

## **PART VI**

### ***PROVISIONS ON THE HUNGARIAN PATENT OFFICE***

#### ***Chapter XIV/C***

#### **The Hungarian Patent Office**

##### *Legal status of the Hungarian Patent Office*

##### ***Article 115/D***

(1) The Hungarian Intellectual Property Office (hereinafter referred to in this Chapter as “the Office”) is the government office for the protection of intellectual property.

(2) The Office’s President is appointed and released by the Prime Minister; its two vice presidents are appointed and released – on the President’s proposal – by the minister exercising the rights of supervision (hereinafter referred to as “the Minister”).

(3) The employer’s rights over the vice presidents – except for the appointment and release – shall be exercised by the President of the Office.

(4) The seat of the Office is Budapest.

##### *Management of the Office*

##### ***Article 115/E***

(1) The Office shall cover its operational costs from its own incomes.

(2) In industrial property procedures before the Office fees for administrative services laid down by specific legislation shall be paid. Such fees shall be paid for copies prepared by the Office with or without legalization, extracts, translation, as well as for legalization performed by the Office. In cases and with conditions defined in this Act or in a specific act a fee – the extent of which is defined in specific legislation – shall be paid for the maintenance and renewal of industrial property protection. The rate of these fees shall be reviewed regularly. During the review – besides the provisions of paragraph (3) – the operational costs of the industrial property system, the specialities of each form of industrial property protection and the aspects of promoting innovation by the means of industrial property protection shall be taken into consideration.

(3) The incomes of the Office consist of the fees for administrative services, the maintenance fees and renewal fees under paragraph (2), the fees and shares for administrative activities carried out by the Office on the basis of the international treaties administered by the World Intellectual Property Organization, and shares from fees paid for European Union or other regional industrial property protection with a unitary effect extending to the territory of Hungary, taking into account the tasks performed by the Office, the income from services provided by the Office as well as other incomes. These incomes shall ensure the continuous and smooth operation of the Office.

(4) The Office shall be entitled to manage its incomes independently, and to use them to cover its operational costs

(5) The Office shall be entitled to form a financial reserve from its incomes to an extent not more than 5% of the actual income in the given year. The reserve so formed shall exclusively be used, until the end of the second year following its formulation, to cover the operational costs of the Office and shall not be drawn away for any other purposes.

(6) The Office shall annually publish a report on its incomes and their use.

(7) The Office shall involve companies that it exercises control over as holder, and are defined in a government decree into the performance of its tasks referred to in Articles 115/I and 115/K, furthermore it may make use of the services of these companies in order to perform its tasks and for supporting its operation and management.

##### *National Intellectual Property Council*

### **Article 115/F**

(1) In the performance of tasks referred to in Articles 115/J to 115/L, the President of the Office shall be assisted by the National Intellectual Property Council (hereinafter referred to as “the Council”) as a professional advisory and opinion-giving body. At the request of the President of the Office, the Council shall give its opinion on the draft of comprehensive measures (programs, strategic plans, national and Community legal acts, international agreements) concerning the protection of intellectual property. The Council participates in the elaboration of the national strategy on intellectual property protection, as well as monitors and facilitates its implementation.

(2) The Council is a body consisting of not more than twelve members having industrial property and copyright expertise or expertise in disciplines related to intellectual property.

(3) About the persons he proposes as members of the Council, the President of the Office informs the Minister, who may raise objection against the persons proposed within fifteen days from the date of receipt of the information. The person objected to may not be appointed as member of the Council. The members of the Council shall be appointed by the President of the Office subsequently.

(4) The members of the Council shall be appointed for a period of three years. The appointment extends only to the person himself, and no replacement may take place. The appointment can be extended for further three-year-long periods.

(5) The membership shall terminate with

(a) the expiration of the defined time period;

(b) resignation;

(c) release;

(d) the death of the member.

(6) The Council shall function according to the rules of procedure established by the President of the Office.

