

**HUNGARY**

**Industrial Design Act**

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TABLE OF CONTENTS

PART ONE DESIGN AND DESIGN RIGHT

Chapter I SUBJECT MATTER OF DESIGN RIGHT

Article 1 Protectable designs

Article 2 Novelty

Article 3 Individual character

Article 4 Common provisions relating to novelty and individual character

Article 5

Article 6 Grounds for refusal

Article 7

Article 8

Article 9

Article 10

Article 11 Designs eligible for design right

Chapter II RIGHTS AND OBLIGATIONS CONFERRED BY A DESIGN AND THE DESIGN RIGHT

Article 12 Moral rights of the designer and his rights concerning disclosure of the design

Article 13 Right to design right

Article 14 Service designs and employee designs

Article 15 Establishment of design right

Article 16 Rights conferred by design right

Article 17 Limitations of the design right

Article 18 Exhaustion of the rights conferred by design right

Article 19 Term of design right

Article 20 Scope of protection

Article 21 The design and design right as objects of property

Chapter III INFRINGEMENT OF DESIGNS AND DESIGN RIGHT

Article 22 Infringement of designs

Article 23 Infringement of design right

Article 24 Ruling on lack of infringement

#### Chapter IV LAPSE OF DESIGN RIGHT

Article 25 Lapse of provisional design right

Article 26 Lapse of definitive design right

Article 27 Surrender of design right

Article 28 Invalidation and limitation of the design right

Article 29 Reclaiming of royalties

#### PART TWO PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN DESIGN MATTERS

#### Chapter V GENERAL PROVISIONS GOVERNING DESIGN PROCEDURES

Article 30 Competence of the Hungarian Patent Office

Article 31 Application of the general rules of public administration procedures

Article 32 Decisions of the Hungarian Patent Office

Article 32/A Legal Remedies

Article 32/B Electronic administration and official services

Article 33 Other general provisions governing design procedures

#### Chapter VI REGISTERS KEPT IN DESIGN MATTERS, INFORMATION TO THE PUBLIC

Article 34 Register of design applications, design register

Article 35 Information to the public

#### Chapter VII PROCEDURE FOR GRANTING DESIGN RIGHT

Article 36 Filing of a design application and its requirements

Article 36/A Electronic filing of a design application

Article 37 Date of filing

Article 38 Unity of the design

Article 39 Representation of the design

Article 40 Priority

Article 41 Examination on filing

Article 42 Communication of certain data

Article 43 Examination as to formal requirements

Article 44 Novelty search

Article 45 Publication

Article 46 Observations

Article 47 Substantive examination

Article 48 Amendment and division

Article 49

Article 50 Grant of design right

Chapter VIII OTHER PROCEDURES IN DESIGN MATTERS

Article 51 Renewal procedure

Article 51/A

Article 52

Article 53

Article 54 Procedure for division

Article 55

Article 56

Article 57 Invalidation procedure

Article 57/A

Article 58

Article 58/A

Article 59 Procedure for a ruling on lack of infringement

Article 60

PART THREE PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS AND THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS

Chapter VIII/A PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS

Article 60/A General provisions

Article 60/B Forwarding Community design applications

Article 60/C Community design as a ground for refusal

Article 60/D Legal consequences of the infringement of a Community design

Article 60/E Community design courts

Chapter VIII/B PROVISIONS CONCERNING INTERNATIONAL INDUSTRIAL DESIGN APPLICATIONS

Article 60/F General provisions

Article 60/G

Article 60/H

Article 60/I [repealed]

Article 60/J International industrial design applications filed through the Hungarian Patent Office

Article 60/K International industrial design applications designating the Republic of Hungary

PART FOUR COURT PROCEEDINGS IN DESIGN CASES

Chapter IX REVIEW OF DECISIONS OF THE HUNGARIAN PATENT OFFICE

Article 61 Request for review

Article 62 Other rules governing court proceedings

Chapter X DESIGN LITIGATION

Article 63 Rules governing design litigation

PART FIVE FINAL PROVISIONS

Chapter XI ENTRY INTO FORCE; MISCELLANEOUS, TRANSITIONAL AND AMENDING PROVISIONS

Article 64 Relationship to copyright protection

Article 65 Rules establishing provisions concerning the entry into force of this Act and transitional provisions

Article 66 [repealed]

Article 67 Amending provisions and related transitional rules

Article 68 Authorisation

Article 69 Compliance with the law of the European Union

## **PART ONE DESIGN AND DESIGN RIGHT**

### **Chapter I SUBJECT MATTER OF DESIGN RIGHT**

#### **Article 1 Protectable designs**

(1) Design right may be granted for any designs which are new and have individual character.

(2) Design shall mean the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.

(3) Product shall mean any industrial or handicraft item. Products shall include inter alia packaging, get-up, graphic symbols, typographic typefaces and parts intended to be assembled into a complex product. Computer programs shall not be regarded as products.

(4) Complex product shall mean a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.

#### **Article 2 Novelty**

(1) A design shall be considered new if no identical design has been made available to the public before the date of priority.

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

#### **Article 3 Individual character**

(1) A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public before the date of priority.

(2) In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration, with particular regard to the nature of the product and the characteristics of the industrial or handicraft sector.

#### **Article 4 Common provisions relating to novelty and individual character**

(1) A design shall be deemed to have been made available to the public if it has been published, exhibited, put on the market or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the European Community.

(2) A design shall not be deemed to have been made available to the public if it has been disclosed to a third person under the conditions of confidentiality.

(3) In assessing novelty and individual character, making available to the public of the design that occurred not earlier than twelve months preceding the date of priority shall not be taken into consideration if:

(a) it was a consequence of an abuse in relation to the applicant or his predecessor in title; or

(b) it has been made available to the public by the applicant, his predecessor in title, or a third person as a result of information provided or action taken by the applicant or his predecessor in title.

#### **Article 5**

(1) A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character if:

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

(b) the visible features of appearance of the component part fulfil in themselves the requirements as to novelty and individual character.

(2) Within the meaning of paragraph (1) 'normal use' shall mean use by the consumer or the end user, excluding maintenance, servicing or repair work.

#### **Article 6 Grounds for refusal**

(1) Features of appearance of a product which are solely dictated by its technical function shall not be granted design right.

(2) Features of appearance of a product may not be granted design right which must necessarily be reproduced in their exact form and dimensions in order to permit the product to which the design is applied and/or in which it is incorporated (hereinafter referred to as 'the product embodying

the design') to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

(3) Paragraph (2) shall not apply to a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

#### **Article 7**

A design right shall not be granted if it is contrary to public policy or to public morality.

#### **Article 8**

(1) A design right shall not be granted if:

(a) it constitutes an unauthorised use of State emblems or other emblems of an authority or international organisation as defined in the Paris Convention for the Protection of Industrial Property;

(b) it contains medals, emblems, armorial bearings, not covered by subparagraph (a), or official signs and hallmarks indicating authentication and warranty the use of which is of public interest.

(2) Design right shall be granted with the consent of the competent authority to designs of which the emblems defined in paragraph (1) constitute only an element.

#### **Article 9**

(1) A design right shall not be granted if it conflicts with a design which has been made available to the public after the date of priority and to which design right has been granted with an earlier date of priority.

