

Industrial Designs Law

(Law No. 129 of December 29, 1992)*

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Chapter I General Provisions

1. The rights in industrial designs shall be recognized and protected by the grant of a title of protection by the State Office for Inventions and Trademarks, under the conditions of this Law.

2. The title of protection shall be the certificate of registration of the industrial design, which shall confer on its owner an exclusive right of exploitation on the territory of Romania.

3. The right to be granted a certificate of registration shall belong to the creator of the industrial design or to his successor in title.

Where the owner is not the same person as the creator, the latter shall be entitled to the grant of a duplicate certificate of registration.

4. Where two or more persons have made the same industrial design independently of each other, the right to be granted the certificate shall belong to the one who first files the registration application with the State Office for Inventions and Trademarks or, where priority has been recognized, to the person whose application has the earliest priority date.

5. Where the creator is an employee and there is no contractual provision more favorable to him, the right to the grant of the certificate of registration of the industrial design shall belong:

(a) to the employer in the case of industrial designs made by the employee either under a contract of employment that provides for the performance of creative activities, where such activities correspond to his actual duties, or while carrying out a research activity expressly entrusted to him;

(b) to the employee in the case of industrial designs made by him either in the course of his duties or within the area of concern of the employer, through knowledge or use of technology or means specific to the employer or information available on the premises of the employer; under these conditions, the employer shall have a preferential right to conclude a contract of assignment or of non-exclusive licensing, which right shall be exercised within three months of the date of the employee's offer; in the absence of agreement between the parties on the contract price, the latter shall be established by judicial decision according to the initial contribution of each of the parties and to the industrial and commercial utility of the industrial design;

* *Romanian title:* Lege privind protectia desenelor si modelelor industriale.

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** Added by WIPO.

(c) to the employee in the case of all other industrial designs.

In the cases provided for in the first paragraph, under (a) and (b), the employee-creator and the employer shall be under the obligation to inform each other in writing of the stage of development of the industrial design and to abstain from any disclosure that is likely to prejudice, wholly or in part, the exercise of the rights conferred by law.

Failure to observe the obligation to inform shall result in the liability of the person responsible, as provided for in civil law.

If, in the case provided for in the first paragraph, under (a), the employer has not filed the application within 60 days of the employee's having informed the employer of the creation of the industrial design, the right to file the application and to be granted a certificate, in the absence of any other agreement between the creator and the employer, shall belong to the employee as provided in the first paragraph under (b).

6. Natural or legal persons having their domicile or registered office outside the territory of Romania shall enjoy the benefits of the provisions of this Law in accordance with the international treaties to which Romania is party or on the basis of reciprocity of protection with the countries whose nationals they are.

7. The protection secured through this Law shall not exclude the benefit of protection conferred through copyright.

Chapter II

Requirements for the Protection of Industrial Designs

8. The new appearance of a product having a utilitarian function may be registered as an industrial design.

9. An industrial design shall be regarded as new if it was not made available to the public, at home or abroad, in respect of the same category of products, prior to the date of the regular deposit of the application or the recognized priority date.

An industrial design shall be regarded as industrially applicable if the article to which the design is applied may be reproduced whenever necessary.

Disclosure of the industrial design shall not be taken into account if it was effected by the creator or his successor in title and occurred within the 12 months preceding the date on which the application was registered.

10. An industrial design whose appearance is determined by a technical function shall not be registered even if it is new.

11. Industrial designs whose purpose and appearance are contrary to morality or public policy shall be excluded from protection.

Chapter III

Registration and Grant of the Title of Protection

12. The application for the registration of the industrial design, comprising the personal particulars of the applicant and of the creator and a statement of the article or articles in which the industrial design is intended to be incorporated, accompanied by a brief description of the characteristic elements of the industrial design, with all written matter in Romanian, and 10 graphic representations, shall be deposited with the State Office for Inventions and Trademarks, either in person or through an agent whose domicile or registered office is in Romania, and shall constitute the regular national deposit.

The application for registration may also comprise a request for deferred publication.

13. The date of regular national deposit shall be that by which the documents referred to in Section 12 have been received by the State Office for Inventions and Trademarks and shall be entered in the National Register of Industrial Design Applications.

14. In procedures before the State Office for Inventions and Trademarks, the applicant for a certificate of registration or his successor in title may avail himself of the assistance of an authorized industrial property attorney.

15. A multiple deposit may include several industrial designs intended to be incorporated in articles included in the same class of the International Design Classification.

16. The regular national deposit secures a right of priority to the applicant, starting on the date of the deposit, in relation to any deposit of the same industrial design effected at a later date.

