

AUSTRIA
Design Law

BGBI. No. 497/1990 as amended by BGBI. No. 772/1992, I 143/2001 and I
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I. General Provisions

§1 Subject of Design Protection

(1) Design protection under this Federal Law may be obtained for designs that are new and have characteristics (Sections 2, 2a) and are neither contrary to Section 2b nor to public order or good manners. Designs that fall under the prohibition on double protection (Section 3) are not protected.

(2) A design as defined by this Federal Law shall mean the apparent form of a whole product or a part thereof, which is caused, in particular, from the characteristic feature of lines, profiles, colors, shapes, surface structures and/or materials of product itself and/or its decoration.

(3) The product as defined by subsection (2) shall be either industrial or handicraft object including - in particular - one of single part, which should be assembled to a complex product, packing, decoration, graphic symbols and typographical scripts; however, a computer program shall be not accepted as a product.

(4) A complex product as defined by subsection (3) shall consist of several building elements, which are changeable, so that the product may be assembled with other and again.

(5) For the design right, which is given on the basis of the ordinance (EC) No. 6/2002 relating to the Community Design, AB1. No. L3 to 5 on January 5, 2002, S.1, where nothing to the contrary with regard to the design nature is emerged from the Community Regulations, the design right also shall be given on the basis of this Federal Law. In all other cases, the regulations of Section VII. shall apply mutatis mutandis.

§2 Novelty and Characteristic

(1) A design shall be considered new, if the identical design has not been accessible to the public before the filing day of the design for registration or, when the priority is claimed, before the priority date of the design. The designs shall be identical, if their characteristic features are distinguished only in the inessential details.

(2) A design shall have characteristics, if the whole impression, which is given rise to a user having been informed of it, is distinguished from the whole impression, which is given rise to him from the other design

that has been accessible to the public before the filing day of the design for registration or, if the priority is claimed, before the priority date of the design.

(3) The degree of the forming freedom of the creator for the development of the design shall be judged on judging characteristics.

(4) For a product, which is the component element of complex product or uses the element or in which the element is inserted in the product, the design shall be new and have characteristics if the component element itself may have the novelty and characteristics.

(5) The legal use as defined by subsection (4) shall mean the use by the end user except the maintenance, service and repair.

§2a

(1) As defined by Section 2, a design shall be accessible to the public if the design was by the registration or in other way publicly known, exhibited, used in market or revealed through other reason, unless this could not be disclosed for a person skilled in the art, who is active in the European economic area in the normal business process before the day of the filing for registration or, when priority is claimed, before the priority date of the design. However, a design shall not be accessible to the public, if it was disclosed solely for the third party under the explicit and silent condition of confidentiality.

(2) The application of Section 2 shall not be to consider for the disclosure, if the design is accessible to the public not earlier than twelve months before the filing day or, when the priority is claimed, before the priority date and that is:

1. by the creator or his successor or by a third party as the result of information or acts by the creator or his successor, or
2. as the result of an abusive act against the creator or his successor.

§2b Design limited by its Technical Function and Design of Combined Elements

(1) A right on a design shall not consist in apparent characteristics of a product, which is limited exclusively by the technical function thereof.

(2) A right on a design shall not consist in apparent characteristics

of a product, which must be copied inevitably in its exact shape and its exact dimensions, in order that the product, in which the design is taken or is used thereon, can be assembled mechanically with other product or combined or installed in the product or on the product or around the product, so that both products may display their functions.

(3) In spite of the stipulation of subsection 2, under the prerequisite of Section 2, a right shall consist in a design, which serves the purpose that the assembling or the combination of a number of mutually exchangeable parts may be enable within a modular system.

§3

A design shall be excluded from design protection if it collides with an earlier design, that was accessible to the public after its filing date or, when the priority is claimed, after the priority date and that is protected by the registered community design or an application as community design or a design registered by this Federal Law or the application of such right from the day before the above-mentioned day.

§4

(1) The registration of a design shall guarantee the owner the exclusive right to use it and to prohibit the use to the third parties without his agreement. The above-mentioned use may include in particular the production, offering the putting in a market, the import, the export or the use of a product, in which the design is employed or used, or the possession of the product for the above-mentioned purposes.

(2) The scope of protection resulted from the right of a design shall extend to all designs, for which the informed user cannot remind the whole impression of other design.

(3) For judging the scope of protection, the degree of the forming of freedom by the creator in developing his design shall be considered.