(2) 'Design right with an earlier date of priority' shall mean a design right granted in or extended to Hungary.

#### **Article 10**

(1) A design right shall not be granted if it uses a distinctive sign which would be in conflict with an earlier industrial property right of third persons, or has been used by others effectively in the country from an earlier date, provided that the use of the sign in the design without the consent of the prior user would be contrary to law.

(2) A design right shall not be granted if it infringes an earlier copyright.

(3) In assessing whether a right and/or use is deemed earlier within the meaning of paragraphs (1) and (2), the priority of the design application shall be taken into account.

#### **Article 11 Designs eligible for design right**

Design right shall be granted to a design if:

- (a) it satisfies the requirements of Articles 1 to 5;
- (b) it is not excluded from design right under Articles 6 to 9;
- (c) it is not excluded from design right under Article 10, or the holder of the earlier right does not make any observations against its protection under Article 10; and
- (d) the application therefor complies with the requirements laid down by this Act.

### **Chapter II RIGHTS AND OBLIGATIONS CONFERRED BY A DESIGN AND THE DESIGN RIGHT**

#### **Article 12 Moral rights of the designer and his rights concerning disclosure of the design**

- (1) The person who has created the design shall be deemed to be the designer.
- (2) Unless a final court judgement rules to the contrary, the person mentioned as such in the application filed at the accorded date of filing shall be deemed to be the designer.
- (3) If two or more persons have created a design jointly, their shares of authorship shall be regarded as equal unless otherwise indicated.
- (4) Unless a final court judgement rules to the contrary, the shares of authorship stated in the application filed at the accorded date of filing or as determined in paragraph (3) shall be deemed applicable.
- (5) The designer shall have the right to be mentioned as such in the design right documents. Design right documents made available to the public shall not mention the designer's name if he so requests in writing.
- (6) The designer shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the design.
- (7) Prior to the publication of the design application, the design may

only be disclosed with the consent of the designer and/or his successor in title.

#### **Article 13 Right to design right**

(1) The right to design right shall belong to the designer or to his successor in title.

(2) Unless a final court judgement or other official decision rules to the contrary, the right to design right shall belong to the person who filed the application with the earliest date of priority.

(3) If two or more persons have created a design jointly, the right to design right shall belong to them or to their successors in title jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise indicated.

(4) With respect to the joint right to design right and joint design right, the provisions of the Act on the protection of inventions by patents (hereinafter referred to as 'the Patent Act') concerning the joint right to a patent and joint patent shall apply mutatis mutandis.

(5) If two or more persons have created a design independently from each other, the right to design right shall belong to the designer or to his successor in title, who filed the application with the earliest date of priority, as the case may be.

#### **Article 14 Service designs and employee designs**

(1) A service design is a design created by a person who, by reason of his employment, is under the obligation to develop solutions in the field of the design.

(2) The right to design right for a service design shall belong to the employer as successor in title of the designer.

(3) An employee design is a design created by a person who, without being under an obligation by reason of his employment, creates a design the exploitation of which falls within the field of activity of his employer.

(4) The right to design right for an employee design shall belong to the designer, but the employer shall be entitled to exploit the design. The employer's right of exploitation shall be non-exclusive; the employer

may not grant license to exploit the design. If the employer ceases to exist or if any of its organisational units are separated, the right of exploitation shall be transferred to its successor in title; it may not be assigned or transferred in any other way.

(5) In any other matters pertaining to service and employee designs and to the remuneration of the designer, the provisions of the Patent Act on service and employee inventions shall apply mutatis mutandis, with the following exceptions:

(a) provisions on keeping a service invention secret and on the exploitation of service inventions as solutions subject to trade secrets shall not apply to service designs;

(b) in case of service designs, failure to pay the maintenance fee shall mean failure to renew design right and expiration shall mean the expiration of the term of design right after which renewal is no longer possible;

(c) remuneration shall only be due to the designer for the exploitation of a service design that is covered by the design right.

(6) In the case of designs created by persons working in public service, by persons in service relationship or by members of a co-operative working within the framework of a legal relationship of an employment nature, the provisions of paragraphs (1) to (5) shall apply mutatis mutandis.

#### **Article 15 Establishment of design right**

(1) Design right is established by the publication of the design application. The design right shall be effective retroactively from the date of filing.

(2) Design right resulting from publication shall be provisional. It shall become definitive if the design right is granted to the applicant.

#### **Article 16 Rights conferred by design right**

(1) Design right shall confer on its holder the exclusive right to exploit the design.

(2) On the basis of the exclusive right of exploitation, the holder of the design right shall be entitled to prevent any person not having his consent from exploiting the design.

(3) Exploitation shall cover, in particular, the manufacture, use, putting on the market, offering for sale, importation, and exportation of the product embodying the design, as well as the stocking thereof for such

purposes.

#### **Article 17 Limitations of the design right**

(1) Design right shall not entitle its holder to prohibit a third person from:

- (a) acts done privately or for non-commercial purposes;
- (b) acts done for experimental purposes, including experiments and tests necessary for the authorisation of the marketing of the product constituting the subject matter of the design;
- (c) acts done for the purposes of making citations or of teaching, provided that such acts are in accordance with fair trade practice, do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

(2) Design right shall not entitle the holder of the design right to prohibit a third person from the use of the design of a component part exploited for the purpose of the repair of a complex product to the extent necessary to restore its original appearance, provided that such use is in accordance with the requirements of fair trade practice.

(3) A right of prior use shall belong to any person who, in good faith, before the date of priority, in the territory of the country and within the framework of his economic activities, had begun to make or use the product embodying the design or had made serious preparations for that purpose. The provisions of the Patent Act shall apply to prior use *mutatis mutandis*.

(4) Subject to reciprocity, the design right shall have no effect in respect of the equipment of ships and aircraft registered abroad when these temporarily enter the territory of the country, the importation of spare parts and accessories for the purpose of repairing such crafts, and the execution of repairs on such craft. The President of the Hungarian Patent Office shall be competent to give a ruling on matters of reciprocity.

#### **Article 18 Exhaustion of the rights conferred by design right**

The exclusive right of exploitation conferred by design right shall not extend to acts relating to the a product embodying the design put on the market within the European Economic Area by the holder of the design right or with his express consent.

### **Article 19 Term of design right**

(1) Definitive design right shall have a term of five years beginning on the date of filing.

(2) Design right shall be renewable for further periods of five years each, four times at the most. In the event of renewal, the new period of design right shall begin on the date following the date of expiration of the previous period.

(3) Design right shall not be renewable after the expiration of twenty-five years from the date of filing.

### **Article 20 Scope of protection**

(1) The scope of design protection shall be determined by features affecting the appearance of the whole or a part of the product which can be determined on the basis of the photographs, drawings or other graphical representations deposited in the design register (hereinafter referred to together as 'representation') and the partial disclaimer [Article 48(2)], if any.

(2) The scope of the design protection shall extend to all designs which do not produce a different overall impression on the informed user.

(3) In assessing the scope of design protection, the degree of freedom of the designer in developing the design shall be taken into consideration, with particular regard to the nature of the product and the characteristics of the industrial or handicraft sector.

