

ACT XLVIII OF 2001
ON THE PROTECTION OF DESIGNS

In order to improve the competitiveness of the Hungarian national economy, to develop the domestic design culture and to recognize designers both morally and financially, in conformity with the international and European Community law obligations of Hungary in the field of the protection of intellectual property, the National Assembly adopts the following Act on the protection of designs:

PART I

DESIGN AND DESIGN PROTECTION

Chapter I

SUBJECT MATTER OF DESIGN PROTECTION

Protectable designs

Section 1

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

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

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

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

Novelty

Section 2

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

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

Individual character

Section 3

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

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

Common provisions concerning novelty and individual character

Section 4

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

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

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

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

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

Section 5

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

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

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

(2) For the purposes of paragraph (1) 'normal use' means use by the consumer or the end user, excluding servicing or repair work.

Grounds for refusal

Section 6

(1) No design protection shall be granted to features of appearance which are solely dictated by the technical function of the product.

(2) No design protection shall be granted to features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product to which the design is applied or in which it is incorporated (hereinafter "the product embodying the design") to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

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

Section 7

No design protection shall be granted to a design if it is contrary to public policy or to accepted principles of morality.

Section 8

(1) No design protection shall be granted to a design if

(a) it uses without authorisation State emblems or other signs of an authority or international organisation as defined under the Paris Convention for the Protection of Industrial Property;

(b) it contains decorations, emblems, coats of arms, not covered by point (a), or official signs and hallmarks indicating authentication and warranty the use of which is of public interest.

(2) If the competent authority consents to it, designs which consist of or contain any of the signs defined under paragraph (1) may be granted design protection.

Section 9

(1) No design protection shall be granted to a design if it conflicts with a design which has been made available to the public after the date of priority and to which design protection has been granted with an earlier date of priority.

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

Section 10

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

(2) A design protection shall not be granted if it conflicts with an earlier copyright.

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

Eligibility for design protection

Section 11

The right to design protection shall be granted to the person entitled to design protection if the design

(a) satisfies the requirements of Sections 1 to 5;

(b) is not excluded from design protection under the terms of Sections 6 to 10; and

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

Chapter II

RIGHTS AND OBLIGATIONS CONFERRED BY DESIGN AND DESIGN PROTECTION

Moral rights of the designer and his rights concerning public disclosure of the design

Section 12

(1) The designer of the design is the person who has created the design.

(2) Unless established otherwise by a final and binding court judgment, the person originally mentioned as the designer in the design application or the person entered as such after a modification of the relevant entry in the Design Register shall be deemed to be the designer of the design.

(3) If two or more persons have created a design jointly, their shares of authorship shall be regarded as equal unless otherwise specified originally in the design application.

(4) Unless established otherwise by a final and binding court judgment, the shares of authorship originally indicated in the design application, those determined under paragraph (3) or those entered in the Design Register after modification of the relevant entry shall be deemed applicable.

(5) The designer shall have the right to be mentioned as such in the design protection documents. Design protection documents made available to the public shall not mention the designer's name if he so requests in writing.

(6) *[repealed]*

(7) Prior to the grant of design protection, the design may only be disclosed with the consent of the designer or his successor in title.

Right to design protection

Section 13

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

(2) Unless established otherwise by a final and binding court judgment or a final decision by an authority, the right to design protection shall belong to the person who filed the application with the earliest date of priority.

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

(4) The provisions of the Act on the Protection of Inventions by Patents (hereinafter "the Patent Act") concerning joint rights to patents and joint patents shall apply accordingly to the joint right to design protection and joint design protection.

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

Service designs and employee designs

Section 14

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

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

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

(4) The right to design protection for an employee design shall belong to the designer, but the employer shall be entitled to exploit the design. The employer's right of exploitation shall be non-exclusive; the employer may not grant licence to exploit the design. If the employer ceases to exist or if any of its organisational units are separated, the right of exploitation shall be transferred to the successor in title; it may not be assigned or transferred in any other way.

(5) In any other matters concerning service and employee designs and the remuneration of the designer, the provisions of the Patent Act on service and employee inventions shall apply accordingly, with the following derogations:

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

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

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

(6) The provisions of paragraphs (1) to (5) shall apply accordingly to designs created by persons employed in public service, government service, or public employment relationship, tax and customs authority service relationship, law enforcement administration service relationship, national security employment relationship, national defence employment relationship, civil national security service relationship or service relationship, or by members of a co-operative working within the framework of a quasi-employment relationship.

Establishment of design protection

Section 15

Design protection shall begin on the date when protection is granted to the applicant, and it shall have retroactive effect from the date of filing of the application.

Rights conferred by design protection

Section 16

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

(2) On the basis of the exclusive right of exploitation, the holder of the design protection shall be entitled to take action against any person who exploits the design without his permission.

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

Limitations of design protection

Section 17

(1) Design protection shall not entitle its holder to prohibit a third party from

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes, including experiments and tests necessary for the authorisation of the placing on the market of the product constituting the subject matter of the design;

(c) acts done for the purposes of making citations or of teaching, provided that such acts are in accordance with honest business practices, do not unduly prejudice the normal exploitation of the design, and that mention is made of the source in connection with such acts.

(2) Design protection shall not entitle the holder to prohibit a third party from the use of the design of a component part exploited for the purpose of the repair of a complex product to the extent necessary to restore its original appearance, provided that such use is in accordance with honest business practices and the design necessarily conforms to the original appearance of the complex product.

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

(4) Subject to reciprocity, the design protection shall have no effect in respect of the equipment of ships and aircraft registered abroad when these temporarily enter the territory of the

country, the importation of spare parts and accessories for the purpose of repairing such craft, and the execution of repairs on such craft. In matters of reciprocity the stand taken by the President of the Hungarian Intellectual Property Office shall be decisive.

Exhaustion of the rights conferred by design protection

Section 18

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

Term of design protection

Section 19

(1) Design protection shall have a term of five years beginning on the filing date of the application.