(4) A registered design shall not release from the obligation to legal provision.

§4a Restriction of Right from Design

(1) The right from a registered design cannot be valid for the following:

1. acts, which are carried out for unindustrial purposes within a private

sphere;

2. acts for the purpose of study;

3. reproductions for the purpose of quotation or for the purpose of teaching, provided that such acts coincide with the good customs of business and do not excessively disturb the normal use of design and the source is informed.

(2) In particular, the right from a registered design cannot be valid for the following:

1. equipments in ship and airplane, which are allowed to pass other country and reach temporarily in Austria;

2. for the reparation of such transport machines in Austria, the import of exchange parts and accessories;

3. the execution of the reparation of such transport machines.

§5

(1) The effect of the protection of design shall not enter into an effect against a person who, already used a design, which falls under the scope of protection of a registered design, before the priority date in Austria or took measures necessary therefore in good faith (prior user).

(2) A prior user may continue to use the design for those products concerned by such use for the needs of his own business in his own workshops or in those of others.

(3) This right may be inherited or transferred only together with the business.

(4) The prior user may require that the owner of the design gives written recognition of this right. The recognized right shall be entered in the Design Register at the request of the prior user.

(5) If recognition is refused, a decision thereon shall be taken by the Patent Office, on request, and, where appropriate, entry of the right in the Design Register shall be ordered.

§5a Exhaustion of right

The right resulted from a registered design shall not extend to acts, that relate to a product, in which a design falling under the scope of protection of the right of a design is inserted or in which it is used,

if the product has been put in the market in the European economic region by the owner or with his approval.

§6 Term of Protection

Design protection shall begin on the day of registration of the design. The term of protection shall amount to five years beginning with the filing day. The owner can extend the term of protection for four five-year periods up to the total period of twenty five years from the filing day on timely payment of renewal fee. For the payment of renewal fee, the end of the term of protection is respectively the last day of the month, which corresponds to the month including the filing day according to his instruction.

§7 Right to Design Protection

(1) The right to design protection shall belong in principle to the creator of the design or to his successor in title.

(2) However, where the design of an employee falls within the field of activity of the enterprise in which he is employed and if the activity that has led to the design forms part of the duties of the employee or if the design has been created not under an employment relationship but on a commission, the right to design protection shall belong, where not otherwise agreed, to the employer or the commissioner or his successor in title.

§8 Naming as Creator of the Design

(1) The creator of a design shall be entitled to be named as the creator in the Design Register on publication in accordance with Section 17 and in the priority document to be issued by the Patent Office.

(2) The right may be neither assigned nor inherited. Renunciation of the right shall be without legal effect.

(3) The request to be named as creator may be submitted by the creator of the design, by the applicant or by the owner of the design. Where more than one person is entitled, and the request is not submitted jointly by all entitled persons, the consent of the remaining entitled persons shall be proved. If a person is to be named as creator in addition to the person already named as creator or in place of such person, the consent of the person hitherto named as creator shall be proved.

(4) Where the applicant, the owner of the design or the person already named as creator refuses his consent, the Patent Office shall decide, on request, as to the right to be named as creator. The creator shall be named in accordance with subsection (1) on the basis of the final decision admitting the request.

§9 Relationship Between Several Owners

The legal relationship between several owners of a design shall be governed by civil law. The right to permit third parties to use a protected design shall belong, in case of doubt, only to all owners jointly; however, each individual owner shall be entitled to take action against infringers of the design right.

§10 Transfer

(1) The right deriving from an application for a design and the design right may be transferred with respect to all or single products in the list of goods as a whole or in conceptual shares.

(2) Such rights shall not pass to the State (Section 760 of the General Federal Code [Allgemeines Bundesgesetzbuch (ABGB)]).

II. Filing Procedure and Design Register

§11 Filing

A design shall be filed with the Patent Office in writing for the protection. The filing date shall be the day of submission of the application to the Patent Office.

§12

(1) The design shall be disclosed on filing by submitting a representation or a copy of the design. Where a copy of the design is submitted, a representation of the design shall also be furnished for publication (Section 17) and registration (Section 18 (1) paragraph 4) that shall reproduce the copy of the design as clearly as possible, but that shall not be taken into consideration for the disclosure.

(2) A description may be filed to explain the design.

(3) The products for which the design is intended shall be stated in the order of the sequence of classes and subclasses of the Locarno Agreement Establishing an International Classification for Industrial Designs, BGBl. No. 496/1990 (list of goods).

