

HUNGARY
Utility Model Act

Act XLVIII of 2001 on the protection of utility models as consolidated on
October 1, 2009

TABLE OF CONTENTS

Chapter I SUBJECT MATTER OF AND RIGHTS CONFERRED BY UTILITY MODEL PROTECTION

Article 1 Protectable utility models

Article 2

Article 3

Article 4

Article 5

Article 6 Inventor of the utility model and right to utility model protection

Article 7

Article 8

Article 9

Article 10 Establishment and term of utility model protection

Article 11

Article 12 Rights conferred by utility model protection, scope and limitations thereof

Article 13

Article 14

Article 15

Article 16

Article 17

Chapter II UTILITY MODEL INFRINGEMENT AND INFRINGEMENT OF UTILITY MODEL PROTECTION

Article 18 Utility model infringement

Article 19 Infringement of utility model protection

Article 20 Ruling on lack of infringement

Chapter III LAPSE OF UTILITY MODEL PROTECTION

Article 21 Cases of lapse of utility model protection

Article 22 Restoration of utility model protection

Article 23 Surrender of utility model protection

Article 24 Revocation of utility model protection

Article 25 Reclaiming of royalties

Chapter IV PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN UTILITY MODEL MATTERS

Article 26 Competence of the Hungarian Patent Office

Article 27 Application of the general rules of public administration procedures

Article 28

Article 29 Utility model application

Article 30 Derivation from patent application

Article 31 [repealed]

Article 32 Description

Article 33 Unity of utility model

Article 34 Examination of the utility model application

Article 35

Article 36 Procedure in utility model matters

Chapter V COURT PROCEEDINGS IN UTILITY MODEL MATTERS AND LITIGATION

Article 37 Review of decisions taken by the Hungarian Patent Office

Article 38 Utility model litigation

Chapter VI FINAL PROVISIONS

Articles 39 - 41 [Repealed]

Article 42 Entry into force

Chapter I SUBJECT MATTER OF AND RIGHTS CONFERRED BY UTILITY MODEL PROTECTION

Article 1 Protectable utility models

(1) Utility model protection shall be granted to any solution relating to the configuration or construction of an article or to the arrangement of parts thereof (hereinafter referred to as "utility model") which is new, involves an inventive step and is susceptible of industrial application.

(2) Utility model protection, within the meaning of paragraph (1), shall not be granted in particular for:

- (a) the aesthetic design of an article;
- (b) plant varieties.

Article 2

(1) A utility model shall be considered new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written description or by public use in the country before the date of priority.

(3) The content of any patent application or utility model application having an earlier date of priority shall also be considered as comprised in the state of the art, provided that it was published or announced in the course of the granting procedure at a date following the date of priority. The content of such a European patent application and international patent application shall only be considered as comprised in the state of the art on special conditions laid down in the Act on the protection of inventions by patents (hereinafter referred to as "the Patent Act"). For the purposes of these provisions, the abstract shall not be considered as comprised in the content of the application.

(4) For the application of paragraphs (1) and (2), a written description or public use during the six months preceding the date of priority of the application shall not be taken into consideration if it was made by or with the consent of the applicant or his predecessor in title, or if it was due to an abuse of the rights of the applicant or his predecessor in title.

Article 3

(1) The utility model shall be considered to involve an inventive step if it is not obvious to a skilled craftsman as compared with the state of the

art.

(2) For the application of paragraph (1), the part of the state of the art referred to in Article 2(3) shall not be taken into consideration.

Article 4

The utility model shall be considered susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Article 5

(1) The applicant shall be granted protection for his utility model if:
(a) the utility model satisfies the requirements prescribed in Articles 1 to 4 of this Act and it is not excluded from utility model protection under paragraph (2) and Article 1(2);

(b) the application complies with the formal requirements prescribed by this Act.

(2) The utility model may not be granted protection if its use would be contrary to law or public morality, unless merely the trade in such products is restricted by law.

Article 6 Inventor of the utility model and right to utility model protection

The inventor of the utility model is the person who has created the utility model.

Article 7

(1) The right to utility model protection shall belong to the inventor or his successor in title.