### **Article 21 The design and design right as objects of property**

(1) Rights conferred by a design and the design right, with the exception of moral rights, may be transferred, assigned and pledged. A right of pledge as a mortgage security shall only be established if the mortgage contract is made in writing and the mortgage is entered in the design register.

(2) Under an agreement of exploitation (design license agreement) the holder of the design right licenses the right to exploit a design and the person exploiting the design is required to pay royalties. With respect to design license agreements, the provisions of the Patent Act concerning patent license agreements shall apply mutatis mutandis.

### **Chapter III INFRINGEMENT OF DESIGNS AND DESIGN RIGHT**

#### **Article 22 Infringement of designs**

Where the subject matter of a design application or design right has been taken unlawfully from the design of another person, the injured party or his successor in title may claim a statement to the effect that he is entitled wholly or partly to the design right and may claim damages under the rules of civil liability.

#### **Article 23 Infringement of design right**

(1) Any person who unlawfully exploits a protected design commits infringement of design right.

(2) The holder of the design right may have recourse to the civil remedies against the infringer in the same way as a patentee, by virtue of the Patent Act, may have recourse thereto against the infringer of his patent. Where a design right is infringed, the holder may request - under the provisions of specific legislation - measures by the customs authorities to prevent infringing goods from being placed on the market.

(3) In the event of the infringement of design right, the provisions of the Patent Act shall apply mutatis mutandis to the rights of the applicant and of the licensee authorised under a license agreement.

#### **Article 24 Ruling on lack of infringement**

(1) Any person believing that proceedings for the infringement of design right may be instituted against him may, prior to the institution of such proceedings, request a decision ruling that the product exploited or to be exploited by him does not infringe the design right of a particular design specified by him.

(2) Where a final ruling on lack of infringement has been given, infringement proceedings in relation to the design right of the specified design may not be instituted in respect of the same product.

### **Chapter IV LAPSE OF DESIGN RIGHT**

#### **Article 25 Lapse of provisional design right**

Provisional design right shall lapse ex tunc:

- (a) if the design application is definitely rejected;
- (b) if the applicant surrenders it.

#### **Article 26 Lapse of definitive design right**

Definitive design right shall lapse:

- (a) where its term expires without renewal, on the day following the date of expiration;
- (b) if the holder thereof surrenders it, on the day following the date of receipt of the surrender or at an earlier date specified by him;
- (c) if it is declared invalid, with retroactive effect to the date of filing.

#### **Article 27 Surrender of design right**

(1) The applicant indicated in the register of design applications or the holder of the design right entered in the design register may surrender his design right by a written statement addressed to the Hungarian Patent Office.

(2) If the surrender affects the rights of third persons deriving from legislation, from decisions of an authority, from a license agreement or from any other agreement recorded in the design register, or, if a lawsuit is recorded in the design register, the surrender shall take effect only with the consent of the persons concerned.

(3) If design right has been granted for several designs, surrender may be made in respect of a part of those designs.

(4) Withdrawal of the surrender of design right shall have no legal effect.

#### **Article 28 Invalidation and limitation of the design right**

(1) Design right shall be declared invalid:

- (a) if the subject matter of the design right does not satisfy the requirements laid down in Articles 1 to 10;
- (b) if the representation deposited in the design register does not present the design in a manner prescribed by this Act (Article 39);
- (c) if the subject matter of the design right differs from the design presented in the application filed at the accorded date of filing or, in case of division, in the divisional application;
- (d) if the design right has been granted to a person not entitled to it under this Act;
- (e) if the international industrial design application has been filed by a person not entitled to it under the Hague Agreement (Article 60/F).

(2) Instead of invalidation, the design right may be maintained in an

amended form [Article 48(1) - (2)], provided that with the amendment no ground for invalidation subsists.

(3) If, in case of a design right granted for several designs, the grounds for invalidation affect only some of the designs covered by the design right, the design right shall be limited to the rest of the designs.

(4) Should the request for invalidation be rejected by a final decision, a new procedure for the invalidation of the same design right on the same grounds may not be instituted by any person.

#### **Article 29 Reclaiming of royalties**

If the definitive design right lapses *ext tunc*, only the part of the royalties paid to the holder of the design right or the designer that was not covered by the profits derived from the exploitation of the design may be reclaimed.

## **PART TWO PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN DESIGN MATTERS**

### **Chapter V GENERAL PROVISIONS GOVERNING DESIGN PROCEDURES**

#### **Article 30 Competence of the Hungarian Patent Office**

(1) The Hungarian Patent Office shall have competence in the following design matters:

- (a) grant of design right;
- (b) renewal of design right;
- (c) division of design right;
- (d) decision on lapse of design right;
- (e) invalidation of design right;
- (f) ruling on lack of infringement;
- (g) registration of design applications and design right;
- (h) official information.

(2) The Hungarian Patent Office shall also have competence in matters deriving from the application of provisions relating to the Community system of protection of designs (Chapter VIII/A) and to the international registration of industrial designs (Chapter VIII/B).

#### **Article 31 Application of the general rules of public administration procedures**

The Hungarian Patent Office shall proceed in design matters falling within its competence - with the exceptions laid down in this Act - by applying the provisions of Act on the general rules of public administration procedures.

#### **Article 32 Decisions of the Hungarian Patent Office**

(1) [repealed]

(2) In invalidation procedures and in procedures for a ruling on lack of infringement, the Hungarian Patent Office shall take its ruling at a hearing by a board consisting of three members. The board shall take its decisions by majority.

(3) Decisions of the Hungarian Patent Office shall become final on service unless its review is requested.

#### **Article 32/A Legal Remedies**

(1) Against the decisions of the Hungarian Patent Office appeals, rehearing

and supervisory procedures and protests of the prosecutor shall not be admissible.

(2) Decisions of the Hungarian Patent Office in design matters shall be reviewed by the court in non-contentious civil procedure laid down in Chapter IX.

(3) In the absence of a provision of the Patent Act to the contrary, the Hungarian Patent Office may withdraw or amend its decisions terminating the procedure taken in the following matters only if a request for review is filed and only until such request is transmitted to the court:

- (a) grant of design right;
- (b) renewal of design right;
- (c) division of design right;
- (d) decision on lapse of design right;
- (e) invalidation of design right;
- (f) ruling on lack of infringement;
- (g) refusal of the effects of an international registration designating the Republic of Hungary.

(4) In the absence of a provision of the Patent Act to the contrary, the Hungarian Patent Office may withdraw or amend its decisions terminating the procedure taken in the matters referred to in paragraph (3)(e) and (f) on the basis of a request for review only if it establishes that its decision is contrary to law or if the parties request the amendment or withdrawal thereof unanimously.

#### **Article 32/B Electronic administration and official services**

(1) In design matters a party to the procedure is not entitled to, except for the case under paragraph (2), communicate with the Hungarian Patent Office by electronic means in writing, and the Hungarian Patent Office shall not be obliged either to communicate with the party by electronic means in writing.

(2) Design applications and requests for renewal may also be filed electronically in the manner and under the conditions laid down in Article 36/A and Article 51/A.

(3) Requesting and providing information by SMS shall be inadmissible in design matters.

