial design has been filed (the applicant) shall be deemed the party entitled to deal with the Agency and any other body.

(2) If an unregistered industrial design is disclosed or obtained by a party that does not have the right in it under Articles 15 and 16, or if a registered industrial design has been filed for registration or registered by such a party, then the party that does hold the right therein under the aforementioned Articles may without prejudice to any other rights or actions claim for recognition as the lawful right holder in that industrial design.

(3) The actions provided for in paragraph (2) shall be taken within three years of the date of publication, in the case of a registered industrial design, or of the date of disclosure, in the case of an unregistered industrial design. This provision shall not apply if the party that did not hold the right in the industrial design did not act in good conscience when the industrial design was presented, disclosed or entrusted to it.

(4) In the case of a registered industrial design, the following details shall be entered in the National Register of applications for registration of industrial designs and the National Register of registered industrial designs:

(a) a record of the filing of a claim on the basis of paragraph (2);

(b) a court ruling or any other official document concluding the procedure;

(c) any change in the right holder in the registered industrial design arising from the court ruling or any other official document concluding the procedure.

(5) The party filing a claim shall notify the Agency within 10 days of any court ruling.

Article 18. Consequences of a court ruling establishing a new right holder in a registered industrial design

(1) If, as a consequence of a claim filed under Article 17, paragraph (2), the right in a registered industrial design is wholly transferred to a new owner, then licenses and other rights granted by the first right owner shall be invalidated and terminated from the moment the new right holder is entered in the National Register of registered industrial designs.

(2) If a right holder in a registered industrial design or a licensee thereof has begun to use that industrial design in the Republic of Moldova or has made serious and real preparations to that end before the filing of a claim under Article 17, paragraph (2) is entered in the National Register of registered industrial designs, that right holder may continue its activities on condition that, within three months, it requests a non-exclusive license from the new right holder, as entered in the National Register of registered industrial designs. The license shall be granted within a reasonable time and under reasonable conditions. This provision shall not apply if the right holder in the registered industrial design or the licensee thereof did not act fairly on beginning to use the industrial design or license in question or in preparing for use.

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 the Agency's procedural documents, in the National Register of applications for registration of industrial designs and in the National Register of registered industrial designs, as well as in the registration certificate;

(b) if the industrial design was created by more than one person, they shall all be named as coauthors;

(c) the author shall have the right to decline to have his/her name entered in the Agency's procedural documents, the National Register of applications for registration of industrial designs, the National Register of registered industrial designs or the registration certificate, or to cancel the records in these registers and the registration certificate.

(2) The author may defend his/her rights in court against any infringement of those rights.

(3) Claiming authorship, coercion in coauthorship or disclosure of an industrial design before a right is claimed without the author's consent shall constitute an infringement of the author's rights and shall be punishable under current legislation.

Part 4

Effect of the right in an industrial design

Article 20. Exercise of rights in an industrial design

(1) In the case of a registered industrial design, the right holder shall enjoy the exclusive right to use the industrial design and to prohibit any third party from using it without the right holder's consent. Use shall mean, inter alia, manufacture, offering for sale, release onto the market, import, export or use per se of the article embodying or using the industrial design, as well as storage of such an article for the aforementioned purposes.

(2) In the case of an unregistered industrial design, the right holder may prohibit the actions listed in paragraph (1) only if the disputed use is a result of copying the protectable industrial design. The disputed use shall not be deemed a result of copying a protectable industrial design if it is the result of the independent creation of an author who can reliably establish that he/she was unfamiliar with the industrial design disclosed by the right holder.

(3) The provisions of paragraph (1) shall also apply temporarily where an application for registration is published under Article 43, paragraph (1) from the date of publication and until the industrial design is registered, unless the application for registration is refused or withdrawn.

(4) If there are several right holders, conditions for each of the parties' use of the protectable industrial design shall be determined by means of an agreement reached between them. In the absence of such an agreement, each right holder shall have full rights to use the industrial design as it sees fit and to file a suit for infringement of its exclusive right against any party using the industrial design, without the consent of the other right holders, but may not conclude licensing

agreements without the consent of the other right holders or take any steps towards transferring or waiving its right in the industrial design without notifying them.

Article 21. Limitation of rights in an industrial design

(1) The rights in an industrial design shall not apply in the following cases:

- (a) actions undertaken for personal or non-commercial purposes;
- (b) actions undertaken for experimental purposes;
- (c) reproduction for the purposes of study or quotation, on condition that the source is credited;
- (d) equipping of vehicles registered in another country and temporarily present on the territory of the Republic of Moldova;
- (e) import into the Republic of Moldova of spare parts and accessories for the repair of vehicles provided for in subparagraph (d);
- (f) conduct of repairs on vehicles provided for in subparagraph (d);
- (g) natural disasters, large-scale accidents, epidemics and other emergencies.

(2) The use provided for in paragraph (1), subparagraphs (a), (b), (c) and (g) shall be permitted on condition that it does not lead to unjustified deviation from the ordinary use of the protectable industrial design or infringe without grounds the legal interests of its right holder, provided that the legal interests of third parties are taken into account. In the opposite case, the right holder may demand appropriate compensation for harm caused by the unauthorized use of the industrial design.

(3) The actions of public authorities shall not be deemed to infringe rights in an industrial design if they are taken in good faith in the process of applying this Law.

Article 22. Exhaustion of rights

Rights in a registered or unregistered industrial design shall not extend to actions relating to an article that embodies or uses an industrial design included in the scope of protection of registered or unregistered industrial designs, if that article is released onto the market on the territory of the Republic of Moldova by the right holder in that registered or unregistered industrial design or with the right holder's consent.

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

(1) Any third party may avail itself of the right of prior use if it can prove that, before the filing date of the application or – if priority is being claimed – before the date of priority, it had in good faith used in the Republic of Moldova an industrial design included in the scope of protection of registered industrial designs and not a copy of the industrial design in question, or had intended or made serious and substantial preparations towards such use.

(2) The right of prior use shall permit a third party to continue to use an industrial design free of charge for the purposes for which it began or prepared for that use before the filing date of the application or – if priority is being claimed – before the date of priority of the registered industrial design, without extending the volume of production and without paying a royalty.