(2) Design protection may be renewed for further periods of five years, four times at the most. If design protection is renewed, the new period shall begin on the day following the date of expiration of the previous period.

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

Scope of protection

Section 20

(1) The scope of design protection shall be determined by the features affecting the appearance of the whole or a part of the product which can be determined on the basis of the photographs, drawings or other graphic representations deposited in the Design Register (hereinafter together “representation”) and the partial disclaimer [Section 48(2)], if any.

(2) Design protection shall cover all designs which do not produce a different overall impression on the informed user.

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

Designs and design protection as negotiable property rights

Section 21

(1) Rights deriving from a design and from design protection, with the exception of moral rights, may be transferred, assigned or encumbered. For hypothecation, it shall be necessary to put the security contract in writing and enter the lien in the Design Register.

(2) Under an exploitation contract (design license contract), the holder of the design protection shall license the right to exploit a design and the person exploiting the design shall pay royalties. The provisions of the Patent Act concerning patent licence contracts shall apply accordingly to design licence contracts.

Chapter III

INFRINGEMENT OF DESIGNS AND DESIGN PROTECTION

Infringement of designs

Section 22

Where the subject matter of a design application or design protection has been taken from the design of another person without authorisation, the injured party or his successor in title may claim a declaration to the effect that he is entitled wholly or partly to the design protection and may claim damages under the rules of civil liability.

Infringement of design protection

Section 23

(1) Any person who exploits a protected design without authorisation commits infringement of design protection.

(2) The holder of the design protection may make the same civil law claims against the infringer as the patentee may enforce, by virtue of the Patent Act, against the infringer of his patent. Where a design protection is infringed, the holder may – in accordance with the provisions of the laws concerning customs action against goods infringing intellectual property rights – demand action by the customs authorities to prevent that the infringing goods be put on the market.

(3) In the event of infringement of the design protection, the provisions of the Patent Act shall apply accordingly to the rights of the licensee authorised under a license contract.

Declaration of non-infringement

Section 24

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

(2) A final and binding decision declaring non-infringement shall exclude the possibility of instituting infringement proceedings on the basis of the specified design protection in respect of the same product.

Chapter IV

TERMINATION OF DESIGN PROTECTION

Section 25

[repealed]

Termination of design protection

Section 26

Design protection shall terminate if:

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

Surrender of design protection

Section 27

- (1) The holder entered in the Design Register may surrender the design protection in a written declaration addressed to the Hungarian Intellectual Property Office.
- (2) If the surrender affects the rights of third parties deriving from a law, from a final decision by an authority, or from a license contract or any other contract recorded in the Design Register, or if a court action is recorded in the Design Register, the surrender shall take effect only with the consent of the persons concerned.
- (3) If protection has been granted for several designs, surrender may also be made in respect of some of the designs.
- (4) Withdrawal of the surrender of design protection shall have no legal effect.

Invalidation and limitation of the design protection

Section 28

- (1) Design protection shall be declared invalid if:
 - (a) the subject matter of the design protection does not satisfy the requirements laid down in Sections 1 to 10;
 - (b) the representation deposited in the Design Register does not present the design in a manner prescribed by this Act (Section 39);
 - (c) the subject matter of the design protection differs from the design presented in the application as filed at the accorded filing date or, in case of division, in the divisional application;
 - (d) the design protection has been granted to a person other than the person entitled to it under this Act;
 - (e) the international industrial design application has been filed by a person not entitled to it under the Hague Agreement (Section 60/F).
- (2) Instead of invalidation, the design protection may be maintained in an amended form [Section 48(1) to 2)], provided that following the amendment no ground for invalidation exists.
- (3) If, in case of a protection granted for several designs, the grounds for invalidation exist in respect only of some of the designs covered by the design protection, the design protection shall be limited to the rest of the designs.
- (4) If the request for invalidation has been rejected by a final and binding decision, it shall preclude that on the same grounds new proceedings for invalidation of the same design protection be instituted by any person.

Reclaiming of royalties

Section 29

If the design protection terminates with retroactive effect to its creation, only that portion of the royalties collected by the holder of the design protection or the designer may be reclaimed which was not covered by the economic benefits derived from the exploitation of the design.

Chapter IV/A

APPLICATION OF THE PROVISIONS OF THE CIVIL CODE

Section 29/A

- (1) The provisions of the Civil Code shall apply to matters not regulated in this Act regarding
- (a) the transfer, assignment or encumbrance of rights relating to a design or deriving from design protection, as well as the joint right to design and joint design protection;
 - (b) exploitation contracts; and
 - (c) other personal and property relations concerning designs.
- (2) The designer shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the design.

PART II

PROCEDURES BEFORE THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE IN DESIGN MATTERS

Chapter V

GENERAL PROVISIONS GOVERNING DESIGN PROCEDURES

Material competence of the Hungarian Intellectual Property Office

Section 30

- (1) The Hungarian Intellectual Property Office shall have material competence in the following design matters:
- (a) grant of design protection,
 - (b) renewal of design protection,
 - (c) division of design protection,
 - (d) declaration of termination of design protection,
 - (e) invalidation of design protection,
 - (f) declaration of non-infringement,
 - (g) keeping the records of design protection,
 - (h) official information.

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

Application of the general rules of administrative authority procedures and of electronic administration

Section 31

(1) In design matters within its material competence, the Hungarian Intellectual Property Office shall act in accordance with the provisions of the Code of General Administrative Procedure and the Act on the Digital State and Certain Rules for the Provision of Digital Services, subject to the derogations and additional provisions laid down in this Act.

(2) Communications with the Hungarian Intellectual Property Office in design matters within its material competence – with the exception of requesting information and granting such requests, access to files and oral hearings – shall be made in writing only, and by electronic means requiring identification; information, however, shall not be requested and such requests shall not be granted by way of short text messages.