(2) If two or more persons have created a utility model jointly, the right to utility model protection shall belong jointly to them or to their successors in title. If two or more persons have created the utility model independently of each other, the right to utility model protection shall belong to the inventor or his successor in title who filed the application with the earliest date of priority with the Hungarian Patent Office.

Article 8

The provisions on service and employee inventions shall apply *mutatis mutandis* to utility models created by persons working in employment or in public service, by persons in service relationship or by members of a cooperative working within the framework of a legal relationship of an employment nature.

Article 9

In any other matters pertaining to the personal rights of the inventor of the utility model and the right to utility model protection, the provisions of the Patent Act concerning the personal rights of the inventor and the right to a patent shall apply *mutatis mutandis*.

Article 10 Establishment and term of utility model protection

Utility model protection shall begin on the date when protection is granted to the applicant, and it shall be effective retroactively from the filing date of application.

Article 11

(1) Utility model protection shall have a term of ten years from the filing date of the application.

(2) Annual renewal fees shall be paid for the term of utility model protection. Payment of the annual fee is due in advance on the date of filing the application for the first year, and on the same calendar days in subsequent years. The annual fee due prior to granting the utility model protection may also be paid within a six-month grace period after the granting decision becomes final, while all other annual fees may be paid within a six-month grace period after the due date of payment.

Article 12 Rights conferred by utility model protection, scope and limitations thereof

Utility model protection shall afford the right holder the exclusive right to exploit the utility model or to license another person to exploit it, as provided for by legislation. The exclusive right of exploitation shall include the manufacture, use, importation of the subject matter of the utility model or putting it on the market within the framework of economic activity.

Article 13

(1) The scope of utility model protection shall be determined by the claims. The claims may be interpreted only on the basis of the description and drawings.

(2) Utility model protection shall cover a product which embodies all the elements of the claim or in which one or more elements of the claim are replaced by an equivalent.

(3) Entitlement to remuneration deriving from utility model protection shall not be affected if one or more elements of the claim are replaced in the

product by improved elements made available to the exploiter by the owner of the utility model protection or by the inventor of the utility model.

Article 14

Rights deriving from a utility model and from utility model protection, with the exception of the personal rights of the inventor, may be transferred, assigned and pledged.

Article 15

Under an exploitation contract (utility model license contract), the right holder of the utility model licenses the exploitation of the utility model to an exploiter who in exchange is obliged to pay royalties.

Article 16

(1) If a protected utility model cannot be exploited without infringing the protection of another utility model, a compulsory license shall be granted for the said other utility model to the extent necessary for exploitation.

(2) If a patented invention or a variety under plant variety protection cannot be exploited without infringing a protected utility model, a compulsory license shall be granted for the said utility model to the extent necessary for exploitation.

Article 17

(1) With respect to succession in title, to the pledging of rights deriving from utility model and from utility model protection, as well as to exploitation contracts, the provisions of the Patent Act shall apply *mutatis mutandis*.

(2) With respect to compulsory licenses of protected utility models and the limitations and exhaustion of utility model protection, the common provisions of the Patent Act on compulsory licenses, and the provisions on limitations and exhaustion of patent protection thereof shall apply *mutatis mutandis*.

(3) With respect to joint right to a utility model protection and joint utility model protection, the provisions of the Patent Act on joint right to a patent and joint patent shall apply *mutatis mutandis*.

Chapter II UTILITY MODEL INFRINGEMENT AND INFRINGEMENT OF UTILITY MODEL PROTECTION

Article 18 Utility model infringement

Where the subject matter of a utility model application or of a utility model has been unlawfully taken from another person, the injured party or his successor in title may claim partial or total assignment of the utility model application or of the utility model protection.

Article 19 Infringement of utility model protection

(1) Any person who unlawfully exploits a protected utility model commits an infringement of utility model protection.

(2) The right holder of the utility model protection may have recourse to the same civil remedies against the infringer as a patentee, by virtue of the Patent Act, may have recourse to against the infringer of his patent.

(3) In case of infringement of utility model protection, the rights of the exploiter authorized by the right holder shall be determined by the provisions of the Patent Act.

Article 20 Ruling on lack of infringement

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

(2) Where a final ruling declaring the lack of infringement has been given, infringement proceedings may not be instituted on the basis of the specified utility model protection in respect of the same product.

