

## ***Law No. XI of 1997 on the Protection of Trademarks and Geographical Indications***

• PART I. PROTECTION OF TRADEMARKS .....	1
• CHAPTER I. Subject Matter of Trademark Protection .....	2
• CHAPTER II. Rights and Obligations Deriving from Trademark Protection .....	4
• CHAPTER III. Trademarks and Trademark Protection as Objects of Property .....	8
• CHAPTER IV. Trademark license contracts .....	9
• CHAPTER V. Infringement .....	10
• CHAPTER VI. Lapse of Trademark Protection .....	12
• PART II. PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN TRADEMARK MATTERS .....	14
• CHAPTER VII. General Provisions Governing Trademark Procedures .....	14
• CHAPTER VIII. Registration of Trademark Matters, Information to the Public .....	17
• CHAPTER IX. Trademark Registration Procedure .....	19
• CHAPTER X. Other Procedures in Trademark Matters .....	24
• PART III. COURT PROCEEDINGS IN TRADEMARK CASES .....	28
• CHAPTER XI. Review of Decisions of the Hungarian Patent Office .....	28
• PART IV. COLLECTIVE MARKS AND CERTIFICATION MARKS ...	33
• CHAPTER XIII. Collective Marks .....	33
• CHAPTER XIV. Certification Marks .....	35
• CHAPTER XV. Application of Provisions Relating to Trademarks to Collective and Certification Marks .....	36
• PART V. PROTECTION OF GEOGRAPHICAL INDICATIONS .....	36
• CHAPTER XVI. Subject Matter of Protection, Rights Conferred, Infringement and Lapse of Protection .....	36
• CHAPTER XVII. Procedures Concerning the Protection of Geographical Indications .....	39
• PART VI. FINAL PROVISIONS .....	41
• CHAPTER XVIII. Entry Into Force; Transitional and Amended Provisions .....	41

In order to promote the development of Hungarian market economy, to strengthen competition conditions based on the distinction of goods and services, to assist consumers in gathering information; and in conformity with the international obligations of the Republic of Hungary concerning the protection of intellectual property, the Parliament enacts the following Law on the Protection of Trademarks and Geographical Indications:

### **PART I. PROTECTION OF TRADEMARKS ➡**

## **CHAPTER I. Subject Matter of Trademark Protection ➡**

### *Signs Capable of Distinction*

#### Article 1

(1) Trademark protection shall be granted for any sign capable of being represented graphically provided that these are capable of distinguishing goods or services from those of other undertakings.

(2) Signs which may be granted trademark protection:

- a) words, combination of words, including personal names and slogans,
- b) letters, numerals,
- c) figures, pictures,
- d) two- or three-dimensional forms, including the shape of goods or of their packaging,
- e) colours, combination of colours, light signals, holograms,
- f) sound signals, and
- g) combination of signs under a)-f).

### *Absolute Grounds for Refusal*

#### Article 2

(1) A sign shall not be granted trademark protection if it is not capable of being represented graphically or does not constitute a trademark under Article 1(2).

(2) A sign shall be excluded from trademark protection if it is devoid of any distinctive character, in particular if

- a) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services, or which have become customary in the current language or in the practices of trade;
- b) it consists of the shape which results from the nature of the goods themselves, or which is necessary to obtain a technical result, or which gives substantial value to the goods.

(3) A sign shall not be excluded from trademark protection in accordance with paragraph (2) if, either before or after the date of priority, it has acquired a distinctive character.

#### Article 3

(1) A sign shall not be granted trademark protection if

- a) its use would be contrary to public policy, morality or law;
  - b) it is suitable to deceive consumers as to the nature, quality, geographical origin or other characteristics of the goods or services;
  - c) its registration was applied for in bad faith.
- (2) A sign shall be excluded from trademark protection if
- a) it consists exclusively of State emblems or other emblems of an authority or international organization as defined in the Paris Convention for the Protection of Industrial Property;
  - b) it relates to medals, badges, armorial bearings, not covered by subparagraph (a) above, or to official signs and hallmarks indicating control and warranty which are of public interest;
  - c) it consists of symbols having close relation to religious or any other beliefs.
- (3) Trademark protection shall be granted with the consent of the competent authority to signs of which the emblems defined under paragraph 2 (a) and (b) form only an element.

#### *Relative Grounds for Refusal*

#### Article 4

- (1) A sign shall not be granted trademark protection
- (a) with respect to identical goods or services if the sign with the later date of priority is identical with an earlier trademark;
  - (b) if because of its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services there exists a likelihood of confusion on the part of the consumers;
  - (c) with respect to not similar goods or services if the sign with the later date of priority is identical with, or similar to, an earlier trademark having a reputation in the country where the use of the later sign would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark.
- (2) "Earlier trademark" means a trademark whose registration was applied for with an earlier date of priority or a sign which has earlier become well known in the country under the Paris Convention for the Protection of Industrial Property even if that sign is not registered.
- (3) A sign shall not be refused trademark protection if it conflicts with an earlier trademark which has not been used by the proprietor in accordance with the provisions of Article 18.

#### Article 5

- (1) A sign shall not be granted trademark protection
- (a) if it would violate earlier personal rights of others, in particular a right to a name or personal portrayal;

(b) if it would conflict with an earlier copyright or industrial property right of others, including conflict with the name of a protected plant variety or animal breed or with a geographical indication.

(2) With respect to identical or similar goods or services a sign shall not be granted trademark protection

(a) if it has been used effectively in the country without registration where the use of the sign without the consent of the prior user would be contrary to law;

(b) if it is identical with, or similar to, a trademark whose protection has expired within a period of two years, unless the earlier trademark was not used.

(3) In determining whether a right, use or expiration is ranked as earlier within the meaning of paragraphs (1) and (2), the priority of the application for registration shall be taken into account.

#### Article 6

A sign shall be excluded from trademark protection if the representative or agent applies for registration in his own name, without the authorization of the proprietor.

#### *Declaration of Consent*

#### Article 7

(1) A sign shall not be refused trademark protection in accordance with Articles 4 and 5 if the holder of the earlier right consents to the registration of the later sign.

(2) A declaration of consent shall be valid if drawn up as a public instrument or private paper providing sufficient evidence.

(3) A declaration of consent may be attacked under those provisions of the Civil Code that concern the action for avoidance of a contract by reason of mistake, deception or threat; the statement may not be withdrawn and may not be replaced by the judgement of a Court.

#### *Registrability*

#### Article 8

(1) Trademark protection shall be granted for a sign if

(a) it satisfies the requirements of Article 1 and is not excluded from trademark protection under the terms of Articles 2 to 7 and

(b) the relevant application complies with the requirements laid down by this Law.