§13

Designs belonging to the same class may be grouped together in a multiple filing. A multiple filing may not contain more than 50 designs. However, the faculty afforded by Section 14 may only be availed of jointly for all designs comprised in a multiple filing.

§14

The copy and the representation of the design as also the description may be filed openly or in a sealed envelope (secret design). The envelope shall be opened:

1. at the request of the applicant of the design,
2. at the request of a third party if he proves that the owner of the design has invoked the design with respect to him;
3. ex officio 18 months after the priority date of the design.

§15

The detailed requirements for the description and the list of goods, the number of copies thereof to be submitted and the number, nature and

dimensions of the representations and copies of the design to be submitted shall be laid down by order of the President of the Patent Office, taking into consideration the requirements of the filing procedure, printing and publication of the design.

§16 Examination for compliance with the Law

(1) The Patent Office shall examine each design application for compliance with the Law, on filing in the case of openly submitted designs and following opening of the envelope (Section 14) in case of designs submitted with a seal where not possible on filing. However, the filing procedure shall not comprise examination for the existence of the prerequisites of Sections 2 and 3 and ascertain whether the applicant has a right to design protection (Section 7).

(2) Where examination results in objections to registration of a design, the applicant shall be invited to comment thereon within a reasonable period of time. Where the inadmissibility of registration is ascertained following comments made in good time or after expiry of the time limit, the design application shall be rejected.

(3) Where there exist no objections to registration of a design, its publication (Section 17) and registration (Section 18) shall be ordered.

§17 Publication of the Design

The design shall be published on the day of its registration in the Austrian Design Gazette [österreichischer Musteranzeiger] (Section 33). The content and scope of the publication of the design shall be determined by order of the President of the Patent Office, taking into consideration the public need for information.

§18 Registration

(1) The following particulars shall be entered on registration in the Design Register kept by the Patent Office:

1. the registration number;
2. the filing date and, where appropriate, any claimed priority;
3. the starting date of the term of protection (Section 6);
4. the representation of the design;
5. where appropriate, notice that a copy of the design or description has also been submitted;
6. the products for which the design is intended (list of goods);

7. the name and address (registered offices) of the owner of the design and, where appropriate, his representative;
8. where appropriate, the person named as creator (Section 8).

(2) The owner of the design shall receive an official confirmation (design certificate) of entries in the Register in accordance with subsection (1).

(3) The Design Register may be inspected by any person. A certified extract from the Register shall be issued on request.

§19 Priority

The applicant shall obtain the priority right as of the day on which the applicant for a design is in order.

§20

(1) The priority right altered according to international conventions or Section 20a must be explicitly claimed. The date of the application whose priority is claimed and the country in which such application has been filed shall be stated (priority declaration). Additionally, the reference number of the application shall be given.

(2) The priority declaration shall be given within two months of filing of the application at the Patent Office. The claimed priority may be corrected within such period. Correction shall be subject to a fee amounting to half the filing fee (Section 40(1) para. 1).

(3) Where maintenance of the design right depends on where priority was rightfully claimed, the priority right is to be proven. Those documents required to furnish such proof (priority documents) in proceedings before the Patent Office and before the Supreme Patent and Trademark Chamber, and the times at which they are to be submitted, shall be laid down by order.

(4) If the priority declaration is not given in good time, the priority documents are not submitted in good time or the reference number of the application whose priority is claimed is not provided within the time limit following an official invitation, the priority shall be determined by the filing date in Austria.

§20a

Within a term of six months after the filing date of earlier design application, which was lodged before the filing office that is not taken into consideration by the valid sector of international convention relating to the recognition of priority, the applicant shall be authorized for the right of priority of the earlier design application for the same design relating to the later design application in Austria, if any corresponding reciprocity with this filing office is determined by the announcement to be published by the Federal Minister for Traffic, Innovation and Technology. The requirements and effects of this priority right shall correspond to those of provisions of Article 4 of Paris Convention for the Protection of Industrial Properties, BGBl. No. 399/1973.

§21 Entries in the Design Register

There shall be entered in the Design Register, in addition to the particulars referred to Section 18(1), the end of design protection, declaration of nullity, transfer of design rights, lines and other rights in rem relating to design rights, licenses, rights of prior use, restoration of rights, decisions on requests for declaration, disputes, and references to decisions communicated in accordance with Section 36.