17. Romanian natural or legal persons and those of States party to the conventions to which Romania is also party shall have a six-month right of priority starting on the date of first deposit if they apply for protection in respect of the same industrial design within that six-month period of time.

18. Priority may also be claimed as a consequence of the industrial design having been displayed at an international exhibition, provided that the application is filed within six months of the date on which the article was put on display at the exhibition.

This period shall not extend the period of priority provided for in Section 17.

19. Priority as provided for in Sections 17 and 18 shall be recognized if claimed at the time the application is filed, and if attested by priority documents within three months of the date on which the application was filed.

20. The application for the registration of the industrial design and the reproduction, photograph or any graphic representation thereof shall be published in the Official Bulletin of Industrial Property of the State Office for Inventions and Trademarks, within six months of the date on which the regular deposit was made, in black and white or, upon request, in color.

The publication referred to in the above paragraph may, at the request of the applicant, be deferred for a period that shall not exceed 12 months from the date on which the application was filed or from the date of priority, if priority has been claimed.

21. Interested parties may contest, in writing, the registration of the industrial design at the State Office for Inventions and Trademarks within three months of its publication.

22. Applications for the registration of industrial designs shall be considered by the specialized division of the State Office for Inventions and Trademarks. The decision to accept or to reject an application shall be taken by a Board within six months of the publication of the application.

Registration of industrial designs shall be made in the National Register of Industrial Designs and published in the Official Bulletin of Industrial Property of the State Office for Inventions and Trademarks.

23. For failure to comply with the conditions laid down in Section 8, the State Office for Inventions and Trademarks may revoke its decisions *ex officio* until such time as the decisions are made public.

24. Decisions regarding applications for the registration of industrial designs may be opposed, through administrative channels, in writing and on valid grounds, at the State Office for Inventions and Trademarks, within three months of notification thereof.

Opposition shall be considered within three months of registration thereof by the Reexamination Board of the State Office for Inventions and Trademarks, which shall be composed of persons other than those who composed the Board provided for in the first paragraph of Section 22.

25. The decision of the Reexamination Board shall be notified to the parties within 15 days of pronouncement, and may be appealed against before the Municipal Court of Bucharest within three months of such notification.

The decisions of the Reexamination Board and the judicial decisions, which shall be final, shall be published in the Official Bulletin of Industrial Property of the State Office for Inventions and Trademarks.

26. All decisions issued by the State Office for Inventions and Trademarks shall be substantiated.

27. The issue of certificates of registration of industrial designs by the State Office for Inventions and Trademarks shall be made on the basis of the final decisions of acceptance within 30 days of the date on which the acceptance decision became final.

28. The registration proceedings for the industrial designs provided for by this Law shall be subject to the payment of fees as laid down in Annexes 1 and 2.¹

The fees shall be paid into the account of the State Office for Inventions and Trademarks in the amounts and within the time limits laid down in Annexes 1 and 2 and shall constitute proceeds to be deposited into the State budget.

Fees payable by foreign natural and legal persons having their domicile or, as the case may be, their registered offices abroad shall be paid in convertible currency and are laid down in Annex 2.

Creators, applicants or owners of a certificate of registration of an industrial design having a gross annual income of less than 1,000,000 lei shall pay 10% of the amount of the fees laid down in the Annexes.

Failure to pay the fees within the time limits laid down in the Annexes shall result in non-carrying out the proceedings, in refusal to recognize priority and, as the case may be, in the forfeiture of the rights of the owner of the certificate of registration of the industrial design.

A 30% share of the annual revenue obtained may be used by the State Office for Inventions and Trademarks for the exclusive purpose of purchasing the computerization apparatus and equipment necessary in order to fulfill the responsibilities which are incumbent on it under Section 40 of this Law.

Chapter IV

Rights and Obligations

29. The certificate of registration of an industrial design confers on its owner the right to prohibit third parties from performing at least the following acts without his consent: reproducing, manufacturing, marketing or offering for sale, using, importing or storing for the purpose of marketing, offering for sale or use of the industrial design or the article in which it is incorporated.

30. In the case of an application for registration published under Section 20, the natural or legal person entitled to the grant of the certificate shall temporarily enjoy the same rights as are conferred on the owner under the provisions of Sections 2 and 29, starting on the date on which the regular deposit was made and until the grant of the certificate of registration.

Any infringement of the provisions under the first paragraph shall make the infringers liable for damages under civil law; the entitlement to the payment of damages shall be enforceable only after the grant of the certificate of registration of the industrial design.