Decisions of the Hungarian Intellectual Property Office

Section 32

(1) *[repealed]*

(2) In invalidation proceedings and in proceedings for a declaration of non-infringement, the Hungarian Intellectual Property Office shall proceed at the hearings and take its decision in boards consisting of three members. The boards shall take their decisions by majority vote.

(3) *[repealed]*

Legal remedies

Section 32/A

(1) Appeals, administrative court actions, supervisory proceedings, or interventions or actions by the prosecutor under the Act on the Prosecution Service shall not be admissible with regard to the decisions of the Hungarian Intellectual Property Office.

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

(3) Unless otherwise provided for by the Patent Act, the Hungarian Intellectual Property Office may modify or withdraw its decisions – closing the proceedings – 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 design protection;
- (b) renewal of design protection;
- (c) division of design protection;
- (d) declaration of termination of design protection;
- (e) invalidation of design protection;
- (f) declaration of non-infringement;
- (g) refusal of the effects of an international registration designating Hungary.

(4) Unless otherwise provided in the Patent Act, the Hungarian Intellectual Property Office may modify or withdraw its decision – closing the proceedings – under paragraph (3) *e*) and *f*) upon a request for review only if it establishes that its decision is contrary to a law or if the parties request unanimously the modification or withdrawal of the decision.

(5) In cases where no opposing parties are involved, upon a request for review, the Hungarian Intellectual Property Office may – in accordance with the request for review – withdraw or modify the decisions specified in Section 61(1)b) to e) even if the decision does not infringe a law, but the Hungarian Intellectual Property Office agrees with the content of the request for review.

(6) Decisions made pursuant to a request for review shall be communicated to the requesting party and to all those to whom the contested decision was communicated.

(7) The same legal remedy shall lie against the modifying decision as against the modified decision.

Electronic administration and official services

Section 32/B

(1) In design matters, the Hungarian Intellectual Property Office shall ensure electronic administration in accordance with the provisions of the Act on the Digital State and Certain Rules for the Provision of Digital Services and this Act.

(2) In design matters the party to the proceedings and his legal representative shall not be required to make use of electronic administration.

Other general provisions governing design procedures

Section 33

(1) In matters not regulated in Sections 30 to 32/B, the provisions of the Patent Act laying down the general rules governing patent procedures shall apply accordingly to proceedings before the Hungarian Intellectual Property Office in design matters, with the derogations specified in paragraphs (1a) to (3).

(1a) Filing of a request for continuation of the proceedings shall be inadmissible in design matters.

(1b) In design matters the general provisions of the Patent Act concerning the content of the application, the procedure for submissions and the legal consequences to be applied in connection therewith shall apply only if this Act does not lay down different rules.

(1c) Where this Act does not set a time limit for remedying deficiencies or submitting a statement, the party to the proceedings shall be granted a time limit of at least one month and not more than three months, which may be extended by at least one month and not more than three months upon request submitted before the expiry of the time limit. Multiple extensions, or extensions of more than three months but not more than six months, may only be granted in particularly justified cases.

(2) In design matters no application for excuse shall be admissible:

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

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

(c) [repealed]

(3) When applying the provisions of the Patent Act related to access to files, the publication of the patent application shall be construed to mean the grant of the design protection. The provisions on the treatment of patent applications as classified data shall not apply to design matters.

(4) Any person may inspect the documents of the design application after the decision granting design protection has become final and binding, and may obtain a copy thereof against payment of a fee laid down by a law. Any person may inspect the opinion on protectability pursuant to Section 33/A after the decision granting design protection has become final and binding, or – if it is drawn up after that date – after the official communication of the opinion on protectability, and, for a fee, may obtain a copy of the documents thereof.

Opinion on protectability

Section 33/A

(1) The Hungarian Intellectual Property Office shall, at the request of the applicant or – after the grant of the design protection – of the right holder of the design, draw up an opinion on protectability. The opinion on protectability shall be a finding – based on novelty search and containing also a statement of reasons having no binding effect beyond the legal effects specified in this Act – as to whether the design may satisfy the requirements set out in Sections 1 to 5 and whether there are no grounds for refusal under Sections 7 and 8.

(2) The opinion on protectability shall be given for one design.

(3) The drawing up of the opinion on protectability shall be carried out separately from the examination of the design application, and the design protection may be granted even before the opinion on protectability has been drawn up.

(4) An opinion on protectability shall be subject to the payment of an administrative service fee at the rate set out in the Ministerial Decree on administrative service fees in industrial property procedures.

(5) If, at the time of payment, the right holder of the design application or of the design protection is exclusively the author, he shall pay half of the fee for the opinion on protectability.

(6) When drafting the opinion on protectability, the Hungarian Intellectual Property Office shall carry out the novelty search on the basis of the representation of the design taking into account the designation of the product in the design.

(7) The opinion on protectability shall indicate the documents or particulars which may be taken into consideration in relation to the design for the purposes of assessing novelty and individual character.

(8) The Hungarian Intellectual Property Office shall draw up the opinion on the protectability of the design on the basis of the representation of the design available on the date of filing the request for such opinion and shall send it to the applicant or the right holder within three months of the filing of the request for the opinion, together with a copy of the documents referred to.

(9) Official information on the completion of the opinion on protectability shall be published in the official journal of the Hungarian Intellectual Property Office together with the publication of the grant of design protection, or separately, if the opinion on protectability is completed later.

(10) The Hungarian Intellectual Property Office shall reimburse the fee for the opinion on protectability upon request if the forwarding of the protectability opinion takes place after the last day of the third month following the filing of the request.

Chapter VI

DESIGN REGISTER, OFFICIAL INFORMATION

Design Register

Section 34

(1) Following the grant of the design protection the Hungarian Intellectual Property Office shall keep a register of design protections in which all facts and circumstances concerning design rights shall be recorded.