(3) The right of prior use shall not permit a license to be granted to a third party for use of the industrial design in question.

(4) If the third party is an enterprise, the right of prior use may be transferred only together with that section of that legal entity's activities under which the industrial design was being used or preparation for use was being made.

Article 24. Preventive marking

(1) The right holder may place on the article a preventive marking in the form of a letter D within a circle, accompanied by the right holder's name or the registration certificate number.

(2) The absence of a preventive marking shall have no legal consequences.

Part 5

Refusal of an application for registration. Invalidity

Article 25. Refusal of an application for registration. Recognition of invalidity

(1) An application for the registration of an industrial design may be refused by a decision of the Agency under Articles 48-50 or by a court ruling resulting from an objection to a decision by the Agency.

(2) A registered industrial design shall be recognized as invalid on the basis of an application for annulment filed with, the district court where AGEPI premises are located or as a result of a countersuit filed in connection with an infringement of rights.

(3) An industrial design may be recognized as invalid even after the right in it has expired or been waived.

(4) An unregistered industrial design shall be recognized as invalid on the basis of an application for annulment filed with the district court where AGEPI premises are located, or as a result of a countersuit filed in connection with an infringement of rights.

Article 26. Grounds for refusal of an application for registration. Grounds for recognition of invalidity

(1) An application for the registration of an industrial design shall be refused and a registered or unregistered industrial design recognized as invalid if:

(a) the industrial design is not in fact an industrial design as defined in Article 6, paragraph (1);

(b) the industrial design does not meet the requirements of Articles 7-11;

(c) according to a court ruling, the applicant or right holder does not possess the right in the industrial design as defined in Articles 15 and 16;

(d) the industrial design is in conflict with an existing industrial design that had become publicly known after the filing date of the application or, if priority is being claimed, after the date of priority, and which has been protected since an earlier date of registration or application for registration;

(e) the industrial design includes a protectable distinguishing mark, the owner of which is entitled to refuse permission for its use;

(e¹) a protected mark is used in an industrial design, and the applicant for the

registration of the industrial design does not possess the right to use the

protected mark according to the legislation in force;

(f) the industrial design uses, without permission, works protectable under copyright legislation;

(g) the industrial design unlawfully 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).

(h) the registration contravenes other normative acts than those in intellectual property.

(2) An application for the annulment of an industrial design on the grounds mentioned in paragraph (1) may be made only by an affected party.

(3) An industrial design that is refused, or a registered industrial design that is recognized as invalid, on the grounds of paragraph (1), subparagraphs (b), (e), (f) or (g) may be registered or retain its validity, as appropriate, in an amended form, if in that form it satisfies the conditions for protection and retains the substance of an industrial design. "Registration or retention of validity in an amended form" shall be understood to mean registration accompanied by a partial waiving of rights in a registered industrial design by the right holder, or the entry in the National Register of registered industrial designs of a court ruling recognizing part of an industrial design as invalid.

Article 27. Consequences of invalidity

(1) If an industrial design is declared invalid, the rights provided under this Law shall be deemed never to have applied.

(2) The retroactive force of the recognition of invalidity of an industrial design shall not affect:

(a) final court rulings executed before the issue of the ruling recognizing invalidity;

(b) agreements concluded and carried out before the issue of the ruling recognizing invalidity. If there are valid circumstances, a reasonable level of compensation may be claimed for costs incurred on the basis of such 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 whole or in part by means of assignment or a licensing agreement or through succession.

(2) An industrial design may be the subject of compulsory execution or in rem jurisdiction.

(3) The Pledge on industrial design shall be registered in the Register of security interests according to the Law on Pledge. Other industrial design rights are registered in the National Register of applications for registration of industrial designs and the National Register of registered industrial designs, and are opposable to third parties from the registration date".

(4) Details regarding the transfer of rights shall be published in BOPI.

[Art. 28(3) in the wording of the Law no.173 of 25.07.14, in force as from 08.11.2014]

(5) Assignment and licensing contracts, referred to in paragraph (1), or other documents enclosed to the application for the registration of these contracts shall be open to public inspection upon an express agreement of the contracting parties or under the court decision, unless otherwise provided by the legislation in force.

Article 29. Licensing agreement

(1) In a licensing agreement, a right holder in an industrial design (licensor) shall transfer the right to use the industrial design to any other person (licensee), but shall retain the right of ownership in it. Licenses may be exclusive or non-exclusive.

(2) In an exclusive license, the licensor shall transfer to the licensee exclusive rights to use of the industrial design and refrain from concluding any agreement with third parties on the right to issue licenses for the same industrial design in the same territory. The licensor may retain the right to continued use of the industrial design (partial license) or refrain from any use of it (full license).

(3) In a non-exclusive license, the licensor shall grant the right to use the industrial design (through a partial or full license), while retaining both the right to use it independently and the right to grant non-exclusive licenses to third parties.

(4) A license may include a requirement for the licensee to pay incomes to the licensor or be granted free of charge.

(5) In accordance with current legislation, a licensing agreement may not include procedures or conditions that could lead to the misuse of intellectual property rights and thus have a negative influence on competition on the market in question, such as a condition obliging the licensee to

pass technical information to the licensor, conditions preventing a challenge to the force of law or a compulsory package of licensing conditions.

(6) Without prejudice to the provisions of the licensing agreement, a licensee may not file a suit for the infringement of rights in an industrial design other than with the consent of the right holder. The holder of an exclusive license may file a suit of this kind if the right holder in the industrial design did not itself begin to do so within an appropriate period.

(7) To compensate for any harm caused, a licensee shall be entitled to take part in the judicial investigation of a suit filed by the right holder in an industrial design in connection with a rights infringement.

Chapter III

REGISTRATION OF AN INDUSTRIAL DESIGN

Part 1. Application for the registration of an industrial design

Article 30. Filing an application for registration

(1) An application for the registration of an industrial design shall be filed with the Agency by the party that holds the right in the industrial design under Articles 15 and 16 or is covered by the force of Article 31.

(2) The application shall be filed in the state language on a standard form approved by the AGEPI. The documents enclosed with the application shall be submitted in the state language. If any of the documents enclosed are submitted in another language, a translation into the state language of these documents or extracts thereof shall be submitted on the filing date of the application.

