

Decree-Law of the Presidium of the Hungarian People's Republic on the Protection of Industrial Design (No. 28 of 1978)

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Chapter I. The Subject of Protection of Industrial Designs and its Duration ➡

Industrial Entitled to Protection

1. - (1) The external shape of an industrial product (hereinafter "design") shall be entitled to the protection afforded to designs (hereinafter "design protection") if it is new and if protection is not excluded under paragraph (4).

(2) A design shall be new if it has not been made accessible to the public to an extent permitting anyone to manufacture it.

(3) The depositor shall obtain protection for the design if:

(a) the design satisfies, at its priority date, the conditions laid down in paragraph (1);

(b) the deposit of the design satisfies the formal conditions laid in this Decree-Law.

(4) The design shall not be entitled to design protection:

(a) if it is detrimental to the normal use of the product;

(b) if it is merely the consequence of the technical solution or of the purpose of the product;

(c) if its purpose is identical to that of a design enjoying earlier priority or is similar thereto to such an extent as to create a risk of confusion;

(d) if its use is contrary to the law or to the moral rules accepted by society, except in those cases where the law restricts only the selling of the product.

The Personal rights of the Author of a Design

2. - (1) The author of a design shall be the person who has created the design. Except where a court judgement having force of law stipulates otherwise, the person shown as the author of the design in the application filed with the Hungarian Patent Office bearing the earliest priority date shall be considered the author of the design.

(2) The author of the design shall have the right to be mentioned as such in the documents relating to the design protection.

(3) In accordance with the Civil Code, the author of the design may institute proceedings against anyone who contests this capacity or who prejudices his other personal rights deriving from the design.

The Owner of the Design Protection

3. - (1) Design protection shall belong to the author or his successor in title. The rights in the design and in the design protection - save for the personal rights of the author - may be transmitted, assigned or limited.

(2) Where the author is required under an employment contract or by other legal relationships to create a design (employee's design), the design protection shall belong to the employer or to the person whose right derives from other legal relationships. If the employer (the person whose right derives from other legal relationships) does not claim the design protection or does not respond, within 60 days, to the author's written notification, the latter or his successor in title may make use of the design.

(3) If the design has been created jointly by more than one person, design protections shall belong jointly to the authors or to their successors in title. The provisions of the Civil Code concerning joint property shall apply, mutatis mutandis, to the joint design protection, provided that where the design is exploited by one of the owners, he shall be required to pay appropriate remuneration to his associates in proportion to their share.

(4) Except where a judgement of a court having force of law or the decision of any other competent authority stipulates otherwise, the person having deposited the design with the Hungarian Patent Office on the earliest priority date shall be deemed to be the owner of the protection.

(5) If two or more person have made the same design independently of each other, design protection shall belong to the author or his successor in title who has deposited the design with the Hungarian Patent Office with the earliest priority date.

(6) Prior to publication in the course of the deposit procedure, the design shall not be published except with the consent of the author.

Remuneration Due to the Owner of the Design Protection and to the Author of an Employee's Design

4. - (1) Where an exploitation contract has been concluded, fees shall be payable to the owner of the design. If the design is transmitted, the purchase price shall fall to the owner and if an employee's design is exploited by employer, the author of the design shall be entitled to remuneration. the amount of the license royalties, the purchase price and the remuneration may be stipulated - in proportion to the economic result - by contract, up to half the consideration due to the authors of works of decorative art or of industrial projects.

(2) Paragraph (1) shall not affect the royalties due to the owner of the design which enjoys copyright protection under the relevant regulations.

(3) The amount of the remuneration due to the author for the exploitation of designs in the commercial activity of economic organizations and in foreign trade shall be stipulated by agreement between the parties.

Constitution and Duration of Design Protection

5. - (1) Design protection shall be constituted by the decision taken on the recording of the design; the effects of protection shall be retroactive to the date of deposit.