(2) The Design Register shall contain, in particular, the following entries:

(a) the registration number of the design protection;

(b) the file number;

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

(d) the name of the product embodying the design;

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

(f) the name and seat of the representative;

(g) the name and address of the designer;

(h) the filing date of the application;

(i) the priority data;

(j) the date of the decision on the grant of design protection;

(k) the renewal or division of the design protection;

(l) the termination of design protection, the legal ground and date thereof, as well as the maintenance in an amended form or limitation of the design protection;

(m) the exploitation licences,

(n) the fact that the right to design protection or the rights conferred by design protection belong to assets existing upon fiduciary asset management.

(3) The Design Register shall authentically attest the existence of the rights and facts recorded therein. Until proven to the contrary, the rights and facts recorded in the Design Register shall be presumed to exist. In respect of the data recorded in the Design Register the burden of proof shall be on the person who disputes their correctness or veracity.

(4) Any right relating to the design protection may only be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Design Register.

(5) The Design Register shall be open to public inspection; the Hungarian Intellectual Property Office shall provide electronic access thereto on its website. Anyone can obtain certified extracts of the data recorded in the Design Register on payment of a fee.

(6) The provisions of the Patent Act on the making entries in the Patent Register shall apply accordingly to entries in the Design Register.

Official information

Section 35

The official journal of the Hungarian Intellectual Property Office shall contain, in particular, the following data and facts relating to design applications and design protections:

(a) to (c) *[repealed]*

(d) upon publication of the grant of design protection, the registration number, the name and address (seat) of the holder of the design protection, the name and seat of the representative, the file number, the filing date of the application, the date of priority of the design protection, the name of the product embodying the design and its international classification code in accordance with the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter „international classification”), the representation of the design, the name and address of the designer and the date of the decision on the grant of design protection;

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

(f) the termination of design protection, the legal grounds and the date thereof, as well as the maintenance in an amended form or the limitation of the design protection;

(g) changes in rights relating to the design protection recorded in the Design Register.

Chapter VII

PROCEDURE FOR GRANTING DESIGN PROTECTION

Design application and its requirements

Section 36

(1) The proceedings for the grant of a design protection shall commence upon the filing of a design application with the Hungarian Intellectual Property Office.

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

(3) In addition to the data specified in the general provisions of the Patent Act concerning the content of the request, the design application shall contain the name and address of the designer, or an indication that the designer requests that his name and address not be indicated in the design documents, and the designer gives his name and address on a separate sheet. In all other respects, design applications shall be filed in compliance with the detailed requirements laid down in the law

on the detailed formal requirements of design applications and the law on the electronic filing of industrial property submissions.

(4) A design application shall be subject to the payment of a filing fee specified by the law on administrative service fees in industrial property procedures; the fee shall be paid within two months after the date of filing.

(5) The applicant may withdraw the design application until the grant of the design protection in compliance with the provisions of Section 27.

Section 36/A

[repealed]

Date of filing

Section 37

(1) The filing date of an 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 design protection is sought,

(b) the name of the applicant, his address or seat or secure delivery service address, in the case of representation the name of the representative and his address or seat or secure delivery service address, or other data making it possible to contact the applicant, and,

(c) the representation of the design, irrespective of whether it complies with the other requirements.

(2) In place of filing the representation of the design, reference to a priority document shall also suffice for according a date of filing.

Unity of the design

Section 38

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

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

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

Representation of the design

Section 39

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

Priority

Section 40

(1) The date establishing priority shall be

- (a) as a rule, the date of filing of the design application (application priority),
 - (b) in the cases defined by the Paris Convention for the Protection of Industrial Property, the date of filing of the foreign application (Convention priority),
 - (c) in the cases defined in the communication of the President of the Hungarian Intellectual Property Office published in the *Magyar Közlöny* (Hungarian Gazette), the first day of displaying the design at an exhibition, which is not earlier than six months prior to the date of filing of the application (exhibition priority),
 - (d) the date of filing of a previously filed and pending design application for the same design, which is not earlier than six months prior to the current application, provided that there has been no other priority claimed in relation thereto (internal priority).
- (2) Convention priority, exhibition priority 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. The provisions of the Patent Act on the certification of exhibition shall apply accordingly to the certification of exhibition.
- (3) If internal priority is claimed, the previous design application shall be considered withdrawn.
- (4) If priority is claimed with respect to a design application seeking design protection for several designs, the right of priority shall cover only those designs that are presented in the application establishing the given priority in accordance with Section 39.
- (5) Convention priority may also be claimed, under the conditions defined by the Paris Convention, if the foreign application has been filed in a Member of the World Trade Organization which is not party to the Paris Convention or, subject to reciprocity, in any other State. In matters of reciprocity, the stand taken by the President of the Hungarian Intellectual Property Office shall be decisive.

Examination on filing

Section 41

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

- (a) the application satisfies the requirements for according a date of filing (Section 37),
 - (b) the filing fee has been paid [Section 36(4)].
- (2) In any other matters, the provisions of the Patent Act on the examination on filing shall apply accordingly to examination on filing of a design application.

Section 42

[repealed]

Section 43

[repealed]

[repealed]

Section 45

[repealed]

Section 46

[repealed]

Examination as to formal requirements and substantive examination

Section 47

(1) If a design application complies with the requirements pursuant to Section 41(1), the Hungarian Intellectual Property Office shall carry out the examination of the design application.

(1a) In the course of the examination as to the formal requirements, the Hungarian Intellectual Property Office shall examine the application as to whether the formal requirements of Section 36 (2) and (3) have been met.

(2) The substantive examination shall ascertain

(a) whether the design meets the requirements of paragraphs (2) to (4) of Section 1, and

(b) whether it is not excluded from protection pursuant to Sections 7 and 8.

(3) If a design application does not meet the requirements examined under paragraphs (1a) or (2), the applicant shall be invited to rectify the irregularities, to submit comments or to divide the application, according to the nature of the objection.