§22

(1) Rights in rem with respect to design rights and the design right itself in the event of a transfer (Section 10) shall be acquired on entry in the Design Register.

(2) The request for entry shall be accompanied by the document on the basis of which the entry is to be effected either in the original or a duly certified copy. If the document is not an official document, it must bear the duly certified signature of the person availing himself of his right.

(3) Legal disputes concerning design rights shall be entered in the Design Register on request (entries relating to disputes).

(4) Section 43(2), (3), (4), (5), (7) (entry in the Patent Register), Section 44 (changes) and Section 45(2) (entries relating to disputes) of the Patent Law 1970, BGBl. No. 259, shall apply mutatis mutandis.

(5) Subsection (2) and Section 45(5) and (7) of the Patent Law 1970 shall apply mutatis mutandis to the transfer of rights deriving from an

application of a design.

III. Declaration of Nullity and Declaration of Lack of Title

§23 Declaration of Nullity

(1) A design right shall be declared null and void if

1. the design is not the design as defined by Section 1, subsection 2, or
2. the design does not fulfill the prerequisites of protection according to Section 1(1), first sentence, or
3. the design falls under the prohibition of double protection (Section 3), or
4. the owner of design right has no right of claim for the protection of design (Section 7).

(2) The reason of nullity under subsection (1), paragraph 3 may be affected only by the owner of colliding right.

(3) The reason of nullity under subsection (1), paragraph 4 may be affected only by a person who has right of claim of the design.

(4) Where the reason of nullity under subsection (1) affects a part only of the list of goods, the list shall be correspondingly limited.

(5) Where the reason of nullity under subsection (1), paragraph 2 affects a part only of the list of goods, the design may be declared partially null and void, if its identity is held. A partial declaration of nullity and maintenance of design right may be raised depending on the proposal of documents which are amended by the owner and may include a voluntary restriction (Disclaimer).

(6) Final declaration of nullity shall have effect retroactively to the filing date of the design. If the design right under subsection (1), paragraph 3 is declared null and void, the second sentence of Section 48, subsection 3 of the Patent Law 1970 shall apply mutatis mutandis.

(7) A right of design shall be also declared null and void even after its expiration or after the abandonment.

§24 (deleted)

§25 Declaration of Lack of Title and Transfer of Design

(1) Any person who claims the right on a design, instead of the declaration of nullity under Section 23, (1), paragraph 4, may claim that the right of design shall be deprived from the owner and transferred it to himself. The owner may abandon the right only with the consent of him until the decision becomes final.

(2) Where the grounds for lack of title (subsection (1)) affect a part of the list of goods, the design right shall be terminated or transferred in part only.

(3) A claim against a bona fide design owner shall become statute-barred three years from the date of entry in the Design Register. Section 49(4) and (7) of the Patent Law 1970 shall apply mutatis mutandis.

IV. Competence and Procedure

§26 General

(1) The Patent Office shall be responsible for taking decisions and performing other acts in matters of design protection except as otherwise stipulated this Federal Law. Within the Patent Office, responsibility shall lie with the member of the Legal Section entrusted with such matters who is competent according to the distribution of responsibilities, except where they are the responsibility of the President, the Appeal Section or the Nullity Section.

(2) Sections 52 to 56, Section 57(2), 57b, 58, 58a, 60, 61, 64, 66 to 69, 76(1), (4) and (5), Sections 79, 82 to 86 and 126 to 137 and 172a(1) of the Patent Law 1970 shall apply mutatis mutandis.

§27 Examiners

(1) Employees who are not members of the Patent Office may be authorized, by order of the President of the Office, to handle business - whose nature shall be clearly defined - in the Legal Section, insofar as this is appropriate in view of the simplicity of the business and the training of such employees (examiners) affords a guarantee of orderly handling of the business. The examiners shall comply with the instructions of the responsible member of the Legal Section. That member may at any time reserve the handling of business for himself or take over business already being handled.

(2) Section 76(1), (4) and (5) of the Patent Law 1970 shall apply mutatis mutandis to examiners.

(3) Decisions by examiners may be appealed against in the same way as those of the responsible member of the Legal Section. The responsible member may himself allow the appeal; where it is held that the appeal should not be allowed or only allowed in part, the appeal shall be filed with the Appeal Section.

§28 Appeals

(1) Decisions of the Legal Section shall be subject to appeal. The appeal shall contain a petition of appeal; it shall be lodged with the Patent Office within two months of the decision and the reasons shall be given at the latest within one month of expiry of that period.

