

HUNGARY
Utility Model Act

Act XXXVIII OF 1991 on the protection of utility models as
consolidated on January 1, 2018

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

Article 1 Protectable utility models

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

(2) An equipment and a system consisting of several, interconnected devices shall be considered a utility model pursuant to paragraph (1); however, the aesthetic design of a product, plant varieties, chemical products and compositions shall not be covered by the concept of utility model.

Article 2

(1) The 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 communication, oral description, by use or in any other way, before the date of priority.

(3) The content of any domestic 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 XXXIII of 1995 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 purposes of paragraphs (1) and (2), a written description or public use that occurred no earlier than six months preceding the date of priority 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, in regard to the state of the art, it is not obvious to a skilled craftsman. The mere fact that the state of the art is consists of several sources or that it consists of, wholly or in part, foreign language sources does not, in itself, establish inventive step.

(2) For the purposes of examining the inventive step, 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 sector of industry, including agriculture.

Article 5

(1) Utility model protection shall be granted for a utility model if
(a) the utility model satisfies the requirements prescribed in Articles 1 to 4 and it is not excluded from utility model protection under paragraph (2); and
(b) the application meets the conditions laid down in this Act.

(2) The utility model may not be granted protection if the exploitation thereof within the framework of economic activity would be contrary to public policy or public morality; such exploitation may not be regarded as contrary to public policy merely because it is prohibited by a 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 to them or to their successors in title jointly. 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 Intellectual Property Office.

Article 8

In the case of utility models created by persons in employment relationship or in public service, government service, state service or public employee legal relationship, or by members of a co-operative working within the framework of a legal relationship of an employment nature, the provisions of the Patent Act governing service and employee inventions shall apply *mutatis mutandis*.

Article 9

In any other matters concerning the moral rights of the inventor of the utility model, his remuneration and his right to the utility model protection, the provisions of the Patent Act on the moral rights of the inventor, his remuneration and his right to the 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 date of filing of the application.

Article 11

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

(2) Annual maintenance fees determined by a law shall be paid during the term of utility model protection. The fee for the first year shall be due in advance on the filing date and the fees for the subsequent years shall be paid in advance on the anniversaries of the filing date. The annual fee which becomes due prior to the grant of the utility model protection may also be paid within a grace period of six months from the date on which the granting decision becomes final, while all other annual fees may also be paid within a grace period of six months from the due date.

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

Within the framework of the laws utility model protection shall afford the holder the exclusive right to exploit the utility model or to license another person to exploit it. The exclusive right of exploitation shall include the manufacture, use, putting on the market or offering for sale of a product that is the subject matter of the utility model, or stocking or importing the product for such purposes within the framework of economic activity.

Article 13

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

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

(2a) The content of the claims shall not be confined to their strict literal meaning; neither shall the claims be considered to be mere guidelines for a skilled craftsman to determine the claimed utility model.

(3) Entitlement to remuneration deriving from utility model protection shall not be affected if one or more characteristics of the claim are replaced in the product by improved characteristics made available to the licensee by the holder of the utility model protection or by the inventor of the utility model.

Article 14 [repealed]

Article 15 [repealed]

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 dominant 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 dominant utility model to the extent necessary for exploitation. Furthermore, the common provisions of the Patent Act on compulsory licenses shall apply mutatis mutandis with respect to compulsory licences for protected utility models.

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 license contracts, the provisions of the Patent Act shall apply mutatis mutandis.

(2) With respect to the limitations and exhaustion of utility model protection, the provisions of the Patent Act on the limitations and exhaustion of patent protection 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 INFRINGEMENT OF UTILITY MODELS AND UTILITY MODEL PROTECTION

Article 18 Infringement of utility models

Where the subject matter of a utility model application or of a utility model protection has been unlawfully taken from another person, the injured party or his successor in title may claim the assignment, wholly or in part, of the utility model application or of the utility model protection, as well as damages under the rules of civil liability.

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 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 provisions of the Patent Act shall apply to the rights of the licensee authorized by the holder.

Article 20 Decision 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 exploited or to be exploited by him does not infringe a particular utility model protection specified by him.

(2) Where a final decision on 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 by the end of the grace period, on the day following the due date;
- (c) if the 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) [repealed]

Article 22 Restoration of utility model protection

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

Article 23 Surrender of utility model protection

(1) The holder entered in the Utility Model Register may surrender utility model protection by a written declaration addressed to the Hungarian Intellectual Property Office. If the surrender affects the rights of third parties deriving from a law, from the decision 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.

(3) Withdrawal of the surrender of utility model protection shall have no legal effect.

Article 24 Revocation and limitation of utility model protection

(1) Utility model protection shall be revoked ex tunc 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 meet the conditions laid down in 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, or

(d) the utility model protection has been granted to a person who is not entitled to it under this Act.