(4) A design application shall be refused, in whole or in part, if despite the rectification of the irregularities or the submitting of comments, it does not comply with the examined requirements.

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

(6) If the applicant does not reply to the invitation or does not divide the application, the design application shall be considered withdrawn.

Amendment and division

Section 48

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

(2) A declaration of the applicant to the effect that a particular part of the representation does not belong to the design and that no design protection is claimed for that part shall also be considered to be an amendment.

(3) The applicant shall be entitled to amend the application as laid down in paragraph (1) until the day on which the decision on the grant of design protection is taken.

Section 49

(1) The applicant who has claimed design protection for several designs in a single application, shall be entitled to divide the application, retaining the date of filing and any earlier priority, if any, until the day on which the decision on the grant of design protection is taken.

(2) A fee specified by the law on administrative service fees in industrial property procedures shall be paid for division within one month from the filing of the relevant request.

(3) If the fee for division is not paid upon filing the request, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity within the time limit specified in paragraph (2). In the event of failure to do so, the request for division shall be considered withdrawn.

Grant of design protection

Section 50

(1) If the design and the design application meet all the requirements of the examination [Section 47(1a) and (2)], the Hungarian Intellectual Property Office shall grant design protection for the subject matter of the application. The date of the decision on the grant of the design protection shall be the date of the grant of the design protection.

(2) The grant of design protection shall be recorded in the Design Register (Section 34), and official information shall be published thereof in the official journal of the Hungarian Intellectual Property Office (Section 35).

(3) After the grant of design protection, the Hungarian Intellectual Property Office shall issue a design certificate. An extract from the register shall be annexed to the design certificate.

Chapter VIII

OTHER PROCEDURES IN DESIGN MATTERS

Renewal procedure

Section 51

(1) The holder of the design protection may request the Hungarian Intellectual Property Office to renew the design protection [Section 19(2)]. Renewal of design protection granted for several designs may also be requested in respect of only a part of the designs (partial renewal).

(2) In addition to the data specified in the general provisions of the Patent Act concerning the content of the request, the request for renewal shall indicate the registration number of the design protection to be renewed and, in the case of partial renewal, the designs concerned.

(3) The request for renewal may be filed not earlier than six months before the expiration of the period of protection and within six months from the date of expiration at the latest.

(4) A fee determined by the law on administrative service fees in industrial property procedures shall be paid for the request for renewal within one month from the filing of the request.

Section 51/A

[repealed]

Section 52

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

(2) The request for renewal shall be rejected if, despite the rectification of the irregularities or the comments of the requesting party, it does not comply with the requirements stated in the invitation. If the requesting party fails to reply to the invitation within the specified time limit, the request for renewal shall be considered withdrawn.

(3) If the fee for the request for renewal has not been paid, the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularity within the time limit specified in the Act. In the event of failure to do so, the request shall be considered withdrawn.

Section 53

(1) If the request meets the requirements laid down in Section 51, the Hungarian Intellectual Property Office shall renew the design protection.

(2) The renewal of the design protection shall be recorded in the Design Register (Section 34), and official information shall be published thereof in the official journal of the Hungarian Intellectual Property Office (Section 35).

Procedure for division

Section 54

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

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

(3) The request for division shall indicate the registration number of the original design protection; in other respects, the provisions concerning the requisites for design applications [Section 36(2) and (3)] shall apply accordingly to the request and to its annexes.

(4) A fee specified by the law on administrative service fees in industrial property procedures shall be paid for the request for division within one month from the filing of the request.

Section 55

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

(2) The request for division shall be rejected if, despite the rectification of the irregularities or comments, it does not comply with the requirements stated in the invitation. If the requesting party fails to reply to the invitation, the request for division shall be considered withdrawn.

(3) If the fee for the request for division has not been paid, the Hungarian Intellectual Property Office shall invite the requesting party to rectify the irregularity within the time limit specified in the Act. In the event of failure to do so, the request shall be considered withdrawn.

Section 56

(1) If the request complies with the requirements laid down in Section 54, the Hungarian Intellectual Property Office shall divide the design protection.

(2) The division of design protection shall be recorded in the Design Register (Section 34), and official information shall be published thereof in the official journal of the Hungarian Intellectual Property Office (Section 35).

(3) After division, the Hungarian Intellectual Property Office shall issue a design certificate for each design protection. An extract from the register shall be annexed to the design certificate.

Invalidation procedure

Section 57

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

(2) Invalidation of design protection may be requested under Sections 9 and 10 only by the holder of an earlier conflicting right, and under Section 28(1)(d) only by the person who is entitled to it under this Act.

(3) The request for invalidation shall be submitted to the Hungarian Intellectual Property Office in one copy in the case of electronic communication, otherwise in as many copies as there are holders of the design protection plus one additional copy, and – in the case of a design protection

granted for a service design – in as many copies as there are designers. In addition to the data specified in the general provisions of the Patent Act concerning the content of the request, the request for invalidation shall state the grounds on which it is based and documentary evidence shall be annexed.

(4) A fee specified by the law on administrative service fees in industrial property procedures shall be paid for the request for invalidation within one month from the filing thereof.

(5) If the request for invalidation does not comply with the requirements laid down in this Act, the requesting party shall be invited to rectify the irregularities; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit prescribed in this Act. In the event of failure to do so, the request for invalidation shall be considered withdrawn.

Section 57/A

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

Section 58

(1) The Hungarian Intellectual Property Office shall invite the holder of the design protection and, in the case of a design protection granted for a service design, the designer to submit comments on the request for invalidation; following the written preparatory work, it shall decide at a hearing on the invalidation, maintenance in an amended form, or limitation of the design protection, or on the rejection of the request. The order closing the proceedings may also be taken without a hearing. After the expiration of the time limit set by the Hungarian Intellectual Property Office for the requesting party, no ground shall be admissible as grounds for invalidation, which was not stated as such within the said time limit. When taking the decision closing the proceedings, a ground so specified shall not be taken into consideration.