### *The functions and competence of the Office*

### **Article 115/G**

The Office’s functions and competence include

(a) official examinations and procedures in the field of industrial property;

(b) performance of certain tasks in connection with copyright and rights related to copyright;

(c) central governmental information and documentation activities in the field of intellectual property;

(d) participation in the preparation of intellectual property legislation;

(e) preparation and implementation of the Government’s strategy for the protection of intellectual property, initiation and execution of governmental measures required for this purpose;

(f) performance of professional tasks of international and European co-operation in the field of intellectual property protection;

(g) performance of official and expert tasks relating to the assessment of research and development activity.

### **Article 115/H**

(1) The Office shall perform the following tasks of industrial property authority determined by this Act and by specific legislation:

(a) the examination of patent, plant variety, utility model, topography, design, trademark, and geographical indication applications and applications for a supplementary protection certificate, the grant and registration of protection resulting from these applications as well as the procedures related to the granted rights;

(b) the examination and transmission of international applications for patents, industrial designs, trademarks and appellations of origin as well as the performance of search, examination, transmission, register-keeping and other procedural acts entrusted to a national industrial property authority and deriving

from regional industrial property co-operation based on an international agreement, from other international treaties and from European Community law.

(2) At the request of the customs authorities, the Office shall furnish information about the holders of industrial property rights for the purposes of customs proceedings initiated due to infringement of intellectual property rights.

(2a) On the basis of specific legislation, the Office shall perform the tasks of preliminary assessment of research and development activity, and it shall participate in deciding specific questions relating to qualifying an activity as research or development and whether certain expenses may be attributed to a given research and development activity.

(3) On the basis of specific legislation, the Office shall provide for the operation of the Body of Experts on Industrial Property.

(4) In connection with copyright and rights related to copyright, the Office shall perform – on the basis of specific legislation – in particular the following tasks:

(a) it shall conduct the procedures related to the use of orphan works and keep a register of the licences granted for the use of orphan works;

(b) it shall keep a register of organisations performing collective management of copyright and related rights;

(c) it shall supervise the activity of organisations performing collective management of rights;

(d) it shall prepare the ministerial approval for the tariffs of royalties and levies, the supporting policy of the organisations performing collective management rights, and the utilisation of the incomes of these organisations in favour of the right holders and take the necessary measures;

(e) it shall keep the voluntary register of works;

(f) it shall provide for the operation of the Body of Experts on Copyright and the Mediation Board operating within that Body.

(5) On the basis of specific legislation, the President of the Office shall exercise legality control over the activity of the Hungarian Chamber of Patent Attorneys.

#### ***Article 115/I***

Within the scope of central governmental documentation and information activity in the field of intellectual property the Office shall perform, in particular, the following tasks:

(a) it shall publish an official journal on industrial property matters;

(b) it shall publish the Hungarian patent specifications, utility model, industrial design and topography descriptions, and those provided for in international agreements;

(c) it shall collect, process by using information technology tools and make accessible to the public the industrial property documents in its specialised public library;

(d) it shall render information and documentation services concerning the protection of intellectual property.

#### ***Article 115/J***

(1) In issues concerning intellectual property protection, the minister responsible for justice shall submit a proposal for the adoption Acts or Government decrees and shall represent the Office in these issues before the Government and the Parliament.

(2) The Office shall be involved in preparing, and giving an opinion of, draft legislation affecting the protection of intellectual property.

(3) The Office shall study and analyse the implementation of intellectual property legislation, it shall assess and evaluate the effects and experience concerning the application of that legislation.

(4) In order to improve the protection of intellectual property, the Office shall – in conformity with international and European Community obligations and the policy objectives of the Government in the fields of economic strategy, research and development, technology and innovation and culture – initiate the adoption of new industrial property and copyright legislation, as well as amendments to existing legal rules and shall participate in the preparation of these pieces of legislation.