### **Article 33 Other general provisions governing design procedures**

(1) Subject to paragraphs (2) and (3), in matters not regulated in Articles 30 to 32/B, the general provisions governing patent procedures shall apply mutatis mutandis to design matters before the Hungarian Patent Office.

(2) In design matters restitutio in integrum shall be excluded:

(a) in the event of failure to comply with the time limit prescribed for filing the declaration of priority [Article 40(2)];

(b) in the event of failure to comply with the time limit fixed for claiming convention priority or the time limit of six months for claiming exhibition priority;

(c) in the event of failure to comply with the time limit fixed for filing the request for restitutio in integrum or the request for continuation of the procedure.

(3) In design matters the provisions on the treatment of patent applications as classified data shall not apply.

## **Chapter VI REGISTERS KEPT IN DESIGN MATTERS, INFORMATION TO THE PUBLIC**

### **Article 34 Register of design applications, design register**

(1) The Hungarian Patent Office shall keep a register of design applications and a design register in which all facts and circumstances concerning design rights shall be entered.

(2) The design register shall contain, in particular, the following entries:

(a) registration number of the design right;

(b) reference number of the file;

(c) representation of the design together with the partial disclaimer of the applicant [Article 48(2)];

(d) denomination of the product embodying the design;

(e) name (official designation) and address (registered seat) of the holder of the design right;

(f) name and registered seat of the representative;

(g) name and address of the designer;

(h) date of filing;

(i) priority data;

(j) date of the ruling on the grant of design right;

(k) renewal or division of the design right;

(l) lapse of design right, the legal ground and date thereof, as well

as the maintenance in an amended form or limitation of the design right;  
(m) exploitation licenses.

(3) Any right in relation to the design right may only be invoked against a third person who acquired his right in good faith and for consideration, if it has been recorded in the design register.

(4) Any person may have access to the design register and may ask for a copy of the registered data thereof on payment of a fee.

(5) The provisions of the Patent Act on the recording of entries in the patent register shall apply mutatis mutandis to entries in the design register.

(6) Following publication of the applications, the provisions of paragraphs (3) to (5) shall apply mutatis mutandis to the register of design applications.

#### **Article 35 Information to the public**

In the official journal of the Hungarian Patent Office the following data and facts relating to design applications and design rights shall be published in particular:

(a) in case of communication of certain data, the name and address of the applicant and the representative, the reference number of the application, the date of filing and the date of priority where the latter is different, as well as the denomination of the product embodying the design;

(b) in case of communication of data of international applications, the number of the international publication in addition to the data listed in paragraph (a);

(c) in case of publication of the design application, the data listed in paragraph (a) and the name of the designer, the international classification code of the product embodying the design under the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter referred to as 'the international classification') and the representation of the design;

(d) after the grant of design right, the registration number, the name and address (registered seat) of the holder of the design right, the name and registered seat of the representative, the reference number of the file, the date of filing and the date of priority, the denomination of the product embodying the design and its international classification

code, the name and address of the designer and the date of the ruling on grant;

(e) in case of renewal or division of design right, the relevant data thereof;

(f) in case of lapse of design right, the fact, legal ground and date thereof, as well as the facts on maintenance in an amended form or limitation of the design right;

(g) changes in rights relating to the design right entered in the design register.

## **Chapter VII PROCEDURE FOR GRANTING DESIGN RIGHT**

### **Article 36 Filing of a design application and its requirements**

(1) The procedure for the grant of a design right shall begin with the filing of a design application with the Hungarian Patent Office.

(2) A design application shall contain a request for the grant of the design right, the representation of the design, the denomination of the product embodying the design and, if necessary, other relevant documents.

(3) Detailed formal requirements which design applications are to be complied with shall be laid down by specific legislation.

(4) A design application shall be subject to the payment of a filing fee determined by specific legislation; the fee shall be paid within two months after the date of filing.

(5) The applicant may withdraw the design application until its publication in compliance with the provisions laid down in Article 27.

### **Article 36/A Electronic filing of a design application**

(1) A design application may also be filed electronically by using an electronic form drawn up by the Hungarian Patent Office for this purpose.

(2) On receipt of the design application filed in electronic form, the Hungarian Patent Office shall send to the applicant - in the manner laid down by specific legislation - an automatic notification containing an electronic receipt number.

(3) After the receipt of the design application filed in electronic form, the Hungarian Patent Office shall immediately examine whether it meets

the legal requirements set out by the legislation on electronic administration.

(4) In the case of electronic filing, the design application shall be considered to have been filed upon the automatic notification of the electronic receipt being sent to the applicant, except where the Hungarian Patent Office establishes that the document received is uninterpretable and notifies the party thereof by electronic mail.

(5) The applicant or the party filing the uninterpretable document is obliged to confirm the receipt of the notification sent electronically under paragraph (4). If the applicant or the party filing the uninterpretable document does not confirm the receipt of the document sent to him electronically within fifteen days, the Hungarian Patent Office shall forward it to him by mail.

(6) [repealed]

(7) Detailed rules of the electronic filing of design applications shall be laid down by specific legislation.

#### **Article 37 Date of filing**

(1) The filing date of an application shall be the date on which the application filed with the Hungarian Patent Office contains at least:

- (a) an indication that design protection is sought;
- (b) information identifying the applicant or permitting contacts with him;
- (c) the representation of the design, even if it does not comply with other requirements.

(2) Instead of filing the representation of the design, reference to a priority document shall be sufficient to grant a date of filing for the application.

#### **Article 38 Unity of the design**

(1) A design application may seek design protection for several designs, provided that the products embodying the designs belong to the same class of the international classification. In addition, a design application may seek design protection for a group of designs linked by their common ornamental features affecting the overall impression they produce on the informed user.

(2) The specific legislation on the detailed formal requirements for design applications [Article 36(3)] may determine the maximum number of designs for which design protection may be sought in a single design application.

(3) In the design application the product embodying the design shall be identified, if possible, by indicating the code under the international classification and by using the terms included therein.

#### **Article 39 Representation of the design**

The representation constituting part of the design application shall clearly present the design for which design protection is sought.

#### **Article 40 Priority**

(1) The date establishing priority shall be:

(a) in general, the date of filing of the design application (application priority);

(b) in the cases defined in the Paris Convention for the Protection of Industrial Property, the date of filing of a foreign application (convention priority);

(c) in the cases defined in the communication of the President of the Hungarian Patent Office published in the Hungarian Official Gazette, the first day of displaying the design at an exhibition, which shall not be earlier than six months prior to the date of filing of the application (exhibition priority);

(d) the date of filing of a prior and pending design application for the same design, which is not earlier than six months prior to the application in question, provided that there has been no other priority claimed in relation thereto (internal priority).

(2) Convention, exhibition and internal priority shall be claimed within two months after the filing of the application. The document establishing convention priority and the certification of exhibition shall be filed within four months after the date of filing of the application. With respect to the certification of exhibition, the provisions of the Patent Act relating to the certification of exhibition shall apply *mutatis mutandis*.

(3) If internal priority is claimed, the prior design application shall be deemed withdrawn.