(2) Appeals lodged within the time limit shall have suspensive effect. Appeals that are lodged too late shall be refused by the Legal Section. Unallowable appeals and appeals that do not satisfy the statutory requirements shall be rejected by the Appeal Section without proceedings; however, an appeal may not be rejected for formal defect unless the appellant has been unsuccessfully invited to remove the defect.

(3) The Appeal Section shall deliberate and take its decisions in boards consisting of three members, the chairman of which shall be a legally qualified member, together with a further legally qualified member and a technically qualified member.

(4) No ordinary appeal shall lie from decision by the Appeal Section. However, review of preliminary decisions by the rapporteur and of interim decisions may be requested from the Appeal Section itself.

(5) In all other cases, Sections 71(2) and (4), 72 and 73 of the Patent Law 1970 shall apply mutatis mutandis.

§29 Proceedings Before the Nullity Section and the Supreme Patent and Trademark Chamber

(1) Petitions for the recognition of a right of prior user (Section 5(5)), naming as creator (Section 8(4)), declaration of nullity (Section 23), lack of title and transfer (Section 25) and declaration (Section 39) shall be heard by the Nullity Section represented by a legally qualified member.

(2) The Nullity Section shall hear the petitions and claims referred to in subsection (1) in application mutatis mutandis of Sections 112(2) to 114a, 115(2), 116(2) to (5), 117 to 120 and 122 to 125 of the Patent Law 1970. Oral proceedings shall only be held if the responsible member deems them to be necessary or they are requested by one of the parties.

(3) If the owner submits no countermemorandum against the request of complete declaration of nullity to design (Section 23) within the term which is given him under subsection (2) jointly with Section 115(2) of the Patent Law 1970, the Nullity Section shall declare the design as null and void.

§30

(1) Appeal from final decisions by the Nullity Section shall lie to the Supreme Patent and Trademark Chamber. The appeal shall be lodged in writing

with the Patent Office within two months of service of the decision. It shall contain a reasoned petition of appeal.

(2) Appeals lodged within the time limit shall have suspensive effect. Appeals lodged too late or appeals that do not contain a reasoned petition or are not corrected within the time limit given by the Nullity Section, shall be rejected by the Nullity Section.

(3) The Supreme Patent and Trademark Chamber shall deliberate and take its decisions under the chairmanship of its President or - if he is unable to attend - of the Vice President in boards consisting of three members comprising the chairman, a legally qualified member and a technically qualified member. The boards shall be composed by the chairman in such a way that they contain at least one judge. The legally qualified member shall be the rapporteur; if necessary, the technically qualified member may be appointed joint-rapporteur.

(4) Preliminary decisions and interim decision of the Nullity Section shall not be subject to separate appeal; however, a request for review may be filed with the Section itself. An appeal to the Supreme Patent and Trademark Chamber may only be lodged in those cases where they have influenced the final decision.

(5) In all other cases, Sections 74, 75(2), 138(4), 139(1), (2), (4) and (5) and 140 to 145 of the Patent Law 1970 shall apply mutatis mutandis.

§31 Inspection of Files

(1) Parties to proceeding shall be entitled to inspect the files relating to those proceedings.

(2) Any person may inspect files relating to registered designs (Section 17).

(3) Third parties may only inspect files concerning unregistered designs with the consent of the applicant. Such consent shall not be required by any person against whom the applicant has invoked his design application.

(4) The right to inspect files shall also include the right to make copies thereof. Copies shall be certified by the Patent Office on request.

(5) Information and official confirmation as to when, by whom and, where

appropriate, by which representative a design has been filed, whether the filing is of a secret design, the serial number allocated to the application, the priority that has been claimed, the serial number of an application on which priority is based, the products for which the design is intended (list of goods), the person named as creator, where appropriate, whether the application is still being processed and whether and to whom the rights in the application have been transferred, shall be proved to any person.

(6) Records of deliberations and parts of files relating solely to internal business shall not available for inspection.

§32 Representative

(1) Anyone acting as a representative in design matter before the Patent Office or the Supreme Patent and Trademark Chamber must have his domicile in Austria; however, professional laws and regulations shall apply to attorneys at law, patent attorneys and notaries. He shall evidence his authority by producing the original written power of attorney or a certified copy thereof. If several persons are authorized, each one of them may act individually as representative.