## **CHAPTER II. Rights and Obligations Deriving from Trademark Protection ➡**

### *Right to Trademark Protection*

## Article 9

(1) The right to the legal protection of a trademark (hereinafter referred to as "trademark protection") shall belong to the person who has registered the trademark according to the procedure prescribed by this Law.

(2) Any natural or legal person or a company without legal personality, irrespective of pursuing economic activities, may apply for trademark protection.

(3) If two or more persons apply for registration jointly, trademark protection shall belong to them jointly. Where two or more persons are entitled to the right, it shall be deemed to belong to them equally unless otherwise provided.

### *Establishment of Trademark Protection*

## Article 10

Trademark protection shall begin with the registration and shall be effective retroactively from the date of the application.

### *Term of Protection*

## Article 11

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

(2) Trademark protection shall be renewable for further periods of ten years. In case of renewal, the new period of protection shall begin on the day following the date of expiration of the previous period.

### *Rights Conferred by Trademark Protection*

## Article 12

(1) Trademark protection shall afford the proprietor of the trademark the exclusive right to use the trademark.

(2) On the basis of the exclusive right of use, the proprietor shall be entitled to prevent any person not having his consent, from using in the course of trade

(a) any sign identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;

(b) any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services, there exists a likelihood of confusion on the part of the public; or

(c) any sign which is identical with, or similar to, the trademark in relation to goods and services which are not identical with, or not similar to those for which the trademark is registered, provided that the trademark has a reputation in the country and the use of the sign would take unfair advantage of, or would be detrimental to, the distinctive character or

the repute of the trademark.

(3) The following, in particular, shall be prohibited under paragraph (2):

- (a) affixing the sign to the goods or to the packaging thereof;
- (b) putting on the market or offering for sale the goods under that sign, or stocking them for such purposes;
- (c) offering or supplying services under that sign;
- (d) importing or exporting the goods under the sign;
- (e) using the sign in business correspondence and in advertising.

#### *Reproduction of Trademarks in Reference Works*

##### Article 13

If the reproduction of a trademark in a dictionary, lexicon, encyclopaedia or similar reference work gives the impression that it constitutes the generic name of the goods or services for which the trademark is registered, the publisher of the work shall, at the request of the proprietor of the trademark, indicate - in the next edition of the publication at the latest - that the trademark has been registered and is under trademark protection.

#### *Unlawful Use of a Trademark by an Agent or Representative*

##### Article 14

Where a trademark is registered in the name of the agent or representative without the proprietor's authorization, the proprietor shall be entitled to oppose the unauthorized use of his trademark by his agent or representative, unless the agent or representative justifies his action.

#### *Limitations of Trademark Protection*

##### Article 15

(1) Trademark protection shall not entitle the proprietor to prohibit a third party from using, in the course of trade and in accordance with the requirements of fair business practices,

- (a) his own name or address;
- (b) indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;
- (c) the trademark where it is necessary to indicate the intended purpose of the goods or services, in particular in the case of accessories or spare parts.

(2) On the basis of paragraph (1)(a) only a natural person may invoke his own name or address against the proprietor of the trademark.

### *Exhaustion of the Rights Conferred by Trademark Protection*

#### Article 16

(1) Trademark protection shall not entitle the proprietor to prohibit the use of the trademark in relation to goods which have been put on the domestic market by him or with his express consent.

(2) Paragraph (1) shall not apply where the proprietor has legitimate reasons to oppose further commercialization of the goods, in particular where the condition of the goods has been changed or impaired.

#### *Acquiescence*

#### Article 17

(1) Where the proprietor has acquiesced, for a period of five successive years, in the use of a later trademark in the country while being aware of such use, he shall no longer be entitled either to oppose the use of the later trademark in the country or to request, on the basis of his earlier trademark, the cancellation thereof (Article 33(2)(b)).

(2) Paragraph (1) shall only apply to goods or services in relation to which the later trademark was actually used.

(3) Paragraph (1) shall not apply where the later trademark was applied for in bad faith.

(4) The proprietor of a later trademark shall not be entitled to oppose the use of the earlier trademark, even though the proprietor of the earlier trademark may no longer oppose, on the basis of paragraph (1), the use of the later trademark.

(5) The provisions of paragraphs (1) to (4) shall apply mutatis mutandis to earlier trademarks having a reputation, to trademarks that have earlier become well-known in the country, as well as to earlier rights referred to in Article 5(1) and (2)(a).

#### *Use of Trademarks*

#### Article 18

(1) If, within a period of five years following the date of registration, the proprietor has not commenced the genuine use of the trademark in the country in connection with the goods or services for which it is registered, or if such use has been suspended during an uninterrupted period of five years, trademark protection shall be subject to the legal consequences provided for in this Law (Articles 4(3), 30(d), 33(2)(a) and 34), unless the proprietor duly justifies non-use.

(2) Within the meaning of paragraph (1), the following shall also constitute genuine use of the trademark in the country:

(a) use of the trademark in a form differing from the registered form only in elements which do not alter the distinctive character;

(b) affixing of the trademark to goods or to the packaging thereof in the territory of the

country solely for export purposes.

(3) Within the meaning of paragraph (1), use of the trademark with the authorization of the proprietor shall be deemed to constitute use by the proprietor.

### **CHAPTER III. Trademarks and Trademark Protection as Objects of Property ➡**

#### *Succession in Title*

##### Article 19

(1) Rights deriving from a trademark and from trademark protection may be transferred and assigned.

(2) The successor in title to a legal person or to a company without legal personality shall also acquire the trademark, unless otherwise provided by the parties or the circumstances clearly dictate otherwise.

(3) Trademark protection may be assigned by contract. Trademark protection may also be assigned in respect of some of the goods or services for which the trademark is registered.

(4) The contract for the assignment of trademark protection shall be null and void where the assignment is likely to mislead the public.

(5) Where a trademark is applied for or is registered in the name of the agent or representative without the proprietor's authorization, the latter shall be entitled to demand the assignment in his favour of the right to trademark protection or of the registration.

#### *Encumbrance*

##### Article 20

Rights deriving from a trademark and from trademark protection may be encumbered. A mortgage may be established by contract made in writing and registered in the Trademark Register.

#### *Joint Right to Trademark Protection and Joint Trademark Protection*

##### Article 21

(1) Where there are two or more proprietors of the same trademark, each of the joint proprietors may dispose of his own share. Where one joint proprietor wishes to dispose of his share, the other joint proprietors shall enjoy a right of preemption with respect to third parties.

