

**General information on design granting procedures
(on the basis of Law No. XLVIII of 2001 on the Protection of Designs)**

1. Examination on Filing

Following the filing of a design application, the Hungarian Patent Office (HPO) shall examine whether the application satisfies the requirements for according a date of filing (i.e. it contains an indication that design protection is sought, information identifying the applicant, the representation of the design and the denomination of the product constituting the design, or reference to a priority document) and whether the filing fee has been paid.

1.1 Date of Filing

The HPO shall notify the applicant of the accorded date of filing. If a date of filing cannot be accorded, the applicant shall be invited to correct the defects within 30 days.

If the applicant complies with that invitation within the specified time limit, the date of receipt of the correction shall be accorded as the date of filing. Failing which, the application shall be considered withdrawn.

1.2 Filing fee

Information relating to the filing fee for design applications is contained in point 1 of the Schedule of Fees attached to this Guide. The fee shall be payable to the account of the HPO, with the indication of the reference number. Payments without a reference number shall not be valid. The HPO may accord an exemption from the filing fee if the right holder cannot pay it because of his wages, income and financial standing.

1.3 Priority

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. If internal priority is claimed, the previous design application shall be considered withdrawn.

2. Communication of Certain Data

If, either on filing or as a result of a correction, a design application complies with the requirements prescribed for according a date of filing, the HPO shall publish, in its official journal (Gazette of Patents and Trademarks) the data of the application: the name and address of the applicant and the eventual representative, the reference number of the application, the filing date and the date of priority where the latter is different, and the denomination of the product constituting the design.

3. Examination as to Formal Requirements

If a design application satisfies the requirements prescribed for the accordance of a filing date, the filing fee has been paid and the request for the grant of protection, the representation of the design, the denomination of the product constituting the design and other necessary documents have been filed, the HPO shall examine the application to the effect whether the documents filed satisfy the prescribed formal requirements. Where the application does not

comply with the formal requirements, the HPO shall invite the applicant by a decision to correct the defects and shall continue the procedure on the basis of the correction. Where the applicant does not reply to the invitation within the fixed time limit, the design application shall be considered withdrawn.

4. Novelty Search

If a design application satisfies the requirements prescribed for the accordance of a filing date, the filing fee has been paid and the representation of the design and the denomination of the product constituting the design have been filed, the HPO shall carry out a novelty search and shall draw up a search report on the basis of the representation of the design. The search report shall mention those documents (designs, representations and data) which may be taken into consideration in deciding whether the design or group of designs represented in the application is new and has individual character. Upon request and on payment of a fee, the HPO shall transmit the search report together with copies of any cited document to the applicant.

5. Publication

After the expiry of nine months from the earliest date of priority the HPO shall publish the design application in the Gazette of Patents and Trademarks and shall notify the applicant thereof. The following data and facts shall be published: in addition to the data given on communication of certain data, the name of the designer, the international classification code of the product constituting the design, and the representation of the design. With the publication provisional design protection shall begin, with retroactive effect to the date of the application. The provisional design protection shall become definitive if design protection is granted to the applicant. Rights resulting from design protection can only be enforced on the basis of definitive design protection.

At the request of the applicant, the HPO shall publish the design application before the expiry of nine months from the earliest date of priority if it satisfies the requirements examined.

At the request of the applicant, the HPO shall defer the publication if the request is submitted not later than nine months from the earliest date of priority or two months before the expiry of the period of the previous deferment. Publication of a design application may not be deferred for more than 30 months from the earliest date of priority. A fee shall be paid for the deferment of publication (see point 5 of the Schedule of Fees) within two months from the filing of the relevant request. If the fee is not paid in spite of an invitation, the request for deferment shall be considered to be withdrawn. Anybody may inspect a published design application and upon payment of a fee may receive copies of it.

6. Observation

After publication, any person (but in certain cases only the earlier user in the country or the holder of the earlier right) may file an observation with the HPO to the effect that the design or the application does not comply with a requirement of protection.

During examination observations shall be taken into consideration, unless they are made by a person not entitled to file an observation. The person making the observation shall be notified of the outcome of his observation.