(2) Where an attorney at law, a patent attorney or a notary public acts as representative, reference to the power of attorney issued to him may replace documentary proof. Power of attorney for the transfer of a design shall, however, be justified in each case by means of written powers that shall be dully certified.

(3) Where a representative acts without power of attorney or, in the case of subsection (2), without making reference to the power of attorney issued to him, the procedural acts effected by him shall only have effect on the condition that he submits the due power of attorney or refers to the power of attorney issued to him within the time limit stipulated to him.

(4) Persons having neither residence nor establishment in Austria may claim rights under this Federal Law before the Patent Office only if they have a representative who is authorized under subsection (1). Such rights may only be asserted before the Appeal Section or the Nullity Section of the Patent Office or before the Supreme Patent and Trademark Chamber where such person are represented by an attorney at law, patent attorney or notary public. Even if the residence or establishment exists in the European economic region, the appointment of a delivery representative

living in Austria may enjoy the execution of right resulted from this Federal Law.

(5) Where an attorney at law, patent attorney or notary public has been authorized to act as a representative before the Patent Office, his power of attorney shall entitle him as of right to exercise all rights deriving from this Federal Law before the Patent Office and the Supreme Patent and Trademark Chamber. In particular, he may file an application for a design, withdraw such applications, waive a registered design, file and withdraw petitions or appeals to be dealt with by the Nullity Section, conclude settlements, accept service of documents of every kind, receive payment of official fees and of the cost of proceedings and representation from adverse parties and appoint a representative.

(6) The power of attorney under subsection (5) may be limited to a particular right or to representation in particular proceedings. The power of attorney shall not, however, expire on the death of the principal or as a result of a change in his legal capacity.

(7) If the representative, who is not attorney at law, patent attorney or notary, is also to be empowered to surrender, in whole or in part, a registered design, he must be explicitly authorized to do so.

§33 Austrian Design Gazette

The Patent Office shall publish periodical official gazette of designs, in which, in particular, publications in accordance with Section 17, publications concerning expiry of design protection, concerning partial waiver, concerning changes to the designation of firms and the identity of the design owner and those publications to be effected in accordance with Section 26(2) in application, mutatis mutandis, of Sections 128 and 133(3) of the Patent Law 1970.

V. Infringement of Design Rights and Requests for Declarations

§34 Infringement of Design Rights

Any person who has suffered an infringement of his design right may apply for injunction, removal, publication of judgment, appropriate compensation, damages, surrender of profit and rendering of accounts; any person who has reason to suspect such infringement may also apply for an injunction. Sections 147 to 154 of the Patent Law of 1970 shall apply mutatis mutandis.

§35

(1) Any person who infringes a design right shall be condemned by the court to a fine of 360 daily amounts.

(2) The same penalty shall be imposed on the owner or director of an enterprise who does not prevent the infringement of a design right by a person working for him or on his behalf in the course of the activities of the enterprise. Where the owner of the enterprise is a legal person, this provision shall apply to those organs of the enterprise that have committed such omission. The enterprise shall be jointly and equally liable with the guilty party for the fines inflicted on the organs.

(3) Prosecution shall take place only at the request of the injured party.

(4) In penal proceedings, Sections 148, 149 and 160 of Patent Law 1970 shall apply mutatis mutandis.

§36

The court of first instance shall communicate to the Patent Office in respect of every judgment ruling on the validity or effectiveness of a design right a copy confirming that the decision is final, for attachment to the design files. A reference to such decision shall be entered in the Design Register (Section 21).

§37

Any person who designates products in such a way as to create the impression that they enjoy design protection shall be required, on request, to provide to any person information on the design right on which the designation is based.

§38

(1) The Commercial Court of Vienna shall have exclusive jurisdiction for actions and injunctions under this Federal Law.

(2) Jurisdiction in criminal matters under this Federal Law shall belong to the Vienna Provincial Court for Commercial Matters.

§39 Request for Declaration

(1) Any person who industrially manufactures, puts on the market, offers for sale or uses a product, or who intends to carry out such act, may apply to the Patent Office for a declaration against the owner of a design right or of an exclusive license that the product is neither in whole or in part subject to the design right.

(2) The owner of a protected design or of an exclusive license may apply to the Patent Office for a declaration against anyone who industrially manufactures, puts on the market, offers for sale or uses a product, or who intends to carry out such acts, that the product is subject in whole or in part to the design right.