#### ***Article 115/K***

In order to develop and enforce the Government's strategy aimed at the protection of intellectual property as well as to initiate and implement governmental measures required for this purpose, the Office shall perform, in particular, the following tasks:

(a) it shall contribute to the establishment, development and implementation of the Government's economic strategy as well as its research and development, innovation, technology and cultural policies by means of the analysis of intellectual property protection-related domestic, foreign and international trends, the monitoring of the development of intellectual creative, innovative and industrial property activities, the preparation of a methodology to evaluate intellectual property and the making available of official experience;

(b) it shall initiate, establish, execute, and participate in, programs for promoting intellectual creative and innovative activities;

(c) it shall participate in the development of a system which serves the public recognition of intellectual creations and innovative results, and it shall launch, organise or promote competitions, exhibitions and other programs related to intellectual creative activity and intellectual property protection;

(d) it shall disseminate knowledge related to intellectual property protection, develop industrial property culture, enrich industrial property and copyright knowledge of enterprises – in particular the small and medium-sized ones – by means of information, customer and advisory service, counselling and by other means, and it shall promote among them the respect for intellectual property rights;

(e) it shall operate, pursuant to the provisions of specific legislation, the National Board Against Counterfeiting, and it shall also contribute in other ways to the establishment and development of a system of conditions required for the effective enforcement of intellectual property rights;

(f) it shall professionally supervise intellectual property training outside public school system, operate its system, furthermore, it shall provide for the organisation of industrial property and patent attorney examinations;

(g) it shall provide for the operation of the Hungarian Design Council and participate in the implementation of awarding national design prizes and scholarships;

(h) it shall promote that intellectual property protection be used accordingly for the forming of the country's image, for the establishment of a uniform nation brand, as well as for the popularisation and the protection of the reputation of the typical Hungarian products.

ment of maintenance fees of patent, plant variety and utility model protection for the period from the first till the fifth years, if the holder of the right as natural person – due to his wages, income and financial standing – is unable to cover them; the fees subject to the deferment shall be paid together with the maintenance fee for the sixth year.

(2) Only those natural persons are entitled to exemption and deferment who can certify that their income (wage, pension, other regular financial allowance) does not exceed the standard prescribed lowest wage (minimal wage) and have no assets other than what is necessary for subsistence and furnishing. Exemption shall be granted to any person who receives a regular social aid, without verifying his income and financial standing.

(3) Exemption and deferment may be granted exceptionally also if the conditions specified in paragraph (2) do not exist but the Hungarian Intellectual Property Office – taking other circumstances of the natural person into consideration – finds that the subsistence of the natural person and his dependents is endangered.

(4) To the request for the exemption or for the deferment, an income certificate of the applicant and of his close relatives under the Civil Code (hereinafter referred to as "close relatives") living in a common household with him, issued not earlier than thirty days by the employer, or in case of pensioners – instead of or besides the income certificate issued by the employer – the last month's pension slip (postal certificate) or, in case of transferring the pension to a bank account, the last month's bank account statement shall be enclosed.

(5) If the applicant and the close relative living in a common household with him have an income not considered as work-related income or pension (e. g. scholarship, benefits related to education, provisions based on social insurance, unemployment allowance, other regular pecuniary benefits, withdrawal of business, letting out of real estate, interest income, exchange gain, dividend income), the postal certificate,

bank account statement, cashier's certificate of these incomes or other documents suitable for certifying the income shall be attached.

(6) If the applicant and the close relative living in a common household with him are not employed and are not pensioners and have no other incomes, this fact shall be declared in the request.

(7) For the purposes of paragraph (3) the applicant may present in the request, besides the documents suitable for certifying his income or pension, other circumstances (disaster, illness, etc.) upon which it can be established that the subsistence of the natural person and his dependents is endangered.

(8) If the request for exemption or deferment submitted contains irregularities, the applicant shall be invited to rectify them within the fixed time limit. In the invitation the applicant shall be warned that failing to rectify the irregularities shall lead to the refuse of the request.

(9) The request shall be refused if, in spite of a rectification, it still does not comply with the requirements specified in paragraphs (1) to (7). Where the applicant does not reply to the invitation within the fixed time limit, the request shall be considered withdrawn.

(10) No individual legal remedy against the order of the Hungarian Intellectual Property Office on the refusal of the exemption or deferment can be made, the review of this order may be requested in the request for review submitted against the decision terminating the industrial property procedure.