Chapter III LAPSE OF UTILITY MODEL PROTECTION

Article 21 Cases of lapse of utility model protection

(1) Utility model protection shall lapse:

- (a) when the period of protection expires, on the day following the date of expiration;
- (b) if the annual fees have not been paid, on the day following the due date;
- (c) if the right holder of the utility model protection surrenders the protection, on the day following receipt of the surrender, or at an earlier date specified by the person surrendering the protection;
- (d) if the utility model protection is revoked, with retroactive effect to the filing date of the application.

(2) Utility model protection shall be considered lapsed *ex tunc*, when a patent is granted by a final ruling for a patent application:

- (a) derived from the utility model application;
- (b) from which the utility model application has been derived.

Article 22 Restoration of utility model protection

If utility model protection has lapsed by reason of failing to pay annual fees, the Hungarian Patent Office shall, on request, restore the protection if the failure occurred for a justifiable reason.

Article 23 Surrender of utility model protection

(1) The right holder entered in the Utility Model Register may surrender utility model protection by a written declaration addressed to the Hungarian Patent Office. If the surrender affects the rights of third parties deriving from legislation, from rulings of an authority or from a license contract recorded in the Utility Model Register, or if a lawsuit is recorded in the Utility Model Register, it shall take effect only with the consent of the parties concerned.

(2) It shall also be possible to surrender certain claims of the utility model protection.

Article 24 Revocation of utility model protection

(1) Utility model protection shall be revoked if:

- (a) the subject matter of the utility model protection does not satisfy the requirements laid down in Article 5(1)(a);
- (b) the description does not satisfy the legal requirements (Article 32);
- (c) the subject matter of the utility model protection extends beyond the

content of the application as filed at the accorded filing date or - in the case of division - beyond the content of the divisional application.

(2) Where grounds for revocation exist only in part, the utility model protection shall be limited accordingly.

Article 25 Reclaiming of royalties

If utility model protection lapses *ex tunc*, only the portion of the royalties collected in good faith by the right holder of the utility model protection or the inventor of the utility model that was not covered by the benefits derived from exploitation of the utility model may be reclaimed.

Chapter IV PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN UTILITY MODEL MATTERS

Article 26 Competence of the Hungarian Patent Office

The Hungarian Patent Office shall have authority in the following utility model matters:

- (a) grant of utility model protection;
- (b) decision on lapse of utility model protection and restoration thereof;
- (c) revocation of utility model protection;
- (d) decision on lack of infringement;
- (e) interpretation of utility model descriptions;
- (f) matters concerning the maintenance and recording of utility model protection.

Article 27 Application of the general rules of public administration procedures

(1) The Hungarian Patent Office shall proceed in utility model matters - with the exceptions laid down in this Act - by applying the provisions of Act on the general rules of public administration procedures.

(2) Against the decisions of the Hungarian Patent Office appeals, rehearing and supervisory procedures and protests of the prosecutor shall not be admissible.

(3) Decisions of the Hungarian Patent Office in design matters shall be reviewed by the court in non-contentious civil procedure laid down in Article 37.

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

- (a) grant of utility model protection;
- (b) decision on lapse of utility model protection and restoration thereof;
- (c) revocation of utility model protection;
- (d) decision on lack of infringement.

(5) In the absence of a provision of the Patent Act to the contrary, the Hungarian Patent Office may withdraw or modify its decision - terminating the procedure - taken in the matters referred to in paragraph (4)(c) and (d) on the basis of a request for review only if it establishes that its decision infringes legislation or if the parties request unanimously the

modification or withdrawal of the decision.

Article 28

(1) For the procedures of the Hungarian Patent Office in utility model matters, the general provisions of the Patent Act governing procedures before the Hungarian Patent Office shall apply *mutatis mutandis*.

(2) The utility model application shall be considered withdrawn when a patent is granted by a final decision for a patent application:

- (a) derived from the utility model application;
- (b) from which the utility model application has been derived.

Article 29 Utility model application

(1) The procedure for the grant of utility model protection shall begin with the filing of an application with the Hungarian Patent Office.

(2) Utility model applications shall contain a request, a description of the utility model and other relevant documents.