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

(3) If a request for revocation has been rejected by a final decision, new proceedings for the revocation of the same utility model protection based on the same facts may not be instituted by any person.

Article 25 Reclaiming of royalties

If utility model protection lapses *ex tunc*, only the portion of the royalties collected in good faith by the 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 INTELLECTUAL PROPERTY OFFICE IN UTILITY MODEL MATTERS

Article 26 Competence of the Hungarian Intellectual Property Office

The Hungarian Intellectual Property Office shall have competence in matters relating to:

- (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) maintenance and recording of utility model protection,
- (g) provision of official information on utility model protection.

Article 27 Application of the General Code of Public Administration Procedure

(1) The Hungarian Intellectual Property Office shall proceed in utility model matters - with the exceptions and additions laid down in this Act - in accordance with the provisions of the Act on the General Code of Public Administration Procedure.

(2) In connection with the decisions of the Hungarian Intellectual Property Office no appeals, no administrative or supervisory proceedings, and no notice or action of the prosecutor pursuant to the Act on the Prosecution Service shall be admissible.

(3) Decisions of the Hungarian Intellectual Property Office taken in utility model matters shall be reviewed by the court in conformity with the provisions of Article 37.

(4) In the absence of a provision of the Patent Act to the contrary, the Hungarian Intellectual Property 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 Intellectual Property 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 a law or if the parties request unanimously the modification or withdrawal of the decision.

Article 28

(1) The general provisions of the Patent Act governing procedures before the Hungarian Intellectual Property Office, including the provisions on the patent register and on official information, shall apply mutatis mutandis to utility model matters before the Hungarian Intellectual Property Office, with the following exceptions:

(a) a time limit set by the Hungarian Intellectual Property Office shall be at least one month, but not more than three months;

(b) a time limit pursuant to point (a) may be extended, on request and before the expiration thereof, by at least one month, but not more than three months;

(c) extensions of time limits exceeding in length or number those laid down in point (b) may not be granted, not even in particularly justified cases;

(d) the terms patent application, patent and patent register shall be construed as meaning utility model application, utility model and utility model register, respectively; provisions on the publication of patent applications and on the application of the Patent Law Treaty shall not apply.

(2) The provisions of the Patent Act on administrative service fees of utility model procedures and maintenance fees of utility models shall only apply if this Act does not provide otherwise.

(3) If for the same subject matter both patent and utility model protection has been granted, a final decision in proceedings for the revocation of either of them shall bind the Hungarian Intellectual Property Office, to the extent of the revocation established in the decision, in parallel proceedings on the validity of the other protection.

(4) After the decision granting utility model protection becomes final,

anybody may inspect the documents of the utility model application and, subject to the payment of a fee determined by a law, may obtain a copy of the same. After the decision granting utility model protection becomes final, or, if the protectability opinion referred to in Article 36/B is drawn up thereafter, following the official information on the protectability opinion, any person may inspect the protectability opinion and, for a fee, obtain a copy of the documents thereof.

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 Intellectual Property Office.

(2) A utility model application shall contain a request, a description of the utility model with one or more claims, a drawing, and, where necessary, other annexed documents.

(3) The detailed formal requirements to be complied with by applications shall be laid down in a Ministerial Decree issued by authorisation pursuant to this Act.

(4) A utility model application shall be subject to the payment of an administrative service fee determined in a Ministerial Decree issued by authorisation pursuant to the Patent Act; the application fee shall be paid within two months of the date of filing.

(5) Where the documents annexed to the application have been prepared in a foreign language, the utility model description with the claims, as well as the drawing shall be filed in Hungarian within four months of the date of filing.

(6) Until the decision granting utility model protection becomes final, the applicant may withdraw the utility model application, in compliance with the provisions of Article 23.

Article 29/A

(1) The filing date of a utility model application shall be the date on which the application filed with the Hungarian Intellectual Property Office contains at least the following:

(a) an indication that a utility model is sought,

(b) information identifying the applicant and making it possible to contact him, and

(c) a description and the drawing referred to therein, irrespective of whether they comply with the other requirements.

(2) Instead of filing the description and the drawing, a reference to a priority document shall also suffice for according a date of filing.

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 date of the patent application shall apply by derivation to the utility model application if the derived utility model application is filed with the Hungarian Intellectual Property 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 refusing the patent application becomes final, or

(b) within three months from the date on which the decision 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

A utility model application may seek protection for one utility model only.

Article 33/A Examination of the utility model application

Following the filing of a utility model application, the Hungarian Intellectual Property Office shall examine whether

- (a) the application satisfies the requirements for according a date of filing pursuant to Article 29/A,
- (b) the application fee has been paid pursuant to Article 29(4), and
- (c) the utility model description and drawing have been filed in the Hungarian language pursuant to Article 29(5).

Article 33/B

(1) If a date of filing cannot be accorded, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities within two months.