(4) If one or more priorities are claimed with respect to a design application

seeking design protection for several designs, such priority shall cover only those designs that are presented in the application establishing the given priority in accordance with Article 39.

(5) Convention priority may also be claimed, under the conditions defined by the Paris Convention, if the foreign application has been filed in a Member of the World Trade Organization which is not party to the Paris Convention or, subject to reciprocity, in any other State. The President of the Hungarian Patent Office shall be competent to give a ruling on matters of reciprocity.

#### **Article 41 Examination on filing**

(1) Following the filing of a design application, the Hungarian Patent Office shall examine whether:

(a) the application satisfies the requirements for according a date of filing (Article 37);

(b) the filing fee has been paid [Article 36(4)].

(2) In any other matters, the provisions of the Patent Act relating to examination on filing shall apply *mutatis mutandis* to examination on filing of a design application.

#### **Article 42 Communication of certain data**

If, either on filing or as a result of a remedy, a design application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in Article 35(a) in its official journal (communication of certain data).

#### **Article 43 Examination as to formal requirements**

If a design application satisfies the requirements examined under Article 41(1), the Hungarian Patent Office shall examine whether the formal requirements of Article 36(2) and (3) have been satisfied. With respect to this examination, the provisions of the Patent Act relating to examination as to formal requirements shall apply *mutatis mutandis*.

#### **Article 44 Novelty search**

(1) If a design application satisfies the requirements laid down in Article 41(1), the Hungarian Patent Office shall carry out a novelty search and shall draw up a search report on the basis of the representation of the design, with due regard to the denomination of the product embodying the

design.

(2) The search report shall indicate those documents and data which may be taken into consideration in deciding whether the design represented in the application is new and has individual character.

(3) The search report, together with copies of any cited documents, shall be sent to the applicant upon request and on payment of a fee.

#### **Article 45 Publication**

(1) A design application shall be published after the expiry of nine months from the earliest date of priority.

(2) At the request of the applicant, the application may be published at an earlier date if it satisfies the requirements of Article 41(1).

(3) At the request of the applicant, publication shall be deferred. The request for deferment shall be submitted within two months at the latest before the expiry of the period applicable under paragraph (1) or of the period of the previous deferment. If the request for deferment of publication is withdrawn, the design application shall be published at the expiry of the period applicable under paragraph (1) or without delay, as the case may be.

(4) Publication of a design application may not be deferred for more than thirty months from the earliest date of priority.

(5) A fee prescribed by specific legislation shall be paid for the deferment of publication within two months from the filing of the request therefor.

(6) If the fee for the deferment of publication has not been paid upon filing the request, the Hungarian Patent Office shall invite the applicant to fulfil that requirement within the period specified in paragraph (5). The request shall be deemed withdrawn in case of failure thereof.

(7) Publication shall be made by giving information to the public in the official journal of the Hungarian Patent Office as laid down in Article 35(c).

(8) The applicant shall be notified of the publication.

#### **Article 46 Observations**

(1) Subject to paragraph (2), after publication of the design application any person may file an observation with the Hungarian Patent Office in the procedure for the grant of the design right to the effect that the design or the application therefore does not comply with any of the requirements for design right.

(2) Only the holder of an earlier right may file an observation on the basis of Article 10.

(3) The Hungarian Patent Office shall take into consideration that a design is excluded from design right on the basis of Article 10 only if the holder of the earlier right files an observation to this effect.

(4) Observations shall be taken into consideration when the requirement objected to in the observation is examined, unless they are made by a person not entitled to file an observation.

(5) The person submitting the observation, except for the holder of an earlier right referred to in paragraph (2), shall not be party to the procedure for the grant of design right. This person shall be notified of the outcome of his observation by sending him the decision on the grant of design right.

#### **Article 47 Substantive examination**

(1) If a design application satisfies the requirements laid down in Article 41(1), the Hungarian Patent Office shall carry out a substantive examination of the design application.

(2) The substantive examination shall assess:

(a) whether the design meets the requirements of Articles 1 to 5 and whether it is not excluded from design right under Articles 6 to 9, or, as a consequence of an observation of the holder of an earlier right to this effect under Article 10; and

(b) whether the application complies with the requirements laid down by this Act.

(3) If a design application does not meet the requirements examined under paragraph (2), the applicant shall be invited, according to the nature of the objection, to remedy the defects, to submit comments or to divide the application.

(4) A design application shall be rejected in whole or in part if it does not meet the examined requirements even after the remedy of the defects or the submitting of comments.

(5) An application may be rejected only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. If necessary, a further invitation shall be issued.

(6) If the applicant fails to reply to the invitation or to divide the application, he shall be deemed to have withdrawn the application or, after publication of the application, to have surrendered the provisional design right.

#### **Article 48 Amendment and division**

(1) A design application may only be amended in such a way that its subject matter remains identical with the design presented in the application at the date of filing.

(2) A statement of the applicant to the effect that a particular part of the representation does not belong to the design and design right is not claimed therefor shall be considered to be an amendment.

(3) Subject to paragraph (1), the applicant shall be entitled to amend the application as long as the decision on the grant of design right does not become final.

#### **Article 49**

(1) If the applicant has claimed design right for several designs in a single application, he may divide the application, retaining the date of filing and any earlier priority, if any, as long as the ruling on the grant of design right does not become final.

(2) A fee prescribed by specific legislation shall be paid for division within two months from the filing of the request therefor.

(3) If the fee for division has not been paid upon filing the request, the Hungarian Patent Office shall invite the applicant to fulfil that requirement within the period specified in paragraph (2). The request shall be deemed withdrawn in case of failure thereof.

#### **Article 50 Grant of design right**

(1) If the design application and the design to which it relates meet all the requirements of the examination [Article 47(2)], the Hungarian Patent Office shall grant design right for the subject matter of the application after the expiry of at least one month from the date of publication.

(2) The grant of design right shall be recorded in the design register (Article 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Article 35).

(3) After the grant of design right, the Hungarian Patent Office shall issue a design certificate to which the extract from the register shall be annexed.

#### **Chapter VIII OTHER PROCEDURES IN DESIGN MATTERS**

##### **Article 51 Renewal procedure**

(1) Design right shall be renewed [Article 19(2)] by the Hungarian Patent Office at the request of its holder. Renewal of design right granted for several designs may also be requested in respect of only a part of those designs (partial renewal).

(2) The request for renewal shall indicate the registration number of the design right to be renewed and, in the case of partial renewal, the designs concerned.

(3) The request for renewal may be submitted not earlier than six months before the expiry of the design right and within a period of six months from the date of expiry at the latest.

(4) A fee prescribed by specific legislation shall be paid for the request for renewal within two months from the filing thereof.

##### **Article 51/A**

(1) The request for renewal may also be filed electronically by using the electronic form of the Hungarian Patent Office specifically designed for this purpose.

(2) In the case of electronically filed requests for renewal, Article 36/A(2) to (5) shall apply mutatis mutandis.

## **Article 52**

(1) If the request for renewal does not comply with the requirements laid down in Article 51(1) to (3), the requesting party shall be invited to remedy the defects.

(2) The request for renewal shall be rejected if it does not comply with the requirements specified in the invitation even after the remedy of the defects or the submitting of comments. Where the requesting party does not reply to the invitation within the fixed time limit, the request for renewal shall be deemed withdrawn.