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

(4) [Repealed]

Article 30 Derivation from patent application

(1) Where the applicant has already filed a patent application at an earlier date, he may, in his declaration of priority filed within two months after the date of filing of a utility model application for the same subject matter, claim the filing date and the right of priority of the said patent application (derivation).

(2) The priority and filing dates of the patent application shall apply only by derivation to the utility model application if the derived utility model application is filed with the Hungarian Patent Office:

(a) in the course of a patent application procedure up to the date on which the decision on the grant of a patent becomes final, or within three months from the date on which the decision rejecting the patent application becomes final; or

(b) within three months from the date on which the ruling declaring the patent revoked for lack of novelty or lack of inventive activity becomes final.

(3) The derivation of a utility model application shall be admissible only within 10 years from the filing date of the patent application.

Article 31 [repealed]

Article 32 Description

(1) The description shall enable a skilled craftsman to carry out the subject matter of the utility model on the basis of the description and the drawings.

(2) At the end of the description one or more claims shall define, with reference to other parts of the description, the extent of the utility model protection applied for.

Article 33 Unity of utility model

In any utility model application, protection may only be sought for a single utility model.

Article 34 Examination of the utility model application

(1) The Hungarian Patent Office shall make an examination of the utility model application in order to ascertain whether it complies with the requirements prescribed in Article 29(2) to (4).

(2) [Repealed]

Article 35

The Hungarian Patent Office shall carry out a substantive examination of the utility model application with regard to the following points:

- (a) whether the subject matter of the application is a utility model;
- (b) whether the subject matter of the application is susceptible of industrial application;
- (c) whether the subject matter of the application is excluded from utility model protection under Article 5(2);
- (d) whether the description meets the legal requirements;
- (e) whether the utility model meets the requirement of unity;
- (f) whether priority for the utility model has been claimed duly.

Article 36 Procedure in utility model matters

(1) For the priority, filing date, examination, amendment, division and withdrawal of utility model applications, communication of certain data of utility model applications, declaration of lapse, restoration, revocation of utility model protection, as well as the interpretation of utility model

descriptions and ruling on lack of infringement, the provisions of the Patent Act shall apply *mutatis mutandis*.

(2) [repealed]

(3) For the grant of utility model protection, the provisions of the Patent Act on the grant of patents shall apply. After the publication of the grant of utility model protection, any person may inspect the utility model application and may obtain copies of its files on payment of a fee.

(4) In utility model matters the provisions of the Patent Act on the effects of the European patent application shall apply *mutatis mutandis*. The European patent application may be converted into a national utility model application by applying the provisions of the Patent Act *mutatis mutandis*.

(5) Where the applicant designates, in compliance with Article 43 of the Patent Cooperation Treaty, that his international application tends to obtain utility model protection in the Republic of Hungary as designated or an elected country, for the procedure of the Hungarian Patent Office as a designated or an elected office, the provisions of the Patent Act shall apply *mutatis mutandis*.

Chapter V COURT PROCEEDINGS IN UTILITY MODEL MATTERS AND LITIGATION

Article 37 Review of decisions taken by the Hungarian Patent Office

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

(a) decisions referred to in Article 27(4);

(b) decisions suspending the procedure or furnishing a basis for entries in the register of utility model applications or the utility model 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:

(b) by any person excluded from, or limited in, the inspection of the 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 utility model protection may be requested by the public prosecutor under Article 5(2). 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 shall be filed or posted by registered mail, with the exceptions laid down in paragraphs (7) and (8), within 30 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 utility model 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 utility model 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*.

(13) In any other matters, 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 utility model matters.

Article 38 Utility model litigation

(1) Utility model litigation:

(a) litigation concerning the grant, modification or cancellation of a utility model compulsory license;

(b) [repealed]

(c) litigation concerning the existence of the right of prior use;

(d) litigation concerning infringement.

(2) The provisions on patent litigation shall apply to utility model litigation.

(3) In any other utility model litigation not mentioned in paragraph (1), the county courts (Metropolitan Court) shall proceed in accordance with the rules governing patent litigation.

Chapter VI FINAL PROVISIONS

Articles 39 - 41 [Repealed]

Article 42 Entry into force

(1) This Act shall enter into force on January 1, 1992.

(2) 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 utility model applications.