(2) The trademark may be used by any one of the joint proprietors alone; however, he shall be obliged to pay appropriate remuneration to the other joint proprietors, in proportion to their shares. Within the meaning of Article 18, such use of the trademark shall be deemed to constitute use by all of the proprietors.

(3) A license for the use of a trademark may only be granted to a third party jointly by the



joint proprietors. Collective consent may be replaced by a court decision under the general provisions of civil law.

(4) In the event of doubt, the shares of all joint proprietors shall be deemed equal. If one of the joint proprietors surrenders his trademark protection, the rights of the other joint proprietors shall extend to his share, in proportion to their own shares.

(5) Any one of the joint proprietors may also act individually to renew, enforce and protect trademark rights. His legal acts - compromise, recognition and waiver of rights excepted - shall be binding on any other joint proprietor who has failed to observe a time limit or to perform a required act, provided that such other joint proprietor has not subsequently remedied his omission.

(6) Where the acts of the joint proprietors are divergent, a decision shall be taken having regard to all other relevant facts in the procedure.

(7) Costs relating to the joint trademark protection are to be borne by the joint proprietors in proportion to their shares. If, despite being notified, a joint proprietor does not pay the costs for which he is liable, the joint proprietor who has paid those costs may claim assignment to him of the share belonging to the joint proprietor having not met his obligations.

(8) The provisions concerning joint trademark protection shall apply *mutatis mutandis* to joint trademark applications.

#### *Application of the Rules of the Civil Code*

##### Article 22

Matters relating to the transfer, assignment and encumbrance of rights deriving from a trademark and from trademark protection, as well as to the joint right to trademark protection and joint trademark protection that are not covered by this Law shall be governed by the provisions of the Civil Code.

## **CHAPTER IV. Trademark license contracts ➡**

### *Conclusion of Trademark License Contracts*

##### Article 23

(1) Under a trademark license contract the proprietor of trademark protection licenses the right to use a trademark and the user (licensee) is required to pay royalties.

(2) The parties shall be free to determine the contents of the license contract. However, any license contract whose fulfilment is likely to mislead the public shall be null and void.

### *Rights and Obligations of the Parties*

##### Article 24

(1) The proprietor shall guarantee for the whole duration of the license contract, that no third parties hold rights in the trademark preventing or limiting exercise the right of use. This guarantee shall be subject to the rules applicable to a vendor who transfers proprietary rights, except that the licensee may, instead of cancellation, terminate the contract with

immediate effect.

(2) The proprietor shall inform the licensee of any third party rights in relation to the trademark and of any other important circumstances. However, he shall be obliged to transfer economic, technical and organizational know-how only if this has been expressly agreed.

(3) The proprietor may control at the licensee the quality of the goods bearing the trademark or of the services supplied under the trademark.

(4) The license contract shall cover all goods and services for which the trademark is registered and every mode of use, to any extent whatsoever, without limitation in time or as to territory.

(5) A right of use shall be exclusive only if expressly stipulated by contract. In the case of an exclusive license, the proprietor may also use the trademark in addition to the licensee who has acquired the right of use, unless expressly excluded by contract. The proprietor may terminate the exclusivity of a license, subject to a proportional reduction in the royalty, if the licensee does not begin use of the trademark within a reasonable period of time.

(6) The licensee may transfer the license or grant sub-licences to third parties only with the express consent of the proprietor.

#### *Termination of the License Contract*

#### Article 25

The license contract shall terminate, with effect for the future, when the contractual period expires or when certain specified circumstances occur or when the trademark protection expires.

#### *Effect of Provisions Relating to License Contracts*

#### Article 26

(1) The parties may derogate by mutual consent from the provisions relating to license contracts where not prohibited by law.

(2) Matters relating to license contracts that are not covered by this Law shall be governed by the provisions of the Civil Code.

## **CHAPTER V. Infringement ➡**

### *Trademark Infringement*

#### Article 27

(1) Any person who unlawfully uses a trademark in contravention of the provisions of Article 12, commits trademark infringement.

(2) The proprietor may, according to the circumstances of the case, have recourse to the following civil remedies:

- (a) request that the fact of infringement be declared by the court;
  - (b) request an injunction that the infringer cease his infringement;
  - (c) demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution;
  - (d) demand satisfaction from the infringer by way of a declaration or by other appropriate means; if necessary, the declaration shall be made public by the infringer or at his expense;
  - (e) require reimbursement of the enrichment obtained by infringement of the trademark;
  - (f) request the seizure of the means used exclusively or predominantly for infringement and of the infringing products and the packaging thereof.
- (3) The court may rule, at the request of the proprietor, that the infringing nature of the means, materials, products and packaging seized be removed - in particular by removing the trademark - or, where this is not possible, that they be destroyed. Under reasonable circumstances the court may order, in place of destruction, that the means and materials seized be auctioned according to court procedure on execution; in such case, the court shall decide how the sum obtained is to be used.
- (4) Seizure of the means and materials used for trademark infringement and of the infringing products and packaging shall be admissible even though they are not in the ownership of the infringer if the proprietor knew or had reasonable grounds to know of the trademark infringement.
- (5) Where a trademark is infringed, the proprietor may also claim damages under the rules of civil liability.

#### *Customs Law Consequences of Trademark Infringement*

##### Article 28

Where a trademark is infringed, the proprietor may claim - under the provisions of special legislation - measures by the customs authorities to prevent infringing goods from getting on the market in the country.

#### *Rights of the Applicant and the Licensee in the Event of Trademark Infringement*

##### Article 29

- (1) An applicant may also institute proceedings for trademark infringement; however, the proceeding shall be suspended until the decision to register the trademark has become final.
- (2) The licensee recorded in the Trademark Register may institute proceedings for trademark infringement in his own name if he invited the proprietor to take appropriate action in order to stop the infringement and the proprietor failed to take action within 30 days from the invitation.

## **CHAPTER VI. Lapse of Trademark Protection ➡**

### *Modes of Lapse*

#### Article 30

Trademark protection shall lapse:

- (a) when the period of protection expires without renewal (Articles 11 and 31), on the day following the date of expiration;
- (b) if the proprietor surrenders protection (Article 32), on the day following receipt of the surrender or at an earlier date specified by the person surrendering protection;
- (c) if the trademark is cancelled (Article 33), with retroactive effect to the filing date of the application;
- (d) if the proprietor has not put the trademark to genuine use (Articles 18 and 34), with retroactive effect to the date of starting the procedure for a decision on the lapse of protection or to the date of priority of the conflicting later trademark, whichever is earlier;
- (e) if the trademark loses its distinctive character or becomes deceptive (Article 35), with retroactive effect to the date of starting the procedure for a decision on the lapse of protection.