(3) If the fee for the request for renewal has not been paid, the Hungarian Patent Office shall invite the requesting party to fulfil that requirement within the period specified by this Act. The request shall be deemed withdrawn in case of failure thereof.

## **Article 53**

(1) If the request meets the requirements laid down in Article 51, the Hungarian Patent Office shall renew the design right.

(2) The renewal shall be recorded in the design register (Article 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Article 35).

## **Article 54 Procedure for division**

(1) The holder of the design right may divide the design right granted for several designs by separating the designs, or particular groups thereof.

(2) A request for division of design right shall be filed in as many copies - in conformity with each other and with the manner of division - as the number of the parts into which the initial design right is to be divided.

(3) The request for division shall contain the registration number of the design right to be divided; the provisions concerning the requirements for design applications [Article 36(2) and (3)] shall apply *mutatis mutandis* to the request and its supporting documents.

(4) A fee prescribed by specific legislation shall be paid for the request for division within two months from the filing thereof.

#### **Article 55**

(1) If the request for division does not comply with the requirements laid down in Article 54(1) to (3), the requesting party shall be invited to remedy the defects.

(2) The request for division shall be rejected if it does not comply with the requirements specified in the invitation even after the remedy of the defects or the submitting of comments. If the requesting party does not reply to the invitation, the request for division shall be deemed withdrawn.

(3) If the fee for the request for division has not been paid, the Hungarian Patent Office shall invite the requesting party to fulfil that requirement within the period specified by this Act. The request shall be deemed withdrawn in case of failure thereof.

#### **Article 56**

(1) If the request meets the requirements laid down in Article 54, the Hungarian Patent Office shall divide the design right.

(2) The division of design right shall be recorded in the design register (Article 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Article 35).

(3) After division, the Hungarian Patent Office shall issue a design certificate for each design right, to which the extract from the register shall be annexed.

#### **Article 57 Invalidation procedure**

(1) Any person may institute proceedings for invalidation of design right against the holder of the design right under Article 28, with the exception laid down in paragraph (2).

(2) Invalidation of design right may only be requested under Articles 9 and 10 by the holder of an earlier conflicting right, and under Article 28(1)(d) by the person entitled to design right.

(3) The request for invalidation shall be filed with the Hungarian Patent Office with a copy for each holder of the design right and - in the case of a design right granted for a service design - for each designer plus one additional copy. The request shall state the grounds on which it is

based and documentary evidence shall be annexed.

(4) A fee prescribed by specific legislation shall be paid for the request for invalidation within two months from the filing thereof.

(5) If the request for invalidation does not comply with the requirements laid down in this Act, the requesting party shall be invited to remedy the defects; if the fee for the request has not been paid, the requesting party shall be invited to fulfil that requirement within the period specified by this Act. Failure to remedy the defects shall result in the request for invalidation being deemed withdrawn.

#### **Article 57/A**

In the case of a design right granted for a service design, the Hungarian Patent Office shall send the request for invalidation to the designer informing him that he may be a party to the invalidation proceedings if a statement to this effect is submitted within thirty days from receipt of the request.

#### **Article 58**

(1) The Hungarian Patent Office shall invite the holder of the design right and - in the case of a design right granted for a service design - the designer to submit comments on the request for invalidation. Following written preparatory work, it shall decide at a hearing on the invalidation, maintenance in an amended form, limitation of the design right or refusal of the request. The order terminating the procedure may also be taken without a hearing. After the time limit fixed by the Hungarian Patent Office for the requesting party, no ground shall be admissible as ground forming the basis of invalidation, which was not stated as ground for invalidation within the said time limit. The ground so stated shall be left out of consideration when taking the final decision.

(2) The orders taken in the course of the hearing and the ruling shall be pronounced on the day of the hearing. The pronouncement may be deferred - for not more than eight days - only in respect of the ruling and only in the event if it is indispensable because of the complexity of the case. In such a case the time limit for pronouncement shall be fixed immediately and the ruling shall be put into writing until the day of pronouncement.

(3) The pronouncement of the decision shall consist of the brief presentation of the operative part and of the grounds.

(4) The decision shall be put in writing within fifteen days at the latest from the day it was taken - except where the Hungarian Patent Office deferred its pronouncement -, and it shall be delivered within fifteen days from the date of putting it in writing.

(5) If there are several requests for the invalidation of the same design right, they shall be dealt with in the same procedure if possible.

(6) If the request for invalidation is withdrawn, the procedure may be continued ex officio, except for the case when invalidation has been requested only under Article 10 or Article 28(1)(d). In such a case the Hungarian Patent Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier.

(7) The losing party shall be required to bear the costs of the invalidation procedure.

(8) The invalidation, maintenance in an amended form or limitation of the design right shall be recorded in the design register (Article 34) and relevant information shall be given in the official journal of the Hungarian Patent Office (Article 35).

#### **Article 58/A**

(1) At the request of any party, invalidation procedures shall be accelerated if court proceedings were initiated for the infringement of a design right and this fact is proved.

(2) For the request for accelerated procedure a fee prescribed by specific legislation shall be paid within one month from the filing of such request.

(3) If the request does not meet the requirements referred to in paragraph (1), the party requesting accelerated procedure shall be invited to remedy the defects or to submit comments. The request for accelerated procedure shall be rejected if it does not meet the requirements laid down in this Act even after the remedy of the defects or the submitting of comments. Failing to comply with the said invitation, the request for accelerated procedure shall be deemed withdrawn.

(4) If the fee for the request has not been paid, the person requesting accelerated procedure shall be invited to make payment within the time

limit fixed by this Act. Failure to comply with the said invitation shall result in the request for accelerated procedure being deemed withdrawn.

(5) The Hungarian Patent Office shall establish the accelerated procedure by an order.

(6) By way of derogation from the provisions of Articles 33(1) and 58, in the case of accelerated procedures:

(a) a time limit of fifteen days may also be fixed for remedying the defects or submitting comments;

(b) an extension of time limits may be granted only in justified cases;

(c) the Hungarian Patent Office shall only hold an oral hearing if the clarification of the facts requires that the parties be heard together or if any of the parties so requests in due time.

#### **Article 59 Procedure for a ruling on lack of infringement**

(1) A request for a ruling on lack of infringement (Article 24) shall be filed with the Hungarian Patent Office with a copy for each holder of the design right plus one additional copy. The request shall contain the representation of the product exploited or intended for exploitation, as well as the representation of the design of the design right involved.

(2) A request for a ruling on lack of infringement may be filed only in respect of one design right and one product exploited or intended for exploitation.

(3) A fee prescribed by specific legislation shall be paid for the request for a ruling on lack of infringement within two months from the filing thereof.

(4) If the request for a ruling on lack of infringement does not comply with the requirements laid down by this Act, the requesting party shall be invited to remedy the defects; if the fee for the request has not been paid, that party shall be invited to fulfil that requirement within the period specified by this Act. Failure to remedy the defects shall result in the request for a ruling on lack of infringement being deemed withdrawn.