(1a) The Hungarian Intellectual Property Office shall postpone the hearing upon a reasoned joint request of the parties submitted no later than three days before the fixed deadline. Upon a joint request submitted later, the hearing may be postponed for an exceptionally important reason.

(1b) The Hungarian Intellectual Property Office may postpone a scheduled hearing *ex officio*, before or at the hearing, without holding the hearing, only for important reasons or for reasons in the interest of the Hungarian Intellectual Property Office, stating the reasons.

(1c) If the hearing is postponed, the Hungarian Intellectual Property Office shall simultaneously set a new hearing date.

(2) The orders taken in the course of the hearing and the final decision shall be pronounced on the day of the hearing; in respect of the final decision, the pronouncement may be deferred for not more than eight days if it is indispensable due to the complexity of the case. In such a case, the date for pronouncement shall be set immediately and the final decision shall also be put in writing by the day of pronouncement. The written decision shall be immediately notified to the parties present at the time of its pronouncement and within three days of the pronouncement to the parties not present.

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

(4) The decision shall be put in writing within not more than fifteen days from the day it was taken, except where the Hungarian Intellectual Property Office deferred its pronouncement, and it shall be served within fifteen days from the date of putting it in writing.

(5) If there is more than one request for invalidation of the same design protection, they shall be dealt with in the same proceedings if possible.

(6) If the request for invalidation is withdrawn, the proceedings may be continued *ex officio*, except for the case when invalidation has been requested only under Section 10 or Section 28(1)(d). In

such a case the Hungarian Intellectual Property Office shall also proceed within the framework of the request, taking into consideration the statements and allegations made by the parties earlier.

(7) The losing party shall be required to bear the costs of the invalidation proceedings. If the holder of the design protection has not provided any grounds for the invalidation proceedings, and he surrenders the design protection – in case of a design protection granted for several designs, at least with respect to the designs concerned – with retroactive effect to the date of filing prior to the expiration of the time limit for submitting comments under paragraph (1), the costs of the proceedings shall be borne by the requesting party.

(8) The invalidation, maintenance in an amended form or limitation of the design protection shall be recorded in the Design Register (Section 34) and official information shall be published thereon in the official journal of the Hungarian Intellectual Property Office (Section 35).

Section 58/A

(1) At the request of any party the invalidation proceedings shall be conducted in accelerated procedure if court action for design protection infringement was brought, or a request for provisional measures was filed before submitting a statement of claim, and this fact is substantiated.

(2) A fee determined by the Ministerial Decree on administrative service fees in industrial property procedures shall be paid for the request for accelerated procedure simultaneously with the filing of the request.

(3) If the request does not comply with the requirements specified in paragraph (1), the party requesting accelerated procedure shall be invited to rectify the irregularities or to submit comments. The request for accelerated procedure shall be rejected if despite the rectification of the irregularities or the comments, it still does not comply with the requirements laid down in the Act. If the party filing the request for accelerated procedure does not reply to the invitation within the specified time limit, the request shall be considered withdrawn.

(4) If the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit specified in the Act. In the event of failure to do so, the request for accelerated procedure shall be considered withdrawn.

(5) The Hungarian Intellectual Property Office shall order the accelerated procedure by means of a procedural decision.

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

(a) a time limit of fifteen days may be set for rectifying the irregularities or submitting comments;

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

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

Procedure for a declaration of non-infringement

Section 59

(1) A request for a declaration of non-infringement shall be submitted to the Hungarian Intellectual Property Office in one copy if the party uses electronic communication, otherwise it shall be submitted with one copy for each holder of the design protection plus one additional copy. The request shall contain the data specified in the general provisions of the Patent Act concerning the content of the request, and the representation of the product exploited or intended for exploitation, and the representation of the design of the design protection involved shall be annexed thereto. The product exploited or intended for exploitation shall be presented in one or more views corresponding to the representation of the design involved as recorded in the Design Register.

(2) A request for a declaration of non-infringement may be filed only in respect of one design protection and in respect of one product exploited or intended for exploitation.

(3) A fee specified by the law on administrative service fees in industrial property procedures shall be paid for the request for a declaration of non-infringement within one month from the filing of the request.

(4) If the request for a declaration of non-infringement does not comply with the requirements laid down by this Act, that party shall be invited to rectify the irregularities; if the fee for the request has not been paid, that party shall be invited to make payment within the time limit specified in the Act. In the event of failure to do so, the request for a declaration of non-infringement shall be considered withdrawn.

Section 60

(1) The Hungarian Intellectual Property Office shall invite the holder of the design protection to submit comments concerning the request for a declaration of non-infringement; following the written preparatory work, it shall decide at a hearing whether to grant or reject the request. The procedural decision closing the proceedings may also be taken without a hearing.

(2) The requesting party shall bear the costs of the proceedings for a declaration of non-infringement.

(3) Section 58(1a) to (4) shall also apply to proceedings for a declaration of non-infringement.

(4) The provisions of Section 58/A shall apply also to proceedings for a declaration of non-infringement.

PART III

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

Chapter VIII/A

PROVISIONS CONCERNING COMMUNITY PROTECTION OF DESIGNS

General provisions

Section 60/A

For the purposes of this Act:

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

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

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

Forwarding Community design applications

Section 60/B

(1) For the forwarding, pursuant to Article 35(2) of the Community Design Regulation, of a Community design application filed with the Hungarian Intellectual Property Office, a fee determined by the law on administrative service fees in industrial property procedures shall be paid on filing the application.

(2) If the fee for forwarding the Community design application has not been paid, the Hungarian Intellectual Property Office shall invite the applicant to rectify the irregularity. The Hungarian Intellectual Property Office shall forward the Community design application after the payment of the fee.