7. Substantive Examination

If a design application satisfies the requirements prescribed for the accordance of a filing date and the filing fee has been paid, the HPO shall carry out a substantive examination of the design application from the point of view whether it complies with the requirements laid down by the Law.

During substantive examination, the HPO shall invite the applicant by a decision to correct the defects, to submit comments or to divide the application, according to the nature of the objection. The HPO shall reject a design application in whole or in part if it does not meet the examined requirements even after the correction of the defects or the submitting of comments. If the applicant fails to reply to the invitation or to divide the application, he shall be considered to have withdrawn the application or – after publication of the application – to have surrendered provisional protection.

8. Amendment – Internal priority

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. Taking into account this limitation, the applicant shall be entitled to amend the application until such time as the decision on the grant of design protection becomes final. The request for amendment shall be subject to the payment of a fee (see point 2 of the Schedule of Fees).

The applicant may file a new application within six months from the filing date of his original application by claiming internal priority.

9. Division

If the applicant has claimed protection for more than one design in one application, he may divide the application, retaining the date of filing and any earlier priority, until such time as the decision on the grant of design protection becomes final. The request for division shall be subject to the payment of a fee (see point 4 of the Schedule of Fees). The fee shall be payable division within two months from the filing of the relevant request. If the fee is not paid in spite of an invitation, the request for division shall be considered to be withdrawn.

10. Time limits – Extension of time limits – *Restitutio in integrum*

The time limits prescribed by the Law on the Protection of Designs (see point 3 of the Schedule of Fees) shall not be extended. Failure to comply with such time limits shall involve legal consequences without notice. Where this Law does not prescribe any time limit, an extension may be requested before the expiry of the time limit set by the HPO in its invitation. The request for extension shall be subject to the payment of a fee (see point 3 of the Schedule of Fees). In design matters - unless excluded by the Law - a request for *restitutio in integrum* may be submitted within 15 days of the unobserved time limit or of the last day of the unobserved period. Where the failure to comply became known to the party subsequently or the cause thereof was removed subsequently, the time limit shall be reckoned from the date on which the failure to comply became known or the cause thereof was removed. The request for *restitutio in integrum* shall only be admissible within six months of the time limit not complied with or the last day of the period not complied with.

11. Grant of Design Protection

If the design application and the design to which it relates meet all the requirements of the examination, the HPO shall grant protection for the subject matter of the application after the expiry of at least one month from the publication. After the grant of protection, the HPO shall issue a design certificate to the applicant, to which the extract from the Register shall be annexed, and the grant shall be announced in the Gazette of Patents and Trademarks.

12. Term of Design Protection

Definitive design protection shall have a term of five years beginning on the filing date of the application.

13. Renewal of Design Protection

Design protection shall be renewable for further periods of five years each, four times at the most. In the event of renewal, the new period of protection shall begin on the date following the date of expiration of the previous period. After expiration of 25 years from the filing date of the application, the protection shall not be renewable any more. The request for renewal shall be subject to the payment of a fee (see point 8 of the Schedule of Fees), the fee shall be payable within two months from the filing of the relevant request. If the fee is not paid in spite of an invitation, the request for renewal shall be considered to be withdrawn.

The request for renewal shall be submitted not earlier than six months before the expiry of protection and not later than within a period of six months from the date of expiry.

14. Lapse of Provisional Design Protection

Provisional design protection shall lapse with retroactive effect to its establishment:

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

15. Lapse of Definitive Design Protection

Definitive design protection shall lapse:

- (a) when the period of protection expires without renewal, on the day following the date of expiration;
- (b) if the right holder surrenders protection, on the day following receipt of the surrender or at an earlier date specified by the person surrendering protection;
- (c) if the design protection is declared invalid, with retroactive effect to the filing date of the application.

16. Re-establishment of design protection

If design protection renewed according to the previously applicable provisions lapsed by reason of expiration within five years prior to the entry into force of the Law on the Protection of Designs (1 January 2002), the right holder may request, by applying *mutatis mutandis* the provisions on renewal and within six months following the entry into force of the Law (until 30 June 2002), the HPO to re-establish design protection according to the provisions of the Law.