(2) If the applicant complies with the invitation within the specified time limit, the date of receipt of the rectification shall be regarded as the date of filing. If the applicant fails to comply with said invitation, no date of filing can be accorded and proceedings shall be terminated.

(3) In the absence of information making it possible to contact the applicant, no invitation to rectify the irregularities shall be issued, and the time limit of two months for the rectification of irregularities shall be reckoned from the receipt of the application.

(4) The applicant shall be notified of the accorded date of filing.

(5) If the application fee has not been paid or the utility model description and drawing have not been filed in the Hungarian language, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularities within the time limit specified in Article 29(4) and (5). If the applicant fails to comply with said invitation, the application shall be deemed to be withdrawn.

Article 34

If the utility model application satisfies the requirements examined under Article 33/A, the Hungarian Intellectual Property Office shall

examine whether the utility model application meets the requirements of Article 29(2) and (3).

Article 35

The Hungarian Intellectual Property 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 pursuant to Article 1;
- (b) whether the subject matter of the application is susceptible of industrial application;
- (c) whether the subject matter of the application is not excluded from utility model protection under Article 5(2);
- (d) whether the description meets the legal requirements (Article 32);
- (e) whether the utility model meets the requirement of unity;
- (f) whether priority for the utility model has been properly claimed and whether the applicant is entitled to the claimed priority.
- (g) whether the application has not been modified by adding new content, so that its subject matter extends beyond the content of the application as filed at the filing date.

Article 36 Procedure in utility model matters

(1) If the utility model application does not meet the requirements examined under Articles 34 and 35, the applicant shall be invited, according to the nature of the objection, to rectify the irregularities, make a declaration or divide the application.

(2) A utility model application shall be rejected, in whole or in part, if it does not meet the examined requirements even after the rectification of irregularities or the making of a declaration.

(3) An application may be rejected only on grounds that have been precisely and expressly stated and duly explained in the invitation.

(4) If the applicant fails to reply to the invitation or to divide the application within the specified time limit, the utility model application shall be deemed to be withdrawn.

(5) If the utility model and the utility model application meet all the requirements of the examination, the Hungarian Intellectual Property Office shall grant utility model protection for the subject

matter of the application.

(6) 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.

(7) Where the applicant indicates, in compliance with Article 43 of the Patent Cooperation Treaty, that his international application aims at obtaining utility model protection in Hungary as a designated or an elected country, for the procedure of the Hungarian Intellectual Property Office as a designated or an elected office, the provisions of the Patent Act shall apply mutatis mutandis.

Article 36/A Application of the special procedural rules of the Patent Act

In matters not regulated in this Act the provisions of the Patent Act shall apply mutatis mutandis regarding the priority, classification, modification and division of utility model applications, and the declaration of lapse, restoration or revocation of utility model protection, as well as regarding the interpretation of utility model descriptions, and decisions on lack of infringement.

Article 36/B Protectability opinion

(1) At the request of the applicant or - following the grant of utility model protection - at the request of the right holder of the utility model protection, the Hungarian Intellectual Property Office shall draw up a protectability opinion. The protectability opinion is a finding - based on novelty search, and containing also reasons but having no binding effect beyond the legal effects specified in this Act - on whether the utility model appears to meet the requirements of novelty, inventive step and industrial applicability.

(2) The protectability opinion is prepared independently of the examination of the utility model application, and the utility model protection can be granted even before the protectability opinion has been drawn up.

(3) An administrative service fee, fixed in a Ministerial Decree issued by authorisation pursuant to the Patent Act, shall be paid for a

protectability opinion.

(4) If at the time of the payment the right holder of the utility model application or of the utility model protection is exclusively the inventor, he shall pay half of the fee of the protectability opinion. The inventor is entitled to this reduction if in connection with the application the priority of no foreign application has been claimed, or if the utility model protection is based on an application in connection with which the priority of no foreign application has been claimed. The provisions of this paragraph shall also apply if - in the case of several inventors - one of the inventors surrendered his utility model claim or right to utility model protection in favour of a co-inventor, or if any of the inventors is succeeded by his heir.

(5) Article 69(1) and (2) of the Patent Act shall apply mutatis mutandis to the novelty search necessary for drawing up the protectability opinion.

(6) The Hungarian Intellectual Property Office shall draw up the protectability opinion on the basis of the description, claim and drawing at its disposal on the day of the filing of the request to this effect and shall send it, together with a copy of the documents referred to, to the applicant or the right holder of the utility model protection within six months of the filing of the request for the protectability opinion.

(7) Official information shall be published in the official journal of the Hungarian Intellectual Property Office on the completion of the protectability opinion, simultaneously with the publication of the grant of utility model protection, or separately, if the protectability opinion becomes available at a later date.