(3) An application for registration shall be filed by any means approved by the Agency under the Regulation.

Article 31. Representation

(1) On condition that the provisions of paragraph (2) are observed, no-one shall be obliged to have a representative for dealings with the Agency.

(2) Natural persons and/or legal entities not having their main place of residence or business in the Republic of Moldova, or having no real, active industrial or commercial undertakings there shall be obliged to have a representative for their dealings with the Agency in respect of any procedure, apart from the filing of an application, under paragraph (3) of this Article.

(3) The natural persons and/or legal entities mentioned in paragraph (2) may be represented in their dealings with the Agency under this Law only by a patent attorney, working in particular in the area of industrial design protection.

(4) Such a patent attorney shall perform his/her activities in accordance with regulations established by the Government.

(5) Natural persons and/or legal entities having their main place of residence or business in the Republic of Moldova or having real, active industrial or commercial undertakings there may be represented in their dealings with the Agency by one of their employees.

(6) The person representing the interests of the applicant or right holder shall submit to the Agency a document signed by the applicant or right holder giving him/her power of attorney for the matter in question.

Article 32. Conditions to be satisfied by an application

(1) An application for the registration of an industrial design shall contain:

(a) a request for the registration of the industrial design;

(b) the applicant's details;

(c) graphical representations of the industrial design, suitable for reproduction, providing full details of the external appearance of the article;

(d) an indication of the articles in which the industrial design is to be embodied or used.

(2) An industrial design application may include:

(a) the identity of the author or a declaration, for which the applicant is liable, that the author has waived the right to be identified;

(b) details of the patent attorney or other representative;

(c) information concerning priority;

(d) the classification of the article in which the industrial design is to be embodied or used under the terms of the appendix to the Locarno Agreement Establishing an International Classification for Industrial Designs of October 8, 1968 (hereinafter the Locarno Classification);

(e) a request for postponement of publication under Article 43, paragraph (2).

(3) The following shall be enclosed with the application:

(a) a certificate of power of attorney, if the application is filed through a patent attorney or other representative;

(b) documents certifying the priority of the industrial design, where priority is claimed;

(c) a description of the industrial design, upon the applicant's willingness;

(d) a document confirming the payment of fees or, if necessary, grounds for exemption.

(4) Other conditions for drawing up and filing an application for the registration of an industrial design shall be determined by the Regulation;

(5) A correctly formulated application for the registration of an industrial design shall contain the information stipulated in paragraph (1), subparagraphs (a), (b) and (c).

Article 33. Application for multiple registration

(1) A number of industrial designs may be included in one multiple registration application. An application for multiple registration may not contain more than 100 industrial designs.

(2) With the exception of ornamental articles, an application for multiple registration may be filed if the articles embodying or using the industrial design all belong to the same class in the Locarno Classification.

(3) An additional fee shall be required for a multiple application for registration.

(4) If a multiple application for registration is filed by a group of applicants, they must all file for all the industrial designs contained in the application.

(5) Each of the industrial designs in an application for multiple registration may be considered independently of the others. One industrial design may, independently of the others, have its validity extended, be used or licensed, or be subject to compulsory execution measures or other jurisdiction in rem.

Article 34. Application filing date

The date on which a correctly formulated application for the registration of an industrial design is deemed to have been filed (the filing date of the application) shall be the date on which the Agency receives the application complete with the information stipulated in Article 32, paragraph (1), subparagraphs (a), (b) and (c).

Article 35. Amendment of an application by the applicant

(1) An applicant may, within two months of the filing date of an application, make amendments and clarifications to that application and the enclosed documents, as long as these do not alter the substance of the industrial design, without paying any fee for the introduction of the amendments.

(2) Amendments and clarifications that do not alter the substance of the industrial design may still be made after the period provided in paragraph (1) has elapsed but shall require payment of a fee.

(3) An application for multiple registration or multiple registration certificate may be divided into a number of separate applications or registration certificates. The conditions for this division shall be laid down in the Regulation.

(4) Two or more applications with the same filing date may be merged into one, on condition of compliance with the provisions of Article 33, paragraphs (1), (2) and (4).

(5) Where there is more than one applicant, amendments and clarifications shall be made only with the written consent of all the applicants.

Article 36. Withdrawal of an application

- (1) An applicant may withdraw an application at any time before the date on which the application for registration of an industrial design is accepted or registration is refused.
- (2) If the application is multiple, the withdrawal may be made in respect of all or only some of the industrial designs contained therein.
- (3) Where there is more than one applicant, the application may be withdrawn only with the written consent of all the applicants.
- (4) An application or an industrial design, in the case of an application for multiple registration, or a graphic representation of the industrial design shall be deemed withdrawn entirely if the irregularities relating to them have not been remedied within the time limit specified.
- (5) The application shall also be deemed withdrawn, where it is found that:
 - a) the fee for registration and issue of the registration certificate has not been paid, in the amount or within the time limit established;
 - b) the permission to use the official or historical name of the State in an industrial design has not been filed;
 - c) the document confirming the consent of the competent body on the use of official names of administrative and territorial units has not been filed.
- (6) The request for permission to use the official or historical name of the State in an industrial design and / or the request for permission to use the official name of an administrative and territorial unit shall have suspensory effect on the term of payment of the prescribed fee.
- (7) The period between the date of filing the request for permission to use the official or historical name of the State in an industrial design or the request for permission to use the official name of an administrative and territorial unit and the date of issuing the decision to grant such permission shall not be included in the computation of the payment term of the fee for registration and issue of the certificate, provided that a copy of this application is submitted within one month of its filing.

Part 2

Priority

Article 37. Effect of the right of priority

The effect of the right of priority shall consist in the fact that the date of priority shall be the filing date of the application as defined in Articles 7-10, 23, Article 26, paragraph (1), subparagraph (d) and Article 43, paragraph (2).

Article 38. Right of priority

(1) A party that has filed an application for the registration of an industrial design or a utility model in a State that is party to the Paris Convention or the Agreement establishing the World Trade Organization, or a successor to such a party, shall, when filing an application with the Agency for the registration of the same industrial design or utility model, enjoy a right of priority for six months from the filing date of the first application, the filing date itself not being included.