31. The term of validity of a certificate of registration of an industrial design shall be five years starting on the date on which a regular deposit was effected and it may be renewed for two successive five-year periods.

Throughout the term of validity of the certificate, the industrial design owner shall be required to pay the certificate maintenance fees.

The State Office for Inventions and Trademarks shall grant a period of grace of six months at the most for the payment of maintenance fees, for which increased fees shall be levied.

Failure to pay such fees shall cause the forfeiture of the certificate owner's rights.

The forfeiture of those rights shall be published in the Official Bulletin of Industrial Property of the State Office for Inventions and Trademarks.

¹ Not reproduced here (*Editor's note*).

32. The owners of certificates of registration of industrial designs may apply the D sign to the products, namely, the capital letter “D” inscribed in a circle accompanied by the owner's name or the serial number of the certificate.

33. The right to the grant of a certificate of registration of an industrial design, the rights deriving from the application for registration of an industrial design and also the rights deriving from the granted certificate of registration shall be transferable, either wholly or in part.

Transfers may be effected by assignment, by the grant of exclusive or non-exclusive licenses or by legal or testamentary succession.

Transfers shall be binding on third parties as from the date on which they are registered at the State Office for Inventions and Trademarks in the National Register of Industrial Design Applications or, as the case may be, the National Register of Industrial Designs.

34. A creator who is the owner of a certificate of registration of an industrial design shall be entitled to economic rights determined by contract concluded with the persons who exploit the industrial design.

Where an assignment contract is concluded, the economic rights accruing to the creator shall be determined by such contract.

35. Industrial designs created on the territory of Romania shall be registered abroad by the natural or legal person who is entitled to the grant of the certificate.

Registration abroad shall not be effected until an application has been filed at the State Office for Inventions and Trademarks.

For the registration abroad, entitled natural or legal persons may avail themselves of credits in convertible currency.

36. The creator shall have the right to the mention of his full name and status in the certificate of registration granted and in any documents or publications concerning the industrial design.

The data in the certificate of registration shall be entered in his employment record.

37. A certificate of registration of an industrial design granted by the State Office for Inventions and Trademarks shall be cancelled, either wholly or in part, at the request of interested parties, where it is established that the conditions for protection were not met on the date of registration of the application.

Cancellation may be requested throughout the term of validity of the certificate, and shall be ruled upon by the Municipal Court of Bucharest.

The cancellation decision shall be registered at the State Office for Inventions and Trademarks and published within two months of the date of its registration.

38. Any litigation concerning the status of creator of the industrial design, the status of owner of the certificate of registration, concerning the economic rights arising from assignment or licensing contracts, or concerning failure to comply with the provisions of the third paragraph of Section 5 shall be within the jurisdiction of the courts.

Chapter V

Responsibilities of the State Office for Inventions and Trademarks in the Field of Industrial Design Protection

39. The State Office for Inventions and Trademarks is the specialized government body with sole authority on the territory of Romania for ensuring the protection of industrial designs.

40. The State Office for Inventions and Trademarks shall have the following responsibilities in the field of industrial design protection:

(a) provision of protection through the grant of a certificate of registration of the industrial design;

(b) keeping of the National Register of Industrial Design Applications and of the National Register of Industrial Designs;

(c) provision of information, on request on the basis of published industrial designs;

(d) conduct of relations with equivalent government organizations and with specialized international organizations of which Romania is a member;

(e) provision of assistance in the field of industrial property on request, organization of training courses for specialists in the same field;

(f) periodical compilation and publication, in the Official Bulletin of Industrial Property of the State Office for Inventions and Trademarks, of information relating to industrial designs.

Chapter VI

Liabilities and Sanctions

41. The unlawful assumption, in any way, of the status of creator of an industrial design shall constitute an offense and shall be punishable by imprisonment of between six months and two years or by a fine.

42. The unlawful reproduction of an industrial design for the purpose of manufacturing products of an identical appearance, the manufacture, offering for sale, selling, importing, using or the storing of such products for the purpose of putting into circulation or using, without having the consent of the owner of the certificate of registration of the industrial design, during the term of validity thereof, shall constitute the offense of counterfeiting the industrial design and shall be punishable by imprisonment of between six months and two years or by a fine.

Criminal proceedings shall be initiated by the preliminary filing of a complaint by the aggrieved party.

The owner shall be entitled, for prejudice caused to him, to damages according to the law.

43. Disclosure, by the staff of the State Office for Inventions and Trademarks and also by persons doing work in connection with industrial designs, of the information contained in the applications for registration prior to the publication thereof shall constitute an offense and shall be punishable by imprisonment of between three months and two years or by a fine.