### *Partial Lapse by Reason of Expiration of Protection*

#### Article 31

Where trademark protection is renewed in respect of only some of the goods or services for which the trademark has been registered, trademark protection shall lapse by reason of expiration of protection only in respect of the parts not covered by the renewal.

### *Surrender of Protection*

#### Article 32

(1) The proprietor named in the Trademark Register may surrender trademark protection by a written declaration addressed to the Hungarian Patent Office.

(2) If the surrender affects the rights of third parties deriving from legislation, from decisions of an authority, from a license contract or any other contract recorded in the Trademark Register, or if a lawsuit is recorded in the Trademark Register, it shall take effect only with the consent of the parties concerned.

(3) Surrender shall also be possible in respect of only some of the goods or services for which the trademark is registered.

(4) Surrender of trademark protection may not be withdrawn.

### *Cancellation*

## Article 33

### (1) The trademark shall be cancelled

(a) if the subject matter of the trademark protection does not satisfy the requirements laid down in Article 8(1)(a);

(b) if the subject matter of the trademark protection differs from, or the list of goods and services extends beyond, the content of the application as filed at the accorded filing date or - in the case of division - the content of the divisional application.

### (2) The trademark may not be cancelled

(a) if it conflicts with an earlier trademark (Article 4(2)) the use of which does not satisfy, at the time of the cancellation procedure, the requirements laid down in Article 18; or

(b) if it conflicts with an earlier trademark, non-registered sign or any other rights whose proprietor was aware of the registration of the later trademark and has acquiesced, for a period of five successive years, in the use of that trademark, unless the proprietor of the later trademark acted in bad faith.

(3) Where the grounds for cancellation exist in respect of only some of the goods or services for which the trademark is registered, cancellation shall be pronounced in the form of a corresponding limitation of the protection.

(4) Should the request for cancellation be rejected by a final decision, a new procedure for the cancellation of the same trademark on the same grounds may not be instituted by any person.

### *Lapse by Reason of Non-Use*

## Article 34

(1) Trademark protection shall lapse by reason of non-use in respect of some or all of the goods or services for which the trademark is registered, depending on whether non-use covers all or some of the goods or services for which the trademark is registered.

(2) Lapse of trademark protection by reason of non-use shall not be declared if, during the interval between expiry of the period laid down in Article 18(1) and filing of the request for declaring lapse by reason of non-use, genuine use of the trademark has been started or resumed. This provision shall not apply where the commencement or resumption of use within a period of three months preceding the filing of the request occurs only after the proprietor becomes aware that decision on lapse by reason of non-use will be requested.

(3) Should the request for decision on lapse by reason of non-use be rejected by a final decision, a new procedure for the decision on lapse of the same trademark on the same grounds may not be instituted by any person.

### *Lapse by reason of losing the distinctive character or becoming deceptive*

## Article 35

(1) Trademark protection shall lapse

(a) if, in consequence of acts of the proprietor, the trademark has become the common name in the trade for a product or service for which it is registered; or

(b) if, in consequence of the use, the trademark has become deceptive, particularly as to the nature, quality or geographical origin of the goods or services.

(2) Trademark protection shall lapse by reason of losing the distinctive character or becoming deceptive in respect of some or all of the goods or services for which the trademark is registered, depending on whether the grounds for lapse exist in respect of all or some of the goods or services for which the trademark is registered.

(3) Should the request for a decision on lapse by reason of losing the distinctive character or becoming deceptive be rejected by a final decision, a new procedure for the decision on lapse of the same trademark on the same grounds may not be instituted by any person.

*Reclaiming of Royalties*

Article 36

If trademark protection lapses ex tunc, only the portion of the royalties collected by the proprietor that was not covered by the profits derived from the use of the trademark may be reclaimed.

**PART II. PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE IN  
TRADEMARK MATTERS ➡**

**CHAPTER VII. General Provisions Governing Trademark Procedures ➡**

*Authority of the Hungarian Patent Office*

Article 37

The Hungarian Patent Office shall have authority in the following trademark matters:

- (a) registration of trademarks,
- (b) renewal of trademark protection,
- (c) decision on lapse of trademark protection,
- (d) cancellation of trademarks,
- (e) division of trademark protection,
- (f) recording of trademark applications and trademarks,
- (g) official information.

### *Application of the General Rules of Administrative Procedure*

#### Article 38

The Hungarian Patent Office shall proceed in trademark matters under its own authority, with the exceptions laid down in this Law, by applying the provisions of Law No. IV of 1957 on the general rules of administrative procedure.

### *Decisions of the Hungarian Patent Office*

#### Article 39

(1) In cancellation procedures, in procedures for a decision on the loss of distinctive character and on becoming deceptive, as well as on lapse for non-use, the Hungarian Patent Office shall proceed in the form of a board consisting of three members; the board shall take its decisions on a majority.

(2) Decisions on the registration of trademarks, on the renewal, division and lapse of trademark protection and on the cancellation of trademarks shall be considered decisions on merits.

(3) Decisions of the Hungarian Patent Office shall take effect on service unless a review is requested.

(4) The Hungarian Patent Office may withdraw or modify its decisions on merits in trademark matters only if a request for review is made and only until such request is transmitted to the court. Its decisions may not be invalidated or changed by a supervisory authority; they shall be without appeal.

(5) The decisions of the Hungarian Patent Office in trademark matters may be repealed or changed by the court in conformity with the provisions of Chapter XI.

### *Establishment of Facts*

#### Article 40

(1) In trademark procedures before it, the Hungarian Patent Office shall examine the facts of its own motion, it shall not be restricted in such examination to the statements and requests of the parties. However, its decisions may only be based on facts or evidence on which the parties concerned have had an opportunity to present their comments.

(2) The parties shall be invited or notified to remedy insufficiencies of documents submitted in trademark matters.

### *Time limits*

#### Article 41

(1) The time limits prescribed by this Law shall not be extended. Failure to comply with such time limits shall involve legal consequences without notice.

(2) Where this Law does not prescribe any time limit to remedy insufficiencies or to submit a

statement, a time limit of at least 30 days shall be fixed which may be extended on request before the expiration of the period. A time limit of more than three months and more than three extensions of a time limit may be granted only in special cases.

(3) The time limits generally prescribed to terminate administrative procedures shall not apply to trademark matters.

### *Restitutio in integrum*

#### Article 42

(1) In trademark matters - unless excluded under paragraph (5) - a request for restitutio in integrum may be submitted within 15 days of the unobserved time limit or of the last day of the unobserved period. The request must state the grounds of failure to comply and the circumstances showing that the failure to comply occurred without fault.