(8) On request, the Hungarian Intellectual Property Office shall refund the fee for the protectability opinion if the protectability opinion is sent after the last day of the sixth month from the filing date of the request.

Chapter V COURT PROCEEDINGS IN UTILITY MODEL MATTERS AND LITIGATION

Article 37 Review of decisions taken by the Hungarian Intellectual Property Office

(1) Upon request, the court may review the Hungarian Intellectual Property Office's

- (a) decisions referred to in Article 27(4);
- (b) decisions suspending the procedure or furnishing a basis for entries in the Utility Model Register;
- (c) orders excluding or limiting the inspection of files against which independent legal remedy is admissible under the provisions of the Act on the General Code of Public Administration Procedure;
- (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) decisions imposing procedural fines or ruling on the amount and on the apportionment of procedural costs.

(2) A request for review brought against a decision imposing procedural fine or ruling on the amount and on the apportionment of procedural costs 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 Intellectual Property 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 Intellectual Property Office;
- (b) any person excluded from, or limited in, the inspection of files;
- (c) any person whose legal status as a party to the procedure has been denied.

(5) Review of a ruling on the registration or the revocation of a utility model protection may be requested by the public prosecutor under Article 5(2). Any other participant to the procedures before the Hungarian Intellectual Property 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 communication 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 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) [repealed]

(9) The request for review shall be filed with the Hungarian Intellectual Property 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 Intellectual Property Office shall simultaneously notify the opposing party of the forwarding of the request.

(10) If the request for review raises legal questions of fundamental importance, the Hungarian Intellectual Property 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 following data shall be indicated in the introductory part of the request for review:

(a) the name of the court seised,

(b) the identification details of the applicant, and, if there is another party, the known identification details of that party, and

(c) the name, seat, phone number, e-mail address of the legal representative, and, if there are several representatives, the name of the representative designated for receipt of official documents.

(11a) The following data shall be indicated in the substantive part of the request for review:

(a) the number of the decision which the request for review is aiming to modify, and, where necessary and available, the registration number, as well as the provision or part of the decision that the request for review is aiming to modify,

(b) the specific request to the court for changing the decision, and

(c) the grounds demonstrating the necessity of changing the decision, together with the supporting evidence and the pleas in law.

(11b) The following shall be indicated in the closing part of the request for review:

(a) the facts and the provision of law conferring jurisdiction on the court,

(b) the amount of the fees paid and the manner it has been paid, or in the event of a partial payment of the procedural fees, the request for granting legal aid, or in the event of an exemption from paying fees pursuant to a law, the facts and the provision of law serving as a basis of such exemption,

(c) the facts and the provision of law evidencing the right of representation of the authorised person, and

(d) the supporting evidence for the facts referred to in the closing part.

(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 of the Hungarian Intellectual Property Office in patent matters shall apply mutatis mutandis in court proceedings for the review of decisions of the Hungarian Intellectual Property 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) litigation concerning the existence of the right of prior use;

(c) litigation concerning infringement, including in cases governed by point b) of paragraph (2) the adjudication of objections relating

to the invalidity of utility model protection.

(2) The provisions on patent litigation shall apply to utility model litigation with the following exceptions:

(a) where, in the course of proceedings for utility model infringement, the defendant produces evidence, before the court order closing the preparatory stage has been made, that he started proceedings before the Hungarian Intellectual Property Office for the revocation of the utility model protection, proceedings shall be suspended by the court until the final decision is taken in the proceedings for revocation, with the proviso that if the right holder of the utility model protection submits, before the closure of the hearing prior to the decision of the first instance, a protectability opinion to the court which is favourable for him, the suspension shall not be mandatory;

(b) where, in the course of proceedings for utility model infringement, on the basis of the defendant's objection - if the suspension of the proceedings pursuant to point a) is not mandatory or suspension would be inappropriate - the court shall examine also the validity of the utility model protection, and if the conditions for the revocation of the utility model protection exist, it shall dismiss the action.

(3) In any other utility model litigation not mentioned in paragraph (1), the court shall proceed by applying the rules governing patent litigation.

Chapter VI FINAL PROVISIONS

Article 39

With respect to the grounds for revocation of a utility model protection granted with a filing date before 1 January 2003, the provisions in force at the date of filing shall be decisive.

Article 40

The provisions of this Act laid down by Act L of 2017 Amending certain Acts in connection with the Entry into Force of the Act on the General Code of Public Administration Procedure and the Act on the Administrative Court Code of Procedure (hereinafter referred to as 'Amending Act for Administrative Procedures') shall be applied in proceedings started after the entry into force of the Amending Act for Administrative Procedures, and in cases re-heard by the authority on remand.

Article 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 authorized to establish by decree, in consultation with the President of the Hungarian Intellectual Property Office and in agreement with the minister exercising the rights of supervision over the Hungarian Intellectual Property Office, the detailed formal requirements for utility model applications.