(2) Any filed application that has the force of a correctly formulated domestic filing of an application under the national legislation of the country in question or under bilateral or multilateral agreements in the area shall be acknowledged as grounds for the existence of a right of priority.

(3) A correctly formulated domestic filing of an application shall be understood to mean any filing adequate to establish a filing date in the country in question, regardless of the ultimate outcome of the application.

(4) If the first application is filed in a country that is not a party to the Paris Convention or the Agreement establishing the World Trade Organization, paragraphs (1)-(3) shall apply only if established, published cases show that applications filed with the respective Office of that country are granted a right of priority under conditions and with results similar to those provided for in this Law.

(5) A subsequent application filed with the Agency for the same industrial design or utility model as a prior application shall be considered as a first application, and its filing date as the start of the term of priority, in cases where, on the filing date of the subsequent application, that prior application had already been withdrawn, abandoned or refused and therefore was not available to the public, or where no rights subsist in relation to that application any longer and it therefore does not serve as a basis for claiming a right of priority. A prior application may therefore not serve as a basis for claiming a right of priority.

(6) Priority may be established on the basis of several previously filed applications, in which case the term and conditions of priority laid down in paragraph (1) shall be observed for each of them.

(7) If an application for multiple registration does not meet the filing conditions laid down in Article 33, the applicant may divide it into several different applications by assigning each industrial design featured in the multiple application to its own application. The separate applications shall retain the same filing date and, where appropriate, the same date of priority as the multiple application.

(8) Likewise, an applicant may divide a multiple application into several different applications at his/her own initiative, by assigning each industrial design featured in the multiple application to its own application. The separate applications shall retain the same filing date and, where appropriate, the same priority date as the multiple application.

Article 39. Exhibition priority

(1) If an applicant has exhibited articles embodying or using an industrial design at an international exhibition, then it may, when filing an application for the registration of this industrial design, request a right of priority dating from the first exhibition display of the articles, provided that the application for registration is filed within six months of the date of exhibition of the articles in question.

(2) An exhibition shall be deemed international if it is formally organized and producers from a number of countries take part in it, and if it is advertised accordingly to the general public.

(3) Exhibition priority shall not extend the priority term established in Article 38, paragraph (1).

Article 40. Claiming priority

(1) An applicant wishing to make use of the right of priority on the grounds of a prior application shall be obliged to claim that priority and submit documents confirming the legitimacy of the priority claim, together with translations of those documents into Moldovan.

(2) An applicant wishing to make use of the right of exhibition priority shall be obliged to claim that priority and submit confirmation issued by a competent body that articles embodying or using the industrial design were displayed at the exhibition in question, together with a translation of that confirmation into Moldovan.

(3) Documents confirming the legality of a priority claim on the basis of a prior application and a translation of those documents into Moldovan, or a confirmation that articles embodying or using the industrial design have been displayed at an exhibition and a translation of that confirmation into Moldovan, shall be submitted within three months of the filing date of the application.

Article 41. Transfer of the right of priority

(1) The right of priority may be the subject of an assignment agreement.

(2) If an applicant claims a right of priority belonging to another party, the application for registration of the industrial design shall be accompanied by an assignment agreement for this right or some other document confirming the applicant's right to claim priority on account of that first application. In such a case, the party that filed the application and has assigned priority to the other party shall no longer have priority in respect of that first application.

(3) An assignment agreement for a right of priority shall be submitted in writing at the same time as or within three months of the date of the claim for priority. Failing this, the priority claimed shall not be recognized.

Part 3

Registration procedure

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

(1) Within two months of the date of receipt of an application, the Agency shall examine the application and accompanying documents for compliance with formal filing requirements.

(2) The procedure for the examination of an application shall include verification of:

(a) its compliance with the conditions necessary to establish the application filing date under Article 32, paragraph (1), subparagraphs (a), (b) and (c);

(b) its compliance with the other conditions provided for under Articles 30 and 31, Article 32, paragraph (1), subparagraph (d) and paragraphs (2), (3) and (4), Article 33 and Part 2 of this Chapter.

(3) If the application satisfies the conditions for establishing the application filing date under Article 34, the Agency shall enter the details of the application in the National Register of applications for registration of industrial designs and shall notify the applicant that the application has been accepted for consideration.

(4) If the examination provided for under paragraph (2) reveals rectifiable infringements in the way the application and/or attached documents have been formulated, the Agency shall require the applicant to rectify them.

(5) If the infringements have to do with the conditions laid down in Article 32, paragraph (1), subparagraphs (a), (b) and (c), and if they are rectified by the applicant within three months of the date on which the Agency first receives the application, the filing date of the application shall then be established as the date on which the infringements were identified. In such a case, the Agency shall enter the details of this application in the National Register of applications for registration of industrial designs and shall notify the applicant that the application has been accepted for consideration. If the infringements are not rectified in that period and the applicant does not submit a request for an extension of that period of no more than three months, with payment of a fee, the application shall be deemed not to have been filed and the applicant notified accordingly.

(6) If the infringements concern the conditions laid down in Article 30 paragraph (2), Article 31, Article 32 paragraph (1) letter d), paragraph (2) letters a), b) and e), paragraph (3) letter a), paragraph (4), and the applicant rectifies them within 2 months of the date of receipt of the notification, the application for registration shall be published in BOPI in accordance with Article 43, taking into account the provisions of paragraphs (7), (8), (9) of this Article. If the infringements are not rectified within that period and the applicant does not submit a request for an extension of no more than three months, with payment of a fee, the application shall be deemed to have been withdrawn and the applicant notified accordingly.

(7) If the classification of the article is not given in the application or is given incorrectly, the Agency shall classify the article in which the industrial design is to be embodied or used under the Locarno Classification.

(8) If the requirements laid down in Article 33 for an application for multiple registration are not met, the applicant shall be obliged within 2 months of the date of receipt of the notification to divide the application into separate applications for each group of industrial designs in accordance with those conditions. If the applicant does not divide the application up within the required period and does not submit a request for an extension of the required period, AGEPI shall conduct an examination only for the first group of industrial designs, the others shall be deemed withdrawn.

(9) If the infringements concern a claim of priority and may be rectified but are not rectified by the applicant within the periods established in Part 2 of this Chapter, the right of priority of the application shall not be recognized.