#### **Article 60**

(1) The Hungarian Patent Office shall invite the holder of the design right to submit comments on the request for a ruling on lack of infringement. Following written preparatory work, it shall decide at a hearing whether

the request shall be admitted or refused. The order terminating the procedure may also be taken without a hearing.

(2) The requesting party shall bear the costs of the procedure for a ruling on lack of infringement.

(3) Article 58(2) to (4) shall apply mutatis mutandis in procedures ruling on lack of infringement.

(4) Article 58/A shall apply mutatis mutandis in procedures ruling on lack of infringement.

**PART THREE PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS AND THE INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS**

**Chapter VIII/A PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS**

**Article 60/A General provisions**

For the purposes of this Act:

(a) Community Design Regulation: Council Regulation (EC) No 6/2002 on Community designs;

(b) Community design: a design, protected with or without registration, as defined in Article 1(1) of the Community Design Regulation;

(c) Community design application: an application for the registration of a Community design, filed in accordance with the Community Design Regulation.

**Article 60/B Forwarding Community design applications**

(1) Where a Community design application is filed with the Hungarian Patent Office, a fee prescribed by specific legislation shall be payable on filing the application for forwarding thereof in accordance with Article 35(2) of the Community Design Regulation.

(2) If the fee for forwarding the Community design application has not been paid, the Hungarian Patent Office shall invite the applicant to remedy that defect. The Hungarian Patent Office shall forward the Community design application after the payment of the fee.

**Article 60/C Community design as a ground for refusal**

Article 9(2) shall apply to registered Community designs.

**Article 60/D Legal consequences of the infringement of a Community design**

In case of an infringement of a Community design the same sanctions and remedies shall apply - in accordance with the provisions of, and in the cases referred to in, Articles 88 to 90 of the Community Design Regulation as in the case of an infringement of a design right granted by the Hungarian Patent Office on the basis of this Act.

**Article 60/E Community design courts**

(1) In the Republic of Hungary the Metropolitan Court, as a court of first instance, in the composition laid down in Article 63(2), shall be the Community design court referred to in Article 80(1) of the Community Design Regulation.

(2) The Metropolitan Court of Appeals, as the Community design court of second instance, shall have jurisdiction concerning appeals against the decisions of the Metropolitan Court.

## **Chapter VIII/B PROVISIONS CONCERNING INTERNATIONAL INDUSTRIAL DESIGN APPLICATIONS**

### **Article 60/F General provisions**

For the purposes of this Act international industrial design application shall mean an industrial design application filed under the Geneva Act of 2 July 1999 of the Hague Agreement of 1925 Concerning the International Deposit of Industrial Designs (hereinafter referred to as 'the Agreement').

### **Article 60/G**

The provisions of this Chapter shall apply mutatis mutandis to international deposits made under the Hague Act of 28 November 1960 of the Hague Agreement of 1925 Concerning the International Deposit of Industrial Designs.

### **Article 60/H**

(1) Where this Act refers to the application of the Agreement, it shall be construed as meaning also the application of the Common Regulations under the Acts of the Agreement referred to in Articles 60/F and 60/G.

(2) Unless otherwise provided in the Agreement, the provisions of this Act shall apply to international industrial design applications with the exceptions laid down in this Chapter.

### **Article 60/I [repealed]**

### **Article 60/J International industrial design applications filed through the Hungarian Patent Office**

(1) For the forwarding of international industrial design applications under the Agreement, the Hungarian Patent Office shall proceed with respect to international industrial design applications in which the Republic of Hungary is indicated as the applicant's Contracting State.

(2) For the forwarding of the international industrial design application, a transmittal fee prescribed by specific legislation shall be payable to the Hungarian Patent Office, and in connection with the international industrial design application a fee prescribed by the Agreement shall

be payable within the time limit and in the manner prescribed by the Agreement.

**Article 60/K International industrial design applications designating the Republic of Hungary**

(1) An international industrial design application designating the Republic of Hungary shall have the same effect from the date of the international registration as a design application duly filed with the Hungarian Patent Office (Article 37).

(2) Publication of the international industrial design application in the procedure before the International Bureau shall be considered to have the same effect as publication in the procedure before the Hungarian Patent Office (Article 45).

(3) The Hungarian Patent Office shall carry out the substantive examination of the international industrial design application. The substantive examination shall ascertain whether the design meets the requirements of Articles 1 to 5 and whether it is not excluded from design right under Articles 6 to 9 and - due to an observation of the holder of an earlier right to this effect - under Article 10.

(4) If the international industrial design application does not comply, in part or in whole, with the requirements examined under paragraph (3), or with respect to it an observation was filed under Article 10, the Hungarian Patent Office shall notify the International Bureau accordingly within six months from the date prescribed by the Agreement.

(5) The notification shall specify the grounds on which it is based and the applicant shall be invited to submit comments within the time limit fixed by the notification. When making a decision on the refusal of the effects of the international registration, the comments of the applicant shall be taken into consideration.

(6) If the applicant does not reply to the invitation within the prescribed time limit or the international industrial design application still does not comply with the examined requirements in spite of the comments filed within the prescribed time limit, the Hungarian Patent Office shall refuse the effects of the international registration in the territory of the Republic of Hungary.

(7) Where on the basis of the comments of the applicant the Hungarian Patent Office considers that the content of the notification referred to in paragraph (4) is unfounded in part or in whole, it shall withdraw the notification in part or in whole. The Hungarian Patent Office shall notify the International Bureau after the ruling on the withdrawal has become final.

(8) Where the Hungarian Patent Office withdraws - in part or in whole - its notification under paragraph (7), the international registration or its part affected by the withdrawal shall have the same effect as a design right granted by the Hungarian Patent Office (Article 50) from the date of the ruling on the withdrawal.

(9) Where the Hungarian Patent Office does not make any notification under paragraph (4), the international registration shall have the same effect as a design right granted by the Hungarian Patent Office (Article 50) from the day following the expiration of the time limit prescribed for the notification.

## PART FOUR COURT PROCEEDINGS IN DESIGN CASES

### Chapter IX REVIEW OF DECISIONS OF THE HUNGARIAN PATENT OFFICE

#### Article 61 Request for review

(1) Upon request, the court may review the Hungarian Patent Office's:

- (a) decisions referred to in Article 32/A(3);
- (b) decisions suspending the procedure or furnishing a basis for entries in the register of design applications or the design register;
- (c) orders excluding or limiting the inspection of files against which independent legal remedy shall be admissible under the provisions of the Act on the general rules of public administration procedures;
- (d) orders denying persons the legal status as a party to the procedure apart from those who have submitted a request for the commencement of the procedure;
- (e) orders imposing procedural fines or ruling on the amount of procedural costs and their payment.

(2) A request for review brought against an order imposing a procedural fine or ruling on the amount of procedural costs and their payment shall have no delaying force with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final.

(3) Any order of the Hungarian Patent Office not referred to in paragraph (1) may only be contested in a request for review of the decisions referred to in paragraph (1).

(4) Review of a decision may be requested by:

- (a) any party to the procedures before the Hungarian Patent Office;
- (b) any person excluded from, or limited in, the inspection of files;
- (c) by any person whose legal status as a party to the procedure has been denied.