(2) Where the failure to comply became known to the party subsequently or the cause thereof was removed subsequently, the time limit shall be reckoned from the date on which the failure to comply became known or the cause thereof was removed. The request for restitutio in integrum shall only be admissible within six months of the time limit not complied with or the last day of the period not complied with.

(3) Where a time limit is not complied with, the omitted act must be carried out simultaneously with the filing of the request for restitutio in integrum or - if it is admissible - an extension of the time limit may be requested.

(4) If the Hungarian Patent Office grants restitutio in integrum, the acts carried out by the party in default shall be considered to have been performed within the time limit not complied with; a hearing held on the day not complied with shall be repeated where necessary. Depending on the outcome of the new hearing, it shall be decided whether the decision taken at the original hearing should stand or should be revoked in whole or in part.

(5) Restitutio in integrum shall be excluded:

(a) in the event of failure to comply with the time limit prescribed for filing the declaration of priority (Article 53(2));

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

### *Interruption and Suspension of the Procedure*

#### Article 43

(1) In the event of the death of a party or the dissolution of a legal person or of a company without legal personality, the procedure shall be interrupted until the person of the successor in title is registered and his claim justified.

(2) Where legal proceedings are instituted with respect to the entitlement to file a trademark application or the right to trademark protection, the trademark procedure shall be suspended until the court decision becomes final.

### *Representation*



#### Article 44

(1) Foreign applicants shall be represented by an authorized patent attorney or an attorney-at-law, having residence in the country, in all trademark matters within the competence of the Hungarian Patent Office.

(2) A power of attorney shall be drawn up as a public instrument or as a private paper having the force of evidence. A power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

(3) The Hungarian Patent Office shall appoint a trustee from among the patent attorneys and attorneys-at-law:

(a) for unknown heirs or for a party whose whereabouts are unknown, at the request of the adverse party, or

(b) for a foreign party not having an authorized representative.

#### *Use of Languages*

#### Article 45

(1) The language of trademark procedure shall be Hungarian, the trademark application shall be in Hungarian.

(2) In trademark matters, documents in foreign languages may also be filed; however, the Hungarian Patent Office may require that a translation into Hungarian, certified where necessary, be filed.

#### *Access to Files*

#### Article 46

(1) Prior to the communication of certain data of the trademark application (Article 57), only the applicant and his representative, and after the communication of data any person may inspect the files, including the sign and the list of goods and services.

(2) Draft decisions, and all other documents used for the preparation of decisions and expert opinions, which are not communicated to the parties shall be excluded from inspection even after the communication of data:

(3) Upon payment of a fee, the Hungarian Patent Office shall issue copies of documents that may be inspected.

(4) Procedures in trademark matters shall be public only if there is an adverse party participating.

### **CHAPTER VIII. Registration of Trademark Matters, Information to the Public ➡**

#### *Register of Trademark Applications, Trademark Register*

## Article 47

(1) The Hungarian Patent Office shall keep a Register of Trademark Applications and a Trademark Register which shall contain all facts and circumstances concerning trademark rights.

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

- (a) registration number of the trademark;
- (b) reference number;
- (c) representation of the trademark;
- (d) list of goods and services;
- (e) name (official designation) and address (place of business) of the proprietor of the trademark;
- (f) name and place of business of the representative;
- (g) filing date of the application;
- (h) priority data;
- (i) date of the decision on the registration of the trademark;
- (j) renewal of trademark protection;
- (k) legal title and date of the expiration of protection and limitation of trademark protection;
- (l) exploitation licenses.

(3) Any right relative to trademark protection may be invoked against a third party who acquired his right in good faith and for a consideration if it is recorded in the Trademark Register.

(4) Any person may have access to the Trademark Register and may ask for a copy of the registered data on payment of a fee.

(5) Following communication of data of the applications, the provisions of paragraphs (3) and (4) shall apply mutatis mutandis to the Register of Trademark Applications.

### *Entries in the Trademark Register*

## Article 48

(1) Entries in the Register of Trademark Applications or in the Trademark Register shall be made exclusively on the basis of decisions of the Hungarian Patent Office or court decisions. Entries on the basis of the decisions listed in Article 77(1), may only be made if no review is requested within the stipulated time limit or if the decision of the court

concerning the review has become final.

(2) The Hungarian Patent Office shall decide on rights and facts relating to trademark protection on the basis of a request submitted in writing. An official document or private document providing sufficient evidence shall be attached to such request.

(3) A request shall be inadmissible if it is based on a document which is invalid due to formal defects or which lacks an official authentication required by law, or if it is clear from the contents of the document that the legal statement included therein is invalid.

(4) Where the request or its enclosures contain rectifiable defects, the applicant shall be invited to remedy them or to submit comments.

#### *Information to the Public*

#### Article 49

The official journal of the Hungarian Patent Office shall contain, in particular, the following data and facts relating to trademark applications and trademarks:

(a) on communication of certain data, the name and address (place of business) of the applicant and the representative, the reference number of the application, the filing date and the date of priority where the latter is different, the sign and the list of goods and services;

(b) after registration of the trademark, the registration number, the name and address (place of business) of the proprietor, name and address (place of business) of the representative, the reference number, the filing date and the date of priority where the latter is different, the trademark, the list of goods and services and the date of the decision on registration;

(c) in the case of renewal or division of trademark protection, the relevant data;

(d) legal title and date of the expiration of trademark protection;

(e) changes in rights relating to trademark protection entered in the Trademark Register.

## **CHAPTER IX. Trademark Registration Procedure ➡**

### *Filing of Trademark Application and Requirements*

#### Article 50

(1) The procedure for the registration of a trademark shall begin with the filing of a trademark application with the Hungarian Patent Office.

(2) A trademark application shall contain a request for trademark registration, the sign, the list of goods and services and, where necessary, other relevant documents.

(3) Detailed formal requirements to be complied with by trademark applications shall be laid down by special legislation.

(4) A trademark application shall be subject to the payment of a filing fee determined by special legislation; the fee shall be payable within two months after the date of filing.

(5) Where the documents making up the trademark application have been prepared in a foreign language, the list of goods and services shall be filed in Hungarian within four months after the date of filing.

(6) Until registration, the applicant may withdraw the trademark application in compliance with the provisions of Article 32. The Hungarian Patent Office shall take note of the withdrawal by a decision.

#### *Date of Filing*

#### Article 51

(1) The filing date of an application shall be the date on which the application filed with the Hungarian Patent Office contains at least:

- (a) an indication that trademark protection is sought,
- (b) information identifying the applicant,
- (c) a representation of the sign and a list of goods and services, even though they do not comply with other requirements.