Community design as a ground for refusal

Section 60/C

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

Legal consequences of the infringement of a Community design

Section 60/D

To the infringement of a Community design the same legal consequences shall apply – in accordance with the provisions of, and in the cases referred to in, Articles 88 to 90 of the Community Design Regulation – as to the infringement of a design protection granted by the Hungarian Intellectual Property Office on the basis of this Act.

Community design court

Section 60/E

(1) In Hungary the Budapest-Capital Regional Court shall proceed at first instance – in the composition laid down in Section 63(2) – as the Community design court referred to in Article 80(1) of the Community Design Regulation.

(2) The Budapest-Capital Regional Court of Appeal, as the Community design court of second instance, shall have jurisdiction concerning appeals against the decisions of the Budapest-Capital Regional Court.

Chapter VIII/B

PROVISIONS CONCERNING INTERNATIONAL INDUSTRIAL DESIGN APPLICATIONS

General provisions

Section 60/F

For the purposes of this Act international industrial design application means an industrial design application filed under the Geneva Act of 2 July 1999 of the Hague Agreement of 1925 Concerning the International Deposit of Industrial Designs (hereinafter “the Agreement”).

Section 60/G

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

Section 60/H

(1) References in this Act to the application of the Agreement shall be construed to mean also the application of the Common Regulations under the Acts of the Agreement referred to in Sections 60/F to 60/G.

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

Section 60/I

[repealed]

International industrial design applications filed through the Hungarian Intellectual Property Office

Section 60/J

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

(2) For the forwarding of the international industrial design application a transmittal fee specified by the law on administrative service fees in industrial property procedures shall be paid to the Hungarian Intellectual Property Office, and in connection with the international industrial design application a fee determined by the Agreement shall be paid within the time limit and in the manner prescribed by the Agreement.

International industrial design applications designating Hungary

Section 60/K

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

(2) *[repealed]*

(3) The Hungarian Intellectual Property Office shall carry out the substantive examination of the international industrial design application. The substantive examination shall ascertain whether the design meets the requirements of Sections 1 to 5 and whether it is not excluded from design protection under Sections 6 to 8.

(4) If the international industrial design application does not comply, in part or in whole, with the requirements examined under paragraph (3), the Hungarian Intellectual Property Office shall notify the International Bureau accordingly within six months from the date prescribed by the Agreement.

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

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

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

(8) Where the Hungarian Intellectual Property Office withdraws – in part or in whole – its notification under paragraph (7), the international registration or its part affected by the withdrawal shall have the same effect as a design protection granted by the Hungarian Intellectual Property Office from the date of the decision on the withdrawal.

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

PART IV

COURT PROCEDURE IN DESIGN MATTERS

Chapter IX

REVIEW OF DECISIONS OF THE HUNGARIAN INTELLECTUAL PROPERTY OFFICE

Request for review

Section 61

(1) Upon request, the court may review the following decisions of the Hungarian Intellectual Property Office:

- (a) decisions referred to in Section 32/A(3);
- (b) decisions suspending the proceedings or concerning entries in the register of design applications or the Design Register;
- (c) procedural decisions excluding or limiting the access to files against which independent legal remedy is admissible under the provisions of the Act on the Code on General Administrative Procedure;
- (d) procedural decisions denying the status of party to the proceedings to persons other than those who have filed the request for the commencement of the proceedings;
- (e) decisions imposing procedural fines or on the amount and on the bearing of procedural costs.

(2) A request for review brought against a decision imposing a procedural fine or on the amount and on the bearing of procedural costs shall have no suspensory effect with respect to any other provisions of the decision not contested in the request for review, and shall not prevent them from becoming final and binding.

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

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

- (a) any party to the proceedings before the Hungarian Intellectual Property Office;
- (b) any person excluded from, or limited in, access to files;
- (c) any person whose status of party to the proceedings has been denied.

(5) Review of a final decision on the grant or invalidation of a design protection may be requested by the prosecutor under Section 7 or 8. Any other participant to the proceedings before the Hungarian Intellectual Property Office may file, in his own right, an independent request for review of the decision or a provision thereof relating to him.

(6) The time limit for filing a request for review or for posting it by registered mail shall be, with the exceptions laid down in paragraphs (7) and (8), thirty days from the date of communication of the decision to the party concerned or to any other participant in the proceedings.

(7) The time limit of thirty days for the filing of a request for review shall be counted from the communication of the procedural decision rejecting the application for excuse or considering it not to have been filed if

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

(b) the application for excuse 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 design file, to the court within fifteen days, except for the case provided for in paragraph (10). Where a party with opposing interests has participated in the proceedings, the Hungarian Intellectual Property Office shall simultaneously notify the party with opposing interests 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 question and shall forward it, together with the request for review and the documents of the design file, to the court within thirty days.

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

(a) the name of the proceeding court,

(b) the identification details of the requesting party specified in the Patent Act's general provisions relating to the content of the request, and, if there is a party with opposing interests, the known identification details of that party, and

(c) the identification details of the legal representative of the requesting party specified in the Patent Act's general provisions relating to the content of the request and his secure delivery service address.

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

(a) the number of the decision whose review is sought, and, where necessary and available, the registration number, as well as the contested provision or part of the decision,

(b) the explicit request to the court to review the decision, and

(c) the grounds demonstrating the necessity of reviewing the decision, together with the supporting evidence and a reference to the legal basis.

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

(a) the facts and a reference to the legal provisions establishing the material and territorial jurisdiction of the court,

(b) the amount paid as a procedural fee and the method of payment, or, if a partial procedural fee was paid, the request for legal aid, or, if the law provides for an exemption from paying procedural fees, the facts and a reference to the legal provisions serving as a basis for exemption,

(c) the facts and a reference to the legal provisions establishing the power of representation of the agent,

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

(12) If a request for review was filed late, the court shall decide on the application for excuse.