Article 43. Publication of an application for registration

(1) Once an application for registration has been entered in the National Register of applications for registration of industrial designs, it shall be published in BOPI within three months of its filing date, provided that it complies with the requirements laid down in Articles 30-33 and on payment of a publication fee where necessary. The content of the information published shall be determined by the Regulation.

(2) At the request of the applicant, publication as provided for in paragraph (1) may be postponed by up to 30 months from the filing date of the application or from the date of the claim of priority.

Article 44. Observations by third parties

(1) For three months following the date of publication of the application for registration in BOPI, third parties may submit to the Agency in writing, free of charge, reasoned observations concerning the registration of the industrial design.

(2) Reasoned observations by third parties shall be taken into consideration in the substantive examination.

Article 45. Objections

(1) For three months following the date of publication of the application for registration in BOPI, interested parties may submit reasoned objections to the registration of the industrial design on the following grounds:

(a) the industrial design does not meet the requirements of Article 6 or infringes ordre publique or accepted moral standards;

(b) the industrial design uses, without permission, works protectable under copyright legislation or uses any protectable intellectual property subject matter;

(c) the applicant is not the first to file such an application for registration.

(2) A reasoned objection shall be submitted in writing to the Agency. An objection shall be deemed to have been submitted only once a fee has been paid.

Article 46. Examination of an objection

(1) During the examination of an objection, the Agency shall verify whether the filing conditions for the objection laid down in Article 45 have been satisfied and whether the opinion given is the applicant's own, and shall evaluate the evidence presented by both parties.

(2) The examination of an objection may be suspended:

(a) when the basis for the objection is an application for the registration of an industrial design in respect of which a final decision has not yet been made;

(b) when an opposing industrial design is in the process of being recognized as invalid but a final decision has not yet been made;

(c) on a reasoned request by one of the parties.

(3) If, as a consequence of the examination of the objection, it is established that all or some of the industrial designs in question are not eligible for registration, the objection shall be upheld in relation to those industrial designs. In the opposite case, the objection shall be refused.

Article 47. Substantive examination

(1) Within 3 months following the expiry date for submitting observations and oppositions by third parties, during the substantive examination, AGEPI shall verify whether any grounds for refusal of an application provided under Article 26, paragraph (1) apply, taking into consideration the results of the examination of any observations and oppositions submitted.

(2) The Agency may ask an applicant for additional information that it considers necessary to identify the applicant or author, to complete the application correctly or to ensure that it satisfies the conditions for protection. The applicant shall provide the information within three months of the date of the request. The information may not alter the substance of the industrial design. If the applicant does not satisfy this condition in the required period and does not submit a request for an extension of that period of no more than three months, with payment of a fee, the application shall be deemed to have been withdrawn on the grounds that it is impossible to conduct a substantive examination. The applicant shall be notified accordingly within one month of the decision being taken.

(3) If an industrial design complies with the provisions of Article 26, paragraph (1), subparagraph (a) and is not covered by the force of Article 11, the Agency shall examine whether the industrial design is in conflict under Article 26, paragraph (1), subparagraph (d) with any earlier industrial design that has the same purpose.

(4) The conditions for verifying the compliance of an industrial design with other requirements laid down in Article 26, paragraph (1) and the time limits for this substantive examination shall be established in the Regulation.

(5) An application for registration may not be refused without the applicant being given the opportunity to withdraw or amend the application or submit evidence supporting the registration of the industrial design, within two months of the date of receiving the information obtained from the substantive examination.

(6) The results of the substantive examination shall be cited in the examination report of the application for the registration of the industrial design.

Article 48. Decision on the results of a substantive examination

(1) As a result of the substantive examination, and on the basis of the examination report for the application for registration, the Agency shall make one of the following decisions:

(a) to register the industrial design, if it is established that the industrial design satisfies the conditions for the granting of protection;

(b) to refuse the application on the grounds contained in Article 26, paragraph (1).

(2) If only some of the industrial designs contained in an application for multiple registration satisfy the conditions for the granting of protection, those industrial designs shall be registered and the others, which do not satisfy the conditions for the granting of protection, refused.

(3) The Agency shall give reasons for its decisions. They shall be based exclusively on grounds or evidence in respect of which the parties have been given the opportunity to put forward their opinion.

(4) The Agency shall notify the applicant of the decision to register or refuse an industrial design within a month of the date of that decision being made and shall publish it in BOPI.

Article 49. Appeals

(1) Appeals against any decisions concerning applications for the registration of industrial designs may be filed with the Agency's Commission for the Examination of Objections, which is competent to conduct extrajudicial investigation of intellectual property disputes. Appeals shall be submitted by interested parties within two months of the date of receipt of the decision or by third parties within 30 days of the information being published. An appeal shall have the effect of suspending the decision.

(2) An appeal shall be made in writing and include the grounds for the appeal; it shall be deemed to have been submitted on payment of a fee.

Article 50. Consideration of an appeal

(1) In considering an appeal, the Commission for the Examination of Objections shall, as appropriate, give each party an established period of time in which to submit its comments on the report of the other party or on that of the Commission for the Examination of Objections. If any disputes of a normative nature should arise, the Commission for the Examination of Objections shall be governed by the standards of the Code of Civil Procedure.

(2) As a result of its consideration of an appeal, the Commission for the Examination of Objections shall issue one of the following decisions:

(a) to leave the contested decision in force;

(b) to revoke the contested decision, either in whole or in part;

(c) to review the contested decision;

(d) to take any other action arising from the examination process.

(3) The Commission for the Examination of Objections may submit a case for further examination and establish a time limit within which results of that examination must be made known.

(4) If significant circumstances arise that were not known when the Commission for the Examination of Objections first considered the appeal, an interested party may, within a period established by procedure, renew its appeal to the Commission for the Examination of Objections. The same right shall also apply to parties that did not know or could not have known about the consideration of the first appeal and also to parties whose rights and interests have been affected by a decision of the Commission for the Examination of Objections and which have grounds sufficient to require an unbiased settlement of the case.

(5) Decisions of the Commission for the Examination of Objections shall enter into force from the date on which they are made, and may be appealed in court within the periods established by legislation on civil procedures.