(2) In place of the filing of a representation of the sign and a list of goods and services, reference to a priority document shall suffice to accord a date of filing for the application.

#### *Unity of the Sign, List of Goods and Services*

#### Article 52

(1) A trademark application may seek trademark protection for one sign only.

(2) The list of goods and services is the enumeration of goods and services with respect to which protection of the sign is sought.

(3) In the list of goods and services the goods or services shall be grouped according to the classes of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks and, where possible, by using the terms included therein.

#### *Priority*

#### Article 53

(1) The date establishing priority shall be:

- (a) generally, the date of filing of the trademark 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 Patent Office published in the Hungarian Gazette, the starting day of displaying the sign at an exhibition, which is not earlier than 6 months prior to the date of filing of the application (exhibition priority);

(d) the date of filing of a previously filed and pending trademark application for the same sign, which is not earlier than 6 months prior to the current filing, provided that it has not served as a basis for claiming a right of priority (internal priority).

(2) Convention, exhibition and internal priority shall be claimed within two months after the filing of the application. The document establishing convention priority and the certification of exhibition shall be filed within four months after the date of filing of the application.

#### *Certification of Exhibition*

##### Article 54

(1) The authority responsible for the exhibition shall attest to the display and date of the exhibition by the certificate of exhibition.

(2) The certificate must be accompanied by the sign whose identity with the sign displayed at the exhibition shall be attested.

(3) The certificate may only be issued during the period of the exhibition and only while the sign can be seen at the exhibition.

#### *Examination on Filing*

##### Article 55

Following the filing of a trademark application, the Hungarian Patent Office shall examine whether

(a) the application satisfies the requirements for according a date of filing (Article 51),

(b) the filing fee has been paid (Article 50(4)),

(c) the list of goods has been filed in the Hungarian language (Article 50(5)).

##### Article 56

(1) If a date of filing cannot be accorded, the applicant shall be invited to correct the defects within 30 days.

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

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

(4) If the filing fee has not been paid or the list of goods has not been filed in the Hungarian language, the Hungarian Patent Office shall invite the applicant to remedy the defects

within the period specified by this Law (Article 50(4) and (5)). Failing which, the application shall be considered withdrawn.

#### *Communication of Certain Data*

##### Article 57

If, either on filing or as a result of a correction, a trademark application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in Article 49(a) in its official journal (communication of certain data).

#### *Observations*

##### Article 58

(1) During the procedure for the registration of a trademark any person, except for the cases under paragraph (2), may file an observation with the Hungarian Patent Office to the effect that the sign or the application does not comply with a requirement of registrability.

(2) On the basis of Articles 4 to 6 only the proprietor of an earlier right may file an observation.

(3) Observations shall be taken into consideration when the requirement objected to in the observation is examined, unless they derive from a person not entitled to file an observation.

(4) The person making the observation shall not be a party to the procedure for the registration of a trademark. That person shall be notified of the outcome of his observation by sending him the decision of the registration of the trademark.

#### *Examination as to Formal Requirements*

##### Article 59

(1) If a trademark application satisfies the requirements examined under Article 55, the Hungarian Patent Office shall examine whether the formal requirements of Article 50(2) and (3) have been satisfied and whether the sign is uniform (Article 52(1)).

(2) Where the application does not comply with the requirements examined under paragraph (1), the applicant shall be invited to correct the defects or to divide the application.

(3) The trademark application shall be rejected if, in spite of correction or comments, it still does not comply with the requirements under examination. An application may be rejected only for grounds precisely and expressly stated in the invitation.

(4) Where the applicant does not reply to the invitation within the fixed time limit or does not divide the application, the trademark application shall be considered withdrawn.

#### *Search for Earlier Rights*

## Article 60

(1) If a trademark application satisfies the requirements laid down in Article 59, the Hungarian Patent Office shall carry out a search for earlier rights and shall draw up a search report on the basis of the sign, with due regard to the list of goods.

(2) The search report shall mention those data which may be taken into consideration in deciding whether the sign to which the trademark application relates is registrable.

### *Substantive Examination*

## Article 61

(1) The Hungarian Patent Office shall carry out a substantive examination of the trademark application on the basis of the search report.

(2) The substantive examination shall ascertain

(a) whether the sign meets the requirements of Article 1 and whether it is not excluded from trademark protection under Articles 2 to 7 and

(b) whether the application complies with the requirements laid down by this Law.

(3) If a trademark application does not meet the requirements examined under paragraph (2), the applicant shall be invited, according to the nature of the objection, to correct the defects or to submit comments.

(4) A trademark application shall be rejected in whole or in part if it does not meet the examined requirements even after the correction of the defects or the submitting of comments. An application may be rejected only on grounds that have been precisely and expressly stated and duly reasoned in the invitation. Where necessary, a further invitation shall be issued.

(5) If the applicant fails to reply to the invitation within the fixed time limit, the trademark application shall be considered withdrawn.

### Amendment and Division of the Application

## Article 62

(1) A trademark application may not be amended in respect of

(a) the sign,

(b) the list of goods in such a way that it extends beyond that contained in the application at the date of filing.

(2) The applicant shall be entitled to amend the list of goods as laid down in paragraph (1)(b) until such time as the decision on the registration of the trademark becomes final.

## Article 63

(1) The applicant may divide the application until such time as the decision on the registration of the trademark becomes final,

(a) prior to the official invitation to this effect (Article 59(2)), if he claimed protection for more than one sign in one application; or

(b) if, by dividing the list of goods, he claims protection for determined goods or services separately.

(2) A fee prescribed by special legislation shall be paid for division within two months from the filing of the relevant request.

(3) If the fee for division is not paid upon filing the request, the Hungarian Patent Office shall invite the applicant to correct the defect within the time limit fixed in paragraph (2). Failing which, the request for division shall be considered withdrawn.

### *Registration of the Trademark*

#### Article 64

(1) If the trademark application and the sign to which it relates meet all the requirements of the examination (Article 61(2)), the Hungarian Patent Office shall register the subject matter of the application as trademark.

(2) The registration shall be recorded in the Trademark Register (Article 47), and relevant information shall be given in the official journal of the Hungarian Patent Office (Article 49(b)).

(3) After the registration, the Hungarian Patent Office shall issue a trademark certificate to which the extract from the Register shall be annexed.

## **CHAPTER X. Other Procedures in Trademark Matters ➡**

### *Renewal Procedure*

#### Article 65

(1) Trademark protection shall be renewed (Article 11(2)) by the Hungarian Patent Office at the request of the proprietor.