(2) Design protection shall be granted for a term of five years as from the day of deposit.

(3) The term of protection shall be renewed, at the request of the owner, once only for an additional term of five years. In the event of a renewal, the second term of protection shall begin the day after the expiry of the first term.

Effects, Scope and Limitations of Design Protection

6. - (1) The owner of a design shall enjoy as a result of design protection - as laid down by law - an exclusive right to produce systematically and put on sale a manufactured product incorporating the design (exploitation of the design) and to grant a license to exploit the design to a third party.

(2) Contracts concerning the assignment of protection or contracts for exploiting a design may not be involved in respect of a third party having acquired a right in good faith under a bilateral contract, unless they have been entered in the Design Register.

(3) The scope of design protection shall be determined by the external shape of the design capable of being identified by means of a photograph or of a graphical representation deposited in the Design Register.

(4) Subject to reciprocity, design protection shall not extend to means of movement and transport in transit in the territory of the country nor to merchandise of foreign origin not intended to be put on sale in the country.

Expiry of Design Protection

7. - (1) Design protection shall expire:

a. when the term of protection comes to an end without being renewed, on the day following the expiration date of the period of protection;

b. if the owner of design protection surrenders protection, the day following the day of receipt of the statement of surrender or at a later date specified by the person surrendering design protection;

c. if cancellation of design protection is ordered, with retroactive effect to the day of deposit of the design.

(2) The owner entered in the Design Register may surrender the design protection by a

written statement addressed to the Hungarian Patent Office. If surrender affects rights afforded to third persons by the law, by a decision of the authorities or by an exploitation contract entered in the Design Register or, if proceedings are entered in the Design Register, surrender, shall be acceptable only if the person concerned gives his consent.

(3) Design protection shall be cancelled if the subject of the design protection does not meet the conditions set out in Section 1(1). The decision to cancel shall be entered in the Design Register and published in the Official Gazette of the Hungarian Patent Office.

Chapter II. Contracts for the Exploitation of Design ➡

Exploitation Contracts

8. - (1) Under an exploitation contract (design licensing contract) the owner of design protection shall grant a license for exploiting the design; in exchange, the exploiter shall be required to pay royalties to the owner.

(2) The parties may derogate, by mutual agreement, from the provisions concerning exploitation contracts where such derogation is not prohibited by law.

(3) The Civil Code shall apply to matters not regulated in this Decree-Law.

Rights and Obligations of the Parties

9. (1) The owner of design protection shall guarantee, for the full duration of the exploitation contract, that no third party will be afforded any right whatsoever to the design protection that may constitute an obstacle to exploitation or that might limit it. This guarantee shall be subject to the provision on the seller's responsibility for the transfer of property rights, except that option of waiver shall be replaced, for the exploiter, by the possibility of terminating the contract with immediate effect.

(2) The exploitation contract shall extend, without any territorial or temporal limit, to all modes of exploitation whatever their extent. However, the licensing contract shall not afford an exclusive exploitation right unless a special clause has been stipulated to that effect.

(3) The exploiter may not grant a third party a license to use the design unless the owner of the design protection has given express authorization.

(4) Where design protection is annulled with retroactive effect to the date of its origin, the exploiter may only claim that part of the royalties already paid which is not covered by useful results deriving from exploitation of the design.

Chapter III. Infringement of the Design and of its Protection ➡

Unlawful Borrowing of the Design

10. - Where the subject of the deposit of the design or of design protection has been unlawfully borrowed from another person's design, the person having suffered the damage or his successor in title may claim the complete or partial assignment of the said deposit.

Infringement of Design Protection

11. - (1) Any unlawful exploitation of a protected design shall be a breach of the design protection (hereinafter "infringement").

(2) The owner of the design protection may institute civil proceedings against the infringer as provided for in Section 84(1) of the Civil Code.