[Art. 50(6) repealed by the Law no.101 of 26.05.16, in force from 24.06.2016]

Article 51. Annulment or withdrawal of decisions

(1) Prior to the issue of a registration certificate, the Agency shall annul a decision already taken:

(a) on the basis of a court ruling;

(b) on the basis of a decision of the Commission for the Examination of Objections.

(2) Prior to the issue of a registration certificate, the Agency may on its own initiative withdraw a decision already taken if significant circumstances have arisen preventing the issue of the registration certificate.

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

(1) Following the decision to register an industrial design, if no appeals have been lodged against the registration under Article 49, paragraph (1), or if any appeals received have been denied, the Agency shall enter the details of registration in the National Register of registered industrial designs and, on payment of a fee within three months of the registration date, shall issue the right holder with a registration certificate, giving notice of this in BOPI.

(2) If there are several right holders, the registration certificate shall, unless otherwise indicated, be issued to only one of them – the first on the list – while the others shall be entitled to receive a copy of the registration certificate.

(3) If the right holder and the author are not the same person, the author shall be entitled to receive a copy of the registration certificate.

Article 53. Reinstatement of rights

(1) If one of the Agency's procedural deadlines is missed, leading to a loss of the rights in an application for registration or in a registration certificate, the applicant or right holder may have its rights reinstated on request. The provisions of this Article shall not apply to the deadlines laid down in paragraph (2) of this Article or in Article 38, paragraph (1), Article 39, paragraph (1) or Article 45, paragraph (1).

(2) At the request of the applicant or right holder, the Agency shall permit the reinstatement of its rights if it is established that the deadline was missed despite every effort in good faith to meet the required conditions or as a consequence of force majeure. Rights shall be reinstated on submission of a request within 12 months of the date of the missed deadline for carrying out the relevant action, together with payment of a fee and completion of the omitted procedure and the submission of documents confirming the force majeure. Rights shall not be reinstated if, before the appeal for reinstatement, another party has already acquired a right in an industrial design that is identical as defined in Article 7, paragraph (2). If a request to extend the validity of a registration certificate is not submitted or the fee for extension not paid, the additional six-month period provided for under Article 14, paragraph (4) shall be subtracted from the 12-month period (for the extension of the validity of a registration certificate).

(3) If rights are reinstated, the applicant or right holder may not claim for infringement of its rights from third parties who, during the period in which rights in the industrial design application or registration were forfeited and before notice was published concerning their reinstatement, had in all good conscience released onto the market an article embodying or using an industrial design covered by the scope of the protection afforded to the industrial design to which rights have since been reinstated.

(4) A third party covered by paragraph (3) may appeal, on payment of a fee, against a decision to reinstate the rights of an applicant or right holder in an industrial design within two months of the date on which notice is published of the reinstatement of rights.

Chapter IV

TERMINATION OF RIGHTS IN A REGISTERED INDUSTRIAL DESIGN

Article 54. Expiry of a right

When a registration certificate is not extended under Article 14 or its term of 25 years from the filing date of the application expires, the Agency shall record in the National Register of registered industrial designs that the registration of this industrial design has ceased to have effect as of the expiry date of the last five-year term of protection, and shall publish this in BOPI.

Article 55. Waiver of a right

(1) A right holder may waive its right in a registered industrial design, in whole or in part, by submitting a statement of waiver to the Agency. The statement of waiver shall be deemed to have been submitted on payment of a fee.

(2) The Agency shall register the waiver of the right in a registered industrial design and shall publish notice of it in BOPI within four months of the submission date of the statement of waiver. The waiver shall take effect once it has been entered in the National Register of registered industrial designs.

(3) If one of a number of right holders fully waives its right in a registered industrial design, the registration certificate shall not lose its force and shall remain in the possession of the remaining right holders.

(4) If all right holders fully waive their rights in a registered industrial design, they shall be obliged to notify the author of the waiving of their rights at the same time as submitting the statement of waiver to the Agency. In this case, the author shall have the preferential right to obtain a certificate of registration in his/her own name on condition of declaring this within three months of the date of notification of the waiver by the right holder.

(5) The provisions of this Article shall also apply to applications that have been approved for registration of industrial designs, but for which registration certificates have not yet been issued.

(6) An industrial design may be the subject of a partial waiver as defined in Article 26, paragraph (3), provided that, in its corrected form, it satisfies the conditions for protection and retains the substance of the industrial design.

(7) The waiver of the right may be entered in the National Register of registered industrial designs only with the consent of the right holder identified in the Register. If a license agreement is recorded in the National Register of registered industrial designs, the waiver may be recorded therein only once the right holder has supplied evidence of having notified the licensee of its intention to waive the right. The waiver shall be entered in the National Register of registered industrial designs within a period of time laid down in the Regulation..

(8) If a suit has been filed claiming the right in a registered industrial design under Articles 15 and 16, any waiver issued during this period may be entered in the National Register of registered industrial designs only with the consent of the party filing the suit.

Article 56. Invalidity

- (1) An interested party may submit a claim to the district court where AGEPI premises are located calling for the invalidation of a registered industrial design on the grounds indicated in Article 26.
- (2) A claim for invalidation shall be submitted in writing, with reasons. A claim for invalidation shall be deemed to have been submitted only on payment of a fee.
- (3) The decision to recognize an industrial design as invalid shall be entered in the National Register of registered industrial designs as soon as it obtains legal force.

Chapter V

ENSURING OBSERVANCE OF RIGHTS

Article 57. Suit for infringement of rights

- (1) Any natural person or legal entity or any other interested parties with claims in relation to the use of an industrial design may file a suit in court for the protection of their rights and legal interests.
- (2) A suit for infringement of exclusive rights or the legal interests arising therefrom may be filed by the following parties:
 - (a) the right holder in the registered or unregistered industrial design;
 - (b) any party entitled to use the industrial design, including licensees;
 - (c) other natural persons or legal entities entitled to represent the right holder.

Article 58. Suit to establish non-infringement of rights

- (1) Any party which uses an industrial design protectable on the territory of the Republic of Moldova or has made serious and genuine preparations for such use may ask the right holder to state its position on whether that use constitutes infringement of the protection title. The right holder shall be obliged to respond to the party in question.
- (2) If the interested party is dissatisfied with the right holder's position under paragraph (1) or the right holder fails to state its position within three months, the interested party may file a suit with the competent court to establish its non-infringement of rights.
- (3) A suit to establish non-infringement of rights may not be filed by the same party in respect of the same object if a court has already issued a ruling on the infringement or non-infringement of rights.