(2) The request for renewal shall contain the registration number of the trademark; the provisions concerning the requirements of trademark applications (Article 50(2) and (3)) shall apply mutatis mutandis to the request and to its requirements.

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

(4) A fee prescribed by special legislation shall be paid for the request for renewal within two months from the filing of the relevant request.

(5) On renewal of protection, the trademark may not be altered and the list of goods may not be extended.



## Article 66

(1) If the request for renewal does not comply with the requirements laid down in Article 65(1) to (4), the requesting party shall be invited to correct the defects.

(2) The request for renewal shall be rejected if, in spite of correction or comments, it still does not comply with the requirements stated in the invitation. Where the requesting party does not reply to the invitation within the fixed 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 Patent Office shall invite the requesting party to remedy the defects within the period specified by this Law. Failing which, the request shall be considered withdrawn.

## Article 67

(1) If the request meets the requirements laid down in Article 65, the Hungarian Patent Office shall renew trademark protection.

(2) The renewal shall be recorded in the Trademark Register, and relevant information shall be given in the official journal of the Hungarian Patent Office.

(3) After the renewal, the Hungarian Patent Office shall issue a trademark certificate to which the extract from the Register shall be annexed.

## *Procedure for Division*

## Article 68

(1) By separating the list of goods, the proprietor may divide trademark protection in respect of determined goods and services.

(2) A request for the division of trademark protection and the necessary documents shall be filed in as many copies, prepared in conformity with each other, in as many parts the initial list of goods shall be separated

(3) The request for division shall contain the registration number of the initial trademark; the provisions concerning the requirements of trademark applications (Article 50(2) and (3)) shall apply mutatis mutandis to the request and to its requirements.

(4) A fee prescribed by special legislation shall be paid for the request for division within two months from the filing of the relevant request.

## Article 69

(1) If the request for division does not comply with the requirements laid down in Article 68(1) to (3), the proprietor shall be invited to correct the defects.

(2) The request for division shall be rejected if, in spite of correction or comments, it still does not comply with the requirements stated in the invitation. Where the proprietor does not 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 Patent Office shall invite the proprietor to remedy the defects within the period specified by this Law. Failing which, the request for division shall be considered withdrawn.

#### Article 70

(1) If the request meets the requirements laid down in Article 68, the Hungarian Patent Office shall divide trademark protection.

(2) The division of trademark protection shall be recorded in the Trademark Register, and relevant information shall be given in the official journal of the Hungarian Patent Office.

(3) After division, the Hungarian Patent Office shall issue a trademark certificate for each trademark, to which the extract from the Register shall be annexed.

#### *Decision on Lapse by Reason of Expiration and Surrender*

#### Article 71

(1) In the case of lapse by reason of expiration of protection, the Hungarian Patent Office shall inform the proprietor of the possibility of renewal.

(2) Where the proprietor surrenders protection (Article 32), the Hungarian Patent Office shall declare lapse of protection by a decision.

(3) The expiration of trademark protection without renewal (Article 30(a)) and lapse by reason of surrender shall be recorded in the Trademark Register, and relevant information shall be given in the official journal of the Hungarian Patent Office.

#### *Cancellation procedure*

#### Article 72

(1) Any person may institute proceedings for cancellation of a trademark against the proprietor under Article 33 except for the cases under paragraph (2).

(2) Under Articles (4) to (6) only the proprietor of an earlier, conflicting right may request cancellation of a trademark.

(3) The request for cancellation shall be filed with the Hungarian Patent Office with a copy for each proprietor plus one additional copy. The request shall state the grounds on which it is based and documentary evidence shall be annexed.

(4) A fee prescribed by special legislation shall be payable for the request for cancellation within two months from the filing of the request.

(5) If the request for cancellation does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the defects; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit fixed by this Law. Failure to remedy the defects shall result in the request for cancellation being considered withdrawn.

## Article 73

(1) The Hungarian Patent Office shall invite the proprietor to submit comments on the request for cancellation. Following the written preparatory work, it shall decide at a hearing on the cancellation of the trademark, on the limitation of trademark protection or on the refusal of the request.

(2) Where the request for cancellation is based on conflict with an earlier trademark of the requesting party, the burden of proving that the use of his trademark has met the requirements of Article 18 at the time of the cancellation procedure shall be on the requesting party.

## Article 74

(1) If there is more than one request for cancellation of the same trademark, they shall be dealt with together.

(2) If the request for cancellation is withdrawn, the procedure may be continued ex officio, except for the case under Article 72(2).

(3) The losing party shall be required to bear the costs of the cancellation procedure.

(4) The cancellation of the trademark or limitation of the trademark protection shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

### *Decision on Lapse by Reason of Non-use, Loss of Distinctive Character or Becoming Deceptive*

## Article 75

(1) Any person may institute proceedings against the proprietor for a decision on the lapse of trademark protection by reason of non-use under Articles 18 and 34 and by reason of the trademark losing the distinctive character or becoming deceptive under Article 35.

(2) The request for a decision on lapse shall be filed with the Hungarian Patent Office with a copy for each proprietor plus one additional copy. The request shall state the grounds on which it is based and documentary evidence shall be annexed.

(3) A fee prescribed by special legislation shall be payable for the request for a decision on lapse within two months from the filing of the request.

(4) If the request for a decision on lapse does not comply with the requirements laid down in this Law, the requesting party shall be invited to correct the defects; if the fee for the request has not been paid, the requesting party shall be invited to make payment within the time limit fixed by this Law. Failure to remedy the defects shall result in the request for a decision on lapse being considered withdrawn.

## Article 76

(1) The Hungarian Patent Office shall invite the proprietor to submit comments on the request for a decision on lapse. Following the written preparatory work, it shall decide at a hearing on the lapse of trademark protection, in whole or in part, by reason of non-use, loss

of distinctive character or becoming deceptive, or on the refusal of the request.

(2) If there is more than one request for a decision on lapse of the same trademark, or there are requests for both the cancellation and for a decision on lapse of the same trademark, they shall be dealt with together.

(3) If the request for a decision on lapse is withdrawn, the procedure may be continued ex officio.

(4) The losing party shall be required to bear the costs of the procedure for a decision on lapse.

(5) The lapse of trademark protection, in whole or in part, by reason of non-use, loss of distinctive character or becoming deceptive shall be recorded in the Trademark Register and relevant information shall be given in the official journal of the Hungarian Patent Office.

### **PART III. COURT PROCEEDINGS IN TRADEMARK CASES ➔**

#### ***CHAPTER XI. Review of Decisions of the Hungarian Patent Office ➔***

##### *Request for Review*

##### **Article 77**

(1) Upon request, the court may repeal or review (hereinafter referred to together as "review") decisions on merits taken by the Hungarian Patent Office (Article 39(2)) as also its decisions declaring interruption of procedure, suspending procedure or furnishing a basis for entries in the Register of Trademark Applications or the Trademark Register.