Other rules governing proceedings

Section 62

The rules on court proceedings for the review of decisions taken by the Hungarian Intellectual Property Office in patent matters shall apply accordingly in court proceedings for the review of decisions taken by the Hungarian Intellectual Property Office in design matters provided that the reference in Section 100(3) of the Patent Act to Section 81(1) of the Patent Act shall be construed as reference to Section 58(1) of this Act.

Chapter X

ACTIONS IN DESIGN MATTERS

Rules governing actions in design matters

Section 63

(1) Actions in design matters shall be the following: actions brought for the infringement of a design or a design protection, actions brought for declaring the existence of the right of prior or continued use [Section 65(8)], as well as actions brought for the prohibition of the use of a Community design under Article 110a(4) of the Community Design Regulation [Section 60/A(a)].

(2) The provisions on patent litigation shall apply to design litigation, except that where, in the course of proceedings instituted for design infringement the defendant produces evidence, before the court order closing the preparatory stage has been made, that he instituted proceedings before the Hungarian Intellectual Property Office for the invalidation of the design, the court shall suspend the proceedings pending the final and binding conclusion of the invalidity proceedings, with the proviso that if the right holder of the design protection submits, before the closure of the hearing prior to the judgement at first instance, a favourable opinion on its protectability to the court, the suspension shall not be mandatory.

(3) In any other dispute in design matters not mentioned under paragraph (1), the court shall proceed by applying the rules governing disputes in patent matters.

PART V

FINAL PROVISIONS

Chapter XI

ENTRY INTO FORCE OF THE ACT; MISCELLANEOUS, TRANSITIONAL AND AMENDED PROVISIONS

Relation to copyright protection

Section 64

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

Rules on the entry into force of the Act and laying down certain transitional provisions

Section 65

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

(2) The provisions relating to excuse shall apply accordingly to pending cases as well.

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

(4) The provisions previously in force shall apply to exploitation commenced before the entry into force of the Act as regards the rights conferred by and the limitations, scope and infringement of the design protection, to the extent of the exploitation at the date of the entry into force of the Act.

(5) The provisions of this Act shall apply to the renewal of a design protection effective at the date of entry into force of the Act. This provision shall also apply accordingly if the date of expiration of the period of design protection is not earlier than six months prior to the date of entry into force of this Act and no request for renewal has been filed under the provisions previously in force until the entry into force of the Act.

(6) If a design protection extended before the entry into force of this Act is renewed after the entry into force thereof, the provisions of this Act shall apply to the invalidation of design protection, with the proviso that in the case of invalidation the design protection shall terminate with retroactive effect to the date of expiration of the extended design protection.

(7) The provisions of paragraph (6) shall apply accordingly if a design protection valid at the date of entry into force of this Act without extension is renewed for a second time, with the proviso that in the case of invalidation the design protection shall terminate with retroactive effect to the date of expiration of the firstly renewed design protection.

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

(9) The provisions of this Act shall apply to the invalidation of a re-established design protection, with the proviso that in the case of invalidation the design protection shall terminate with retroactive effect to the date of entry into force of this Act.

(10) The provisions in force at the date of priority shall apply to the conditions of invalidation of a design protection effective at, or terminated before, the date of entry into force of this Act. Such design protection renewed or re-established after the entry into force of this Act shall be invalidated with retroactive effect to the date of filing if invalidation is admissible under the provisions in force at the date of priority. In such cases, the provisions laid down in paragraphs (6) to (7) and (9) shall not apply.

(11) References to industrial design or industrial design protection in laws shall be construed to mean design or design protection.

Section 66

[repealed]

Transitional provisions

Section 67

(1) *[repealed]*

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

(3) The provisions in force at the date of priority shall apply to the conditions of invalidation of a utility model protection effective at the date of entry into force of this Act.

(4) [repealed]

Section 67/A

(1) The provisions in force at the date of filing shall apply to the conditions of invalidation of a design protection granted with a filing date before 1 May 2004.

(2) The provisions of this Act in force on 30 April 2004 shall apply to

a) exploitation commenced before 1 May 2004 in respect of the rights conferred by, the scope of, and, with the exception of the exhaustion of the rights, the infringement of the design protection, and to the extent of the exploitation on 1 May 2004,

b) exploitations implemented before 1 May 2004 in respect of the exhaustion of the rights conferred by design protection.

Section 67/B

The provisions of this Act in force on 31 December 2016 shall apply to electronic communications until 31 December 2017 if the Hungarian Intellectual Property Office has not undertaken to provide electronic administration services before 1 January 2018 pursuant to Section 108(2) of Act CCXXII of 2015 on the General Rules of Electronic Administration and Trust Services.

Section 67/C

The provisions of this Act as established by Act L of 2017 Amending Certain Acts in respect of the Entry into Force of the Act on the Code of General Administrative Procedure and the Act on the Code of Administrative Court Procedure (hereinafter “Act L of 2017”) shall apply to proceedings commenced or repeated after the entry into force of Act L of 2017.

Section 67/C

(1) Section 11, Section 49(2), Section 51(4), Section 54(4), Section 57(4), Section 59(3) of this Act, as amended by Act XLI of 2023 amending certain Acts necessary to promote the economic exploitation of innovation and scientific results (hereinafter “Act XLI of 2023”), and Section 33(1c) and (4), Section 33/A, Section 47(2), Section 58/A(2), Section 63(2) of this Act shall apply to proceedings instituted after the entry into force of Act XLI of 2023. (2) Section 44 of this Act, which was repealed by Act XLI of 2023, shall not apply to proceedings initiated after the entry into force of Act XLI of 2023.

Authorizations

Section 68

The minister responsible for justice shall be authorized to determine in a decree, after seeking the opinion of the President of the Hungarian Intellectual Property Office and in agreement with the minister exercising supervision over the Hungarian Intellectual Property Office, the detailed formal requirements for design applications.

Compliance with the law of the European Union

Section 69

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

(2) This Act lays down the provisions necessary for the implementation of Council Regulation 6/2002 (EC) of 12 December 2001 on Community Designs.