Article 59. Measures to secure evidence before filing a suit

- (1) Any authorized party that produces adequate evidence in support of the infringement of its rights may, before filing a suit for these unlawful activities, request a court or other competent

body to take provisional measures to secure relevant evidence provided that the confidentiality of the information obtained is guaranteed and on condition that an adequate security is paid, or a guarantee of equivalent value pledged, to compensate the harm caused to the respondent should any of the infringements not be proven.

(2) In taking measures to secure evidence, the court may:

(a) require a detailed description of the actions claimed to be causing the infringement;

(b) seize the contested product;

(c) seize materials and equipment used in the process of producing and/or distributing the contested product;

(d) require relevant documents to be submitted.

(3) The court or other competent body shall carry out the procedure for undertaking measures to establish evidence in accordance with the Code of Civil Procedure. Measures to secure evidence shall be taken with the participation of a court bailiff, accompanied, where necessary, by an Agency representative and a police officer.

Article 60. Securing evidence in urgent cases

(1) Measures to secure evidence may be undertaken without hearing the respondent if a delay might result in irreparable harm being done to the right holder or if there is a risk that the evidence will be destroyed. The party whose interests are affected by such a decision shall be notified of such a court order immediately.

(2) The party whose interests are affected may demand a review of the court order to secure evidence.

Article 61. Invalidity of measures to secure evidence

(1) Measures to secure evidence shall be null and void:

(a) if the plaintiff does not file a suit for infringement of rights within 20 working days with the courts;

(b) consequent to any unlawful action or inaction by the plaintiff;

(c) if it is established that no infringement of rights has been committed or attempted;

(d) in other cases provided for in current legislation, by a court ruling.

(2) If harm has been done through measures to secure evidence that have then been declared null and void, the plaintiff shall be obliged to compensate the respondent accordingly.

Article 62. Producing and securing evidence in the context of a suit for infringement of rights

(1) If a party produces evidence supporting its claims and provides information that certain evidence is in the possession of the opposing party, the court shall require a sufficient and reasonable quantity of this evidence to be produced, providing that the confidentiality of the information is maintained. In the case of infringement of commercial rights, the court may additionally order the parties to produce banking, financial or commercial documentation.

(2) In cases where one of the parties to proceedings denies access to the information required without good grounds, or in bad faith delays the production of such information, hindering the resolution of the conflict, the court shall rule either in favor of or against the court action being taken on the basis of the information that has been produced – including the complaint or claim of the party that has been denied access to information – provided that both parties are given the opportunity to have their claims or evidence heard.

Article 63. Right to information

(1) If, in the process of investigating a dispute, a court establishes that rights in an industrial design have been infringed, it may request information concerning the production and channels of distribution of goods infringing the right in an industrial design from the infringer and/or any other party:

(a) found to be in possession of counterfeit goods intended for sale;

(b) discovered to be using contract production services for commercial purposes;

(c) discovered to be providing services used in activities that infringe rights, for commercial purposes;

(d) identified, by a party mentioned in subparagraphs (a), (b) or (c), as being involved in the creation, manufacture or distribution of such goods or the provision of such services.

(2) The information provided under paragraph (1) shall, as appropriate, contain:

(a) names and addresses of producers, distributors, suppliers and prior owners of the goods, as well as suspected wholesale and retail sellers;

(b) information on the quantities of goods produced, supplied, obtained or ordered and their prices.

(3) Paragraphs (1) and (2) shall be applied without prejudice to legislative and regulatory standards that:

(a) permit a right holder to obtain more detailed information;

(b) regulate the use of information presented under this Article in civil or criminal cases;

(c) determine liability for misuse of the right to information;

(d) permit a refusal to produce information that might force the party mentioned in paragraph (1) to admit involvement or the involvement of close family members in the infringement of rights in an industrial design; or

(e) regulate the preservation of confidentiality of sources of information and the handling of personal data.

Article 64. Measures to secure a suit for the infringement of rights

(1) On establishing that rights in an industrial design have already been or are unavoidably about to be infringed, a court may, at the request of the right holder, impose measures to secure a suit for the infringement of rights against the infringer and/or intermediaries, such as:

(a) issue of an instruction temporarily prohibiting certain activities that constitute an infringement of the rights in an industrial design or permitting such activities only on payment of a security adequate to compensate the harm caused to the right holder;

(b) seizure of property suspected of infringing the rights in an industrial design, in order to prevent its being commercially traded;

(c) seizure of any property belonging to the infringer, including the freezing of bank accounts and the provision of banking, financial or commercial documents, if the infringement is committed on a commercial level and there is a risk of non-payment of compensation.

(2) Measures to secure rights may, in accordance with Article 60, be imposed without hearing the respondent if the delay involved might lead to irreparable harm being done to the right holder or where there is a risk that evidence will be destroyed. The party whose interests are affected shall be notified of such a court ruling immediately.

Article 65. Corrective measures

(1) Having established that an infringement of rights has taken place, a court may, at the request of the plaintiff, order measures to be taken with regard to goods that infringe rights in an industrial design and, in appropriate cases, to materials and equipment used to create and manufacture these goods. These measures shall include:

(a) temporary removal of the goods from commercial trading;

(b) permanent removal of the goods from commercial trading; or

(c) destruction – in cases where the industrial design cannot be removed from the article without the destruction of the article, and in cases where the removal of the industrial design would be inadequate to rectify the infringement of rights.

(2) The measures laid down in paragraph (1) shall be applied at the expense of the respondent, except in cases where there are serious grounds preventing this.

(3) In considering a request for the application of corrective measures, a court shall be guided by the principle of justice and shall ensure that the means of defense employed are proportionate to

the seriousness of the infringements committed; it shall also take into account the interests of third parties.

Article 66. Ensuring enforcement of a court ruling

Having ruled that rights in an industrial design have been infringed, a court may, at the request of the right holder, take measures in respect of the infringer to ensure the application of a court ruling; through these measures, the infringer shall be ordered to terminate any actions constituting an infringement of the right holder's rights. To this end, the court may require the infringer to pay an adequate security or provide a guarantee of equivalent value. The right holder may request that such measures also be applied to intermediaries whose services are used by third parties to infringe the right holder's rights in the industrial design.