(3) The exploiter of a design entered in the Design Register may act in his own name the infringer if he has requested the owner of the design protection to take the necessary steps to put end to the infringement and the owner has not instituted any proceedings within 30 days of notification.

Establishing the absence of Infringement

12. - (1) Any person fearing that design infringement proceedings are to be instituted against him may, before the commencement of the procedure, have the court establish that the product manufactured or to be manufactured by that person does not prejudice a given design.

(2) Where a final judgement establishes the absence of infringement, no infringement proceedings may be instituted on the basis of the design protection referred to with respect to that same product.

Chapter IV. Design Protection Procedure Before the Hungarian Patent Office ➡

Competence, General Rules of Procedure

13. - (1) The Hungarian Patent Office shall be competent for:

- a. granting design protection;
- b. renewing design protection;
- c. establishing the expiry of design protection;
- d. annulling design protection;
- e. establishing the absence of infringement;
- f. matters related to design registration.

(2) the Hungarian Patent Office shall apply, as regards design protection, the provisions of law no. iv. of 1957 on the general provisions concerning administrative procedure, subject to the derogations provided in this decree-law.

Filing the Application for Design Protection

14. - (1) The procedure for the grant of design protection shall begin with the filing of an

application with the Hungarian Patent Office.

(2) The application shall comprise a request, a photograph or graphical representation of the design and a statement of the product to which the depositor wishes to apply the design. The President of the Hungarian Patent Office shall publish, by means of a notice in the Hungarian Official Gazette, the formal and detailed provisions for filing the design protection application.

(3) Only an application containing at least the name and address of the depositor and a photograph or graphical representation of the design may give rise to a right.

Administration of Matters Relating to Design Protection

15. - (1) Law No. II of 1969 on the Protection of Inventions by Patents'Page: 1

See Industrial Property, 1970. p. 112/313 and the Decree implementing that lawPage: 1

Ibid., 1970. p. 314., concerning the full examination of patent applications, shall be applicable mutatis mutandis to priority, examination, publication of the application for design protection, opposition to the grant of protection as well as to the grant, notification of the expiry and annulment of protection, the establishment of the absence of infringement and the registration of matters relating to design protection.

(2) The owner of the design shall submit his request for renewal of the term of design protection, stating the registration number, to the Hungarian Patent Office. Such request may only be submitted within a period of six months from the day of expiry of the term of protection. Where this time limit is not respected, the request for reinstatement shall not be acceptable.

(3) The renewal of design protection shall be entered in the Design Register and published in the Official Gazette of the Hungarian Patent Office.

Chapter V. Judicial Procedure in Respect of Designs and Litigation Concerning Designs ➡

Review of Decisions by the National Office of Inventions

16. - (1) On request, the court may review decisions taken by the Hungarian Patent Office relating to:

- a. the grant and renewal of design protection;
- b. establishing the expiry of design protection;
- c. annulment of design protection;
- d. establishing the absence of infringement.

(2) Any person having participated as a party in the proceedings before the Hungarian Patent Office may request a review of the decision. The prosecutor may also request a review of the decision.

(3) The request shall be submitted to the Hungarian Patent Office or to the court within 30 days of notification of the decision to the party concerned. In the event of this time not being respected, a request for reinstatement may be submitted in accordance with the Code of Civil Procedure; the court shall pronounce on the request for reinstatement.

(4) The Hungarian Patent Office shall be required to transmit the request to the court, together with the relevant file, within eight days. Where the request is submitted to the court, the Hungarian Patent Office shall be required, at the request of the court, to transmit the relevant file to the court.

General Provisions of Judicial Procedure

17. - (1) The court shall pronounce on requests for review of decisions taken in respect of design protection, in accordance with civil procedure in noncontentious proceedings, subject to the derogations provided for in this Chapter.

(2) Appeals for review of decisions taken by the Hungarian Patent Office shall be within the exclusive competence and responsibility of the Budapest Metropolitan Court. The Budapest Metropolitan Court shall be composed of three professional judges when sitting in the proceedings referred to.