(3) Requests under subsections (1) and (2) shall be refused where the person opposing the request shows that infringement proceeding concerning the same design right and the same product, instituted prior to filing of the request for a declaration, are pending before a court or on which a final decision has been taken.

(4) A request may only relate to a single design right. The request must be accompanied by a representation of the product in four copies; one copy shall be attached to the final decision.

(5) Where the behavior of the opposing party has not given reason for the filing of the request and he has recognized the claim within the period of time stipulated for the countermemorandum, costs of proceeding shall be born by the applicant.

VI. Fees

§40 Fees to be Paid on Filing

(1) The following fees shall be paid on filing:

1. Filing fee

(a) for a single filing € 43.-

(b) for a multiple filing (Section 13) € 54.- plus € 5 for the 11th and each further design comprised on the application

2. Supplement for secret filing (Section 14) 50% of the filing fee payable

3. Class fee for an individual filing for each class € 10.-

4. Storage fee for three-dimensional designs for each copy of the design € 36.-

5. Contribution to printing costs the amount of which is to be laid down by order (Section 43(1))

(2) The contribution to printing costs in accordance with subsection (1) para.5, shall be refused if the application does not result in publication (Section 17).

§41 Renewal Fee

(1) The renewal fee for an individual design shall be 65 euro for the first extension for the term of protection and 87 euro for each further extension, for each design in a multiple filing it shall be 21 euro for the first extension of the term of protection and 29 euro for each further extension. The fee may be paid at the earliest one year before the end of the term of protection and at the latest six months after the end of such term. For each payment after the end of the term of protection, a supplement of 20% of the renewal fee shall be paid.

(2) Renewal fees may be paid by any person interested in the design.

§42 Procedural Fees

(1) The following procedural fees shall be payable:

1. Appeal (Section 28) € 58.-

2. For each request to be dealt with by Nullity Section (Section 29) € 188.-

3. Appeal (Section 30) € 290.-

4. (a) Request for entry of a prior user right (Section 5(4)), for transfer inter vivos (Section 10), for entry of a license (Section 22(4)) or a

transfer of license or for any other of the entries in the Design Register under Section 22(1) € 50.-

(b) Request for entry of a notice of dispute (Section 22(3)) € 21.-

(2) The fees under subsection (1) are to be paid for each filed or protected design that is the subject matter of a request or an appeal.

(3) The fees under subsection (1) paragraphs 1 and 3, shall be refunded if the grievance or appeal is essentially successful and if the proceedings have been conducted without an adverse party. Half of the fees laid down in subsection (1) paragraphs 2 and 3, shall be refunded if the appeal is dismissed or the procedure terminated without a hearing. Half of the fees laid down in subsection (1) paragraph 4, shall be refunded if the request is withdrawn before a decision is taken.

§43 Special Fees

(1) By ordinance, contributions to printing expenses as well as special fees for official publications, register extracts, design certificates, priority documents and official attestations can be established. In establishing the individual rate, which must not exceed 79 euro, the required labor input and materials cost must be taken into consideration. For fees depending on the number of pages or sheets, Section 166(10) of the Patent Law 1970 shall apply by analogy.

(2) Demands for official publications and requests which, when granted, result in an official publication on the basis of this Federal Law, shall be rejected if the fees or contributions to printing costs allotted thereto not paid in due time.

§44 Payment of Fees

(1) Fees under this Federal Law shall be paid to the Patent Office.

(2) The method of payment of such fees and the type of justification of payment shall be laid down by order in which it shall be stipulated, in particular, when a payment is deemed to have been made in good time. The order shall take into account types of payment available other than payment in cash and also the need for simple and economical verification by the Patent Office.

VII. Community Design

§44a

Applications for Community Design may be filed before the Patent Office under Article 35, paragraph 1, lit. b of the order(EG)No. 6/2002. The Patent Office shall note on the application the day of acceptance and forward the documents without examination to the Harmonization Office for European Market (marks, designs and models) in Alicante within the term of two weeks, which is stipulated in Article 35, paragraph 2 of this order.

§44b

(1) The Community Design Court of first instance as defined by Article 80, paragraph 1 of the order (EG) No. 6/2002 is the Commercial Court of Vienna. For legal matters, in which actions fall within the competence of the Community Design Court, injunctions fall also within the exclusive competence of the Commercial Court.

(2) Criminal cases relating to Community Design shall fall under within the jurisdiction of the Provincial Court for Criminal matters in Vienna.