Article 67. Alternative measures

If an infringement of rights in an industrial design has, either unintentionally or because of negligence, caused material damage, a court may, at the request of the affected party, oblige the infringer to pay financial compensation instead of undertaking measures to rectify rights as provided for in this Chapter. In determining the sum of financial compensation, account shall be taken of the level of the royalty that the right holder could have received had permission been obtained to use the industrial design.

Article 68. Compensation for harm

(1) At the victim's request, a party that has infringed the rights in an industrial design, either knowingly or with reasonable grounds to know, shall compensate the right holder for the material harm caused to that right holder by the infringement of its rights. In determining the amount of the compensation:

(a) the calculation shall take account of all relevant circumstances, such as the negative economic impact – including income lost by the victim and income obtained unlawfully by the respondent – and, in appropriate cases, other elements such as the emotional distress caused to the right holder by the infringement; or

(b) as an alternative, a single sum may be set, calculated to equal the minimum level of royalty or compensation that would have been paid to the right holder if the respondent had requested permission to use the industrial design in question.

(2) If the infringer committed the infringement unknowingly or without reasonable grounds to know, it shall compensate the right holder for lost income and harm caused, as established in accordance with legislation in force.

Article 69. Publication of court rulings

(1) Concerning suits for infringement of protectable rights in industrial designs, the competent court may, at the request of the plaintiff and the expense of the infringer, order appropriate measures to be taken to disseminate information concerning its ruling, including publicizing it and also publishing it in full or in part.

(2) The competent court may order additional measures to publicize certain circumstances appropriately, including by making the information known to the general public.

Chapter VI

GENERAL PROVISIONS

Article 70. Examination of disputes

(1) Disputes, involving natural persons and legal entities, arising from the application of this Law shall be examined by the Agency's Commission for the Examination of Objections, the district court where AGEPI premises are located or a specialist arbitration tribunal.

(2) The Commission for the Examination of Objections shall resolve the following kinds of complaints:

(a) registration of an industrial design or refusal of an application for registration;

(b) granting or non-recognition of priority;

(c) extension of validity of a registration certificate;

(d) separation of an application for registration;

(e) expiry of a right;

(f) withdrawal of an application for registration or waiving of a right;

(g) reinstatement of rights.

(3) The district court where AGEPI premises are located shall investigate complaints filed with the Commission for the Examination of Objections and shall resolve the following kinds of disputes:

(a) authorship of an industrial design;

(b) determination of the party that holds the rights in an industrial design;

(c) conclusion and execution of a licensing agreement;

(d) right of prior use;

(e) remuneration of an author by an employer;

- (f) infringement of exclusive rights (acts of counterfeiting);
- (g) invalidity;
- (h) other infringements of rights in an industrial design.

Article 71. Filing applications for the registration of industrial designs abroad

(1) An industrial design may be registered abroad by means of an application filed directly with the office of the country in which registration for the industrial design is sought, or through the procedure for filing applications laid down by the international conventions to which the Republic of Moldova is a party.

(2) Applications for international registration under the Hague Agreement may be filed either directly with the World Intellectual Property Organization or through the Agency.

Article 72. Fees

(1) Fees shall be charged for filing and examination of an application for the registration of an industrial design, filing of an objection or complaint, publication and postponement of publication, registration of industrial designs and issue of a registration certificate, extension of validity of a registration certificate, transfer of rights, waiving of rights, reinstatement of rights, extension of procedural deadlines, issue of a certificate of priority, issue of a copy or duplicate of a registration certificate, examination and forwarding of an application for international registration under the Hague Agreement and the performance of other actions of legal significance.

(2) The actions for which fees are charged and the amounts of those fees shall be determined by the Government.

(3) Fees shall be payable by applicants, right holders and other interested parties, be they natural persons or legal entities.

(4) If the fee for registration of an industrial design and issue of a registration certificate is not paid within the established time limit, it may still be paid, with a supplement of 50 per cent, within six months of the date of the missed deadline.

(5) Once paid, any fee apart from the fee for filing an application for registration shall be returned to the payer on request before the procedure for which the fee was paid is begun.

(6) If a fee is paid less than in full, it shall be considered settled only on payment of the remaining sum; the procedure in question shall be completed on payment of the full fee.

(7) If a request to fast-track completion of procedures is submitted, the amount of the fee shall be increased by 100 per cent and the time limit for completion of the relevant work halved.

(8) Objections and complaints from national and local public authorities shall be investigated free of charge if they are made in the interests of the State or the territorial administrations, as appropriate.

Article 73. Rights of foreign natural persons and legal entities

Natural persons and legal entities of other States parties to international agreements to which the Republic of Moldova is also a party shall enjoy the same rights, laid down in this Act, as natural persons and legal entities of the Republic of Moldova.

Chapter VII

CONCLUDING AND TRANSITIONAL PROVISIONS

Article 74. Entry into force

(1) This Law shall enter into force after three months have elapsed since its publication.

(2) From the date of entry into force of this Law, Law No. 991-XIII of October 15, 1996 on the Protection of Industrial Designs shall be repealed.

Article 75. Applicability

(1) Applications for the registration of industrial designs in the Republic of Moldova, processing of which is not complete by the date on which this Law enters into force shall be dealt with under the procedures established in this Law. However, the question of whether the industrial design meets the criteria for protection shall be determined in accordance with the legislation in force on the filing date of the application.

(2) Registration certificates issued in the Republic of Moldova before the entry into force of this Law shall have the same legal force as registration certificates issued under this Law.

(3) Disputes arising before the entry into force of this Law and still under examination shall be resolved under the terms of the previous Law if the provisions that led to the specific circumstances of the dispute in question contradict the terms of this Law.

Article 76. Organization of enforcement

The Government shall, within three months of the date of entry into force of this Law:

- (a) submit proposals to Parliament to bring current legislation into line with this Law;
- (b) bring its own normative acts into line with this Law.

CHAIRPERSON OF THE PARLIAMENT

Marian LUPU

Chisinau, July 12, 2007 No. 161-XVI.