(5) Review of a ruling on the registration or the invalidation of a design right may be requested by the public prosecutor under Article 7 and 8. Any other person who took part in the procedures before the Hungarian Patent Office may submit, in his own right, an independent request for review of the decision or a provision thereof relating to him.

(6) The request for review must be filed or posted by registered mail,

with the exceptions laid down in paragraphs (7) and (8), within thirty days from the date of notification of the decision to the party concerned or to any other party to the procedure.

(7) The time limit of thirty days for the filing of a request for review shall be reckoned from the date of communication of the order refusing, or considering not to have been filed, the request for continuation of the procedure or the request for restitutio in integrum, if:

(a) that date is later than the date of communication of the decision under paragraph (6); and

(b) the request for continuation of the procedure or the request for restitutio in integrum was filed to avert the consequences of an omission, which served directly as a basis for the decision under paragraph (6).

(8) If the review of a decision taken by the Hungarian Patent Office is requested on the basis of a decision taken by the Constitutional Court under the provisions of the Act on the general rules of public administration procedures, the time limit for filing a request for review shall open again for thirty days from the pronouncement of the decision of the Constitutional Court.

(9) The request for review shall be filed with the Hungarian Patent Office, which shall forward it, together with the documents of the design file, to the court within fifteen days except for the case provided for in paragraph (10). Where an opposing party has taken part in the procedure, the Hungarian Patent Office shall simultaneously notify that party of the forwarding of the request of the other party.

(10) If the request for review raises legal questions of fundamental importance, the Hungarian Patent Office may make a written statement on such questions and shall forward it, together with the request for review and the documents of the design file, to the court within thirty days.

(11) The rules concerning the requirements of actions shall apply mutatis mutandis to the requirements for a request for review.

(12) In the case of a request for review filed late, the court shall decide on the request for restitutio in integrum.

#### **Article 62 Other rules governing court proceedings**

The provisions on court proceedings for the review of decisions taken

by the Hungarian Patent Office in patent matters shall apply mutatis mutandis in court proceedings for the review of decisions taken by the Hungarian Patent Office in design matters provided that the reference in Article 100(3) of the Patent Act to Article 81(1) of the Patent Act shall be construed as reference to Article 58(1) of this Act.

## **Chapter X DESIGN LITIGATION**

### **Article 63 Rules governing design litigation**

(1) Court proceedings concerning the infringement of a design or a design right, the establishment of prior use and continued use [Article 65(8)], as well as court proceedings instituted for the prohibition of the use of a Community design under Article 110a(4) of the Community Design Regulation [Article 60/A(a)] shall constitute design litigation.

(2) The provisions on patent litigation shall apply mutatis mutandis to design litigation.

(3) In any other design litigation not mentioned in paragraph (1), the county courts (Metropolitan Court) shall proceed by applying mutatis mutandis the rules governing patent litigation.

## **PART FIVE FINAL PROVISIONS**

### **Chapter XI ENTRY INTO FORCE; MISCELLANEOUS, TRANSITIONAL AND AMENDING PROVISIONS**

#### **Article 64 Relationship to copyright protection**

The protection granted to a design under this Act shall be without prejudice to the copyright protection under specific legislation of the design as an artistic work.

#### **Article 65 Rules establishing provisions concerning the entry into force of this Act and transitional provisions**

(1) This Act shall enter into force on 1 January of 2002; its provisions shall apply - with the exceptions and conditions set out in paragraphs (2), (6) to (7) and (9) to (10) - only in procedures that begin after its entry into force.

(2) The provisions relating to restitutio in integrum shall also apply mutatis mutandis to pending matters.

(3) Where a contract of remuneration of the designer or a design license agreement was concluded or a service design was utilised before the entry into force of this Act, the provisions in force at the time of the conclusion of the contract or of the utilisation shall apply.

(4) Exploitation commenced before the entry into force of this Act shall be subject to the previously applicable provisions with respect to the rights conferred by and the scope, limitations and infringement of the design right to the extent of the exploitation at the date of the entry into force of this Act.

(5) Renewal of a design right valid at the date of entry into force of this Act shall be subject to the provisions of this Act. This provision shall apply mutatis mutandis if the date of expiration of the term of design right is not earlier than six months prior to the date of entry into force of this Act and no request for renewal has been filed under the previously applicable provisions until the entry into force of this Act.

(6) If a design right extended before the entry into force of this Act is renewed after the entry into force thereof, the provisions of this

Act shall apply to the invalidation of design right, provided that in the case of invalidation the design right shall lapse with retroactive effect to the date of expiration of the extended design right.

(7) The provisions of paragraph (6) shall also apply *mutatis mutandis* if a design right valid at the date of entry into force of this Act without extension is renewed for a second time, provided that in the case of invalidation the design right shall lapse with retroactive effect to the date of expiration of the firstly renewed design right.

(8) If a design right extended under the previously applicable provisions lapsed by reason of expiration within five years prior to the entry into force of this Act, the holder of the design right may request, by applying *mutatis mutandis* the provisions on renewal and within six months following the entry into force of this Act, that the Hungarian Patent Office re-establish the design right with an effect from the entry into force of this Act and for the remaining part of the period fixed by Article 19(3). The initial term of the re-established design right shall be the time by which the remaining part of the period fixed by Article 19(3) exceeds ten years; in such cases the fee for the request for renewal shall be reduced proportionally. Re-establishment of a design right and a renewal thereof may be requested together, if the initial term of the re-established design right does not exceed one year. A right of continued use shall belong to any person who has started or continued the exploitation of the design in the period between the lapse of the design right and the entry into force of this Act; with respect to this right, the provisions of the Patent Act concerning the right of continued use shall apply *mutatis mutandis*.

(9) Invalidation of a re-established design right shall be subject to the provisions of this Act except that in the case of invalidation the design right shall lapse with retroactive effect to the date of entry into force of this Act.

(10) With respect to the conditions of invalidation of a design right valid at, or lapsed before, the date of entry into force of this Act, the provisions applicable at the date of priority shall be decisive. Such design right renewed or re-established after the entry into force of this Act shall be invalidated with retroactive effect to the date of filing, if invalidation is admissible under the provisions applicable at the date of priority. In such cases the provisions laid down in paragraphs (6)

- (7) and (9) shall not apply.

(11) Any mention of industrial design or industrial design right in legislation shall mean design or design right.

#### **Article 66 [repealed]**

#### **Article 67 Amending provisions and related transitional rules**

(1) [repealed]

(2) Where a contract of remuneration was concluded or a service invention was utilized before the entry into force of this Act, the provisions effective at the time of the conclusion of the contract or of the utilization shall apply.

(3) With respect to the conditions of revocation of a utility model protection effective at the date of entry into force of this Act, the provisions applicable at the date of priority shall be decisive.

(4) [repealed]

#### **Article 68 Authorisation**

The minister responsible for justice shall be authorised to establish by decree, in consultation with the President of the Hungarian Patent Office and in agreement with the minister exercising the rights of supervision over the Hungarian Patent Office, the detailed formal rules for design applications.

#### **Article 69 Compliance with the law of the European Union**

(1) This Act serves compliance with Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs.

(2) This Act lays down the rules required for implementing Council Regulation 6/2002 (EC) of 12 December 2001 on Community Designs.