(3) In addition to the cases listed in Sections 13 to 15 and 21 of the Code of Civil Procedure, the persons having participated in the decision by the Hungarian Patent Office, together with their close relations or divorced spouses, as defined in Section 13(2), shall be excluded from the procedure and may not participate therein as judges. This also applies to minute writers and experts.

(4) In addition to the persons defined in Section 67(1) of the Code of Civil Procedure, consulting engineers may also exercise the functions of representative during the procedure.

Taking of Decisions

18. - (1) Before taking its decision and on request, the court shall hear the parties. If the matter cannot be judged on the basis of the file, the court, in accordance with the provisions of the Code of Civil Procedure, shall hold a hearing and shall examine the evidence. The court may exclude the public from the hearing or from the pronouncement of the judgement, even where the conditions of Section 7 of the Code of Civil Procedure are not met.

(2) The court shall reject a request for review of a decision by the Hungarian Patent Office shall amend such decision or, in those cases listed in paragraph (3), shall annul such decision. Where the court amends the decision, the latter's judgement shall replace the decision of the Hungarian Patent Office.

(3) The court shall annul the decision and order the Hungarian Patent Office to institute a new procedure if:

(a) a person against whom incompatibility may be invoked has participated in the taking of the decision; or

(b) during the proceedings before the Hungarian Patent Office any other fundamental breach of procedure which cannot be remedied the court occurred.

Appeal; Action for Unlawfulness

19. - (1) The provisions of the Code of Civil Procedure concerning appeals from court decisions shall apply in respect of appeals from decisions of first instance courts and the examination of the appeal; however, limited evidence may be taken also by the court of second instance.

(2) Final decisions rejecting a request for design protection, establishing the expiry of design protection or annulling design protection, may not be annulled as regards substance by means of an appeal for unlawfulness; the decision of the Supreme Court shall restrict itself to establishing a violation of the law.

Litigation Concerning Design Protection

20. - (1) The court shall apply the general provisions of the Code of Civil Procedure, subject to the derogations provided for in paragraphs (2) and (3), in proceedings instituted for breach of design protection and in all other litigation concerning design protection.

(2) Proceedings instituted for breach of design protection shall be within the exclusive competence - both substantive and territorial - of the Budapest Metropolitan Court.

(3) The provisions of Section 17(2) concerning the constitution of the court chamber, the provisions of Section 17(4) concerning the functions of consulting and the provisions of Section 18(1) concerning the exclusion of the public shall also apply to proceedings instituted for breach of design protection.

Chapter VI. Final Provisions ➡

21. (1) This Decree-Law shall enter into force on March 1, 1979.

(2) On the entry into force of this Decree-Law the following shall be repealed:

the provisions still in force, relating to designs of Law No. XI. of 1911 on temporary protection for the duration of exhibitions of patentable inventions, designs and marks, together with provisions relating to design in Decree No. 30.500/1911 of the Ministry of Trade concerning the execution of the above mentioned provisions;

Section 72(3) of Law No. II. of 1969 on the protection of patents;

the provisions still in force of Decree No. 107.709/1907 of the Ministry of Trade on the legal protection of industrial designs and their registration, together with the provisions supplementing and amending that Decree.

(3) This Decree-Law shall be applicable to ongoing proceedings and to designs protected at the time of its entry into force. The provisions of the preceding legislation shall be applicable in respect of the term of protection of the designs protected on the entry into force of this Decree-Law; however, the form of protection may be renewed in accordance with Section 5(3). Design exploitation contracts concluded prior to the entry into force of this Decree-Law shall maintain their validity.

(4) The Minister of Justice shall be authorized to lay down by decree, in collaboration with the President of the National Committee for Technical Development and the President of

the Hungarian Patent Office, detailed provisions of judicial procedure concerning proceedings for design protection.