VIII. Final and Transitional Provisions

§45

The Federal Law provisions cited in this Federal Law shall be applied in their currently valid version.

§46

(1) This Federal Law shall enter into force on January 1, 1991.

(2) Orders based on this Federal Law in each version may be issued as from the day following the publication of Federal law to be enforced; However, they may not enter into force before the regulations to be enforced.

(3) The following shall cease to apply on entry into force of this Federal Law:

1. Design Law 1970, BGBl. No. 261;

2. Order of the Federal Minister for Trade and Reconstruction of November 11, 1959, on Certain Requirements for the Deposit of Design, BGBl. No. 255;

3. Order of the Federal Minister for Commerce, Trade and Industry of November 11, 1969, on the Establishment of Design Deposit Office and the Justification of Priority Right (Design Order), BGBl. No. 387.

(4) The statutory instruments repealed under subsection (3) shall nevertheless continue to apply to design deposited prior to January 1, 1991.

(5) Sections 40(1), 41(1), 42(1) and 43(1) in version of the Federal Law BGBl. I No. 143/2001 shall enter into on January 1, 2002.

(6) Section 1, the title of Section 2, Sections 2 and 2a, the title of Section 2b, Sections 2b, 3, 4, the title of Section 4a, Sections 4a, 5(1), the title of Section 5a, Sections 5a, 6, the title of Section 11, Sections 11, 12, 16(1), 17, 20(1) and (2), Sections 20a and 21, the title of Section 23, Section 23, the title of Section 25, Section 25(1), 26(2), 29, 31(2) and (3), 32(1), (4), (5) and (7), 41(1), Chapter VII., Indication of Chapter VIII., Section 46a and 48 in the version of the Federal Law BGBl. I No. 81/2003 shall enter into at the beginning of the day following the publication of the above-mentioned Federal Law. At the same time, the titles of Section 12, Section 24 together with Section 44(3) including

the title shall become ineffective.

(7) Orders of the Federal Minister for Commercial Affairs relating to the establishment of the filing office for design (Order to the filing office for design - MASTV), BGBl. No. 715/1990 shall become ineffective with the entering to force of the Federal Law BGBl. I No. 81/2003. However, to designs which have been filed before the above-mentioned Federal Law shall enter into force, the statutory instruments shall continue to be applicable.

§46a

(1) To design applications and registered designs, whose filing dates lie before the entering into force of the Federal Law BGBl. I No. 81, 2003, Sections 1, 2, 3, 12(1), 24, 25, 29 and 44(3) in the version effected before the entering into force of the above-mentioned Federal Law shall continue to be applicable. Sections 2a and 23 in the version of the above-mentioned Federal Law shall not apply to these design applications and registered designs.

(2) For the official procedures to the declaration of nullity, which have been introduced before the entering into force of the Federal Law BGBl. I No. 81/2003, Section 23 in the version effected before the entering into force of the above-mentioned Federal Law shall continue to be applicable.

(3) If acts could not be prevented before the day of the entering into force of the Federal Law BGBl. I No. 81/2003, based on Section 4 and 5 in the version effected before the entering into force of the above-mentioned Federal Laws, the rights resulted from the design under Sections 4 and 5 in the version of the above-mentioned Federal Laws may be invalid in order to prevent the continuation of such acts by a person who has begun with the acts before the day of the entering into force of the above-mentioned Federal Law.

§47

The following shall be responsible for implementation of this Federal Law:

1. with respect to Section 25(2), in conjunction with Section 49(4) of the Patent Law 1970 and with respect to Sections 34 to 38, in conjunction with Sections 148 to 154 and 160 of the Patent Law 1970, the Federal Minister

for Justice;

2. with respect to Section 26(2), in conjunction with Section 126 of the Patent Law 1970, and with respect to Section 30(5), in conjunction with Section 74(2) and (3) of the Patent Law 1970, where the appointment of judges is concerned, the Federal Minister for Economic Affairs and the Federal Minister for Justice;

3. with respect to Section 43(1), the Federal Minister for Economic Affairs in consultation with the Federal Minister for Finance;

4. with respect to all other provisions of this Federal Law, the Federal Minister for Economic Affairs.

§48

The guideline 98/71/EG of the European Parliament and Councils of October 13, 1998 relating to the legal protection of designs and models, ABl. No. L 289 of October 28, 1998, S.28 shall be changed by this Federal Law.