(2) Any person may request review of a decision:

(a) who was a party to the procedures before the Hungarian Patent Office, furthermore

(b) who has a legal interest in the review of the decision and filed an observation in the procedure before the Hungarian Patent Office (Article 58).

(3) Review of a decision on the registration and cancellation of a trademark may be requested by the public prosecutor under Article 3(1)(a) and (b) and Article 3(2).

(4) The request for review must be filed within 30 days from the date of notification of the decision to the party concerned or, in the case of application of paragraph (2)(b), to the person making the observation.

(5) The request shall be filed with the Hungarian Patent Office which shall forward it, together with the documents of the trademark file, to the court within 15 days.

(6) The rules concerning complaints shall apply mutatis mutandis to the requirements for a request for review .

(7) In the case of a request filed late, the court shall decide on the request for restitutio in integrum.

### *Jurisdiction and Competence*

#### Article 78

(1) In proceedings for the review of decisions taken by the Hungarian Patent Office, the Metropolitan Court shall have jurisdiction and exclusive competence.

(2) The Metropolitan Court shall sit in a chamber consisting of three professional judges.

(3) In appeals lodged against decisions of the Metropolitan Court, the Supreme Court shall have jurisdiction.

### *Rules Governing Proceedings Concerning Requests for Review*

#### Article 79

The court shall hear requests for the review of decisions taken by the Hungarian Patent Office in accordance with the rules of non-contentious civil procedure, subject to the exceptions mentioned in this Law. Unless this Law or the non-contentious nature of the procedure indicates otherwise, the rules of the Code of Civil Procedure shall apply to the proceedings *mutatis mutandis*.

### *Publicity*

#### Article 80

The court may, at the request of a party, exclude the public from the hearing or from the pronouncing of the decision notwithstanding the fact that the requirements prescribed in the general provisions of the Code of Civil Procedure may not be fulfilled.

### *Incompatibility*

#### Article 81

(1) In addition to the cases determined in the general provisions of the Code of Civil Procedure, the following persons shall be excluded from participating in the proceedings or from acting as judges:

(a) persons who participated in taking the decision of the Hungarian Patent Office;

(b) relatives, as defined in the general provisions of the Code of Civil Procedure relating to the incompatibility of judges, of a person mentioned under (a), above.

(2) The provisions of paragraph (1) shall also apply to the persons keeping records of evidence and to the experts.

### *Parties to the Proceedings and Other Participants*

#### Article 82

(1) The person who filed the request shall be a party to the court proceedings. The public prosecutor instituting proceedings shall be entitled to all the rights to which a party is

entitled, except that he may not agree to a compromise nor relinquish or recognize rights.

(2) Where an adverse party has also taken part in the procedure before the Hungarian Patent Office, the court proceedings shall be initiated against that party.

#### Article 83

Where a joint proprietor acts independently to maintain and protect trademark rights, or proceedings have been initiated against one only of the joint proprietors, the court shall notify the other joint proprietors that they may join the proceedings.

#### Article 84

(1) Any person having a legal interest in the outcome of the proceedings for review of decisions taken by the Hungarian Patent Office may intervene in the proceedings, until such time as the court decision becomes final, in favour of the party whose interests he shares.

(2) Save for compromise, recognition and surrender of rights, the intervenor may take any action which the party he supports is entitled to take, except that his acts shall have effect only where they do not conflict with the acts of the party concerned.

(3) Any legal dispute between the intervenor and the party concerned may not be decided in the course of the proceedings.

#### *Representation*

#### Article 85

(1) Patent attorneys may also act as representatives in proceedings.

(2) The power of attorney given to a patent attorney or an attorney-at-law shall be valid only if signed by the principal.

#### *Costs of Proceedings*

#### Article 86

(1) Where an adverse party also takes part in the court proceedings, the provisions on litigation costs shall apply mutatis mutandis to the preliminary deposit and payment of the costs of proceedings.

(2) In the absence of an adverse party, the applicant shall advance and meet the costs.

(3) The expenses and fees of the patent attorney representing the party shall be added to the costs of proceedings.

#### *Omission*

#### Article 87

Where neither the applicant nor any of the parties appear at the hearing or where none of

the parties respond to the invitation of the court in the fixed time limit, the court shall decide on the request on the basis of the material at its disposal.

### *Restitutio in integrum*

#### Article 88

The provisions of Article 42 shall apply mutatis mutandis to the submission of a request for restitutio in integrum in non-contentious proceedings.

### *Hearing and Taking of Evidence*

#### Article 89

(1) The court of first instance shall take evidence and shall hold its hearings in accordance with the provisions of the Code of Civil Procedure.

(2) If no adverse party takes part in the proceedings and the case can be settled on the basis of documentary evidence, the court may take a decision without a hearing, but the party shall be heard at his request.

(3) Should the court consider the case without a hearing, but find during the proceedings that a hearing is necessary, it may at any time order such hearing. However, where the court considers the case at a hearing, or has ordered a hearing, it may not revoke such order and consider the case without a hearing.

(4) Compromise may not be reached in the court proceedings if such compromise was not possible in the procedure before the Hungarian Patent Office.

### *Decisions*

#### Article 90

The court shall decide both on the merits of a case and on other matters by a judgement.

#### Article 91

(1) If the court changes a decision taken in a trademark case, the judgement shall replace the decision of the Hungarian Patent Office.

(2) The court shall repeal a decision and order the Hungarian Patent Office to start a new procedure if:

(a) the decision was taken with the participation of a person who could be objected to on the grounds of incompatibility;

(b) important rules of procedure which cannot be remedied by the court were infringed during the procedure before the Hungarian Patent Office;

(c) the trademark application has been rejected for formal reasons and the applicant remedies the defects simultaneously with the filing of a request for review or at the invitation of the court.

(3) Where a party requests a court decision on a matter which was not the subject of the procedure before the Hungarian Patent Office, the court shall refer the request to the Hungarian Patent Office. In such case the court shall, if necessary, repeal the decision of the Hungarian Patent Office.

(4) Where, after the filing of a request for review, the Hungarian Patent Office withdraws or repeals its decision since it does not qualify as taken on merits, the court shall terminate the proceedings. If the Hungarian Patent Office has changed its decision, the court proceedings may only continue in respect of matters still pending.

#### Article 92

The court judgement on the merits of a case shall be communicated by service.

#### *Court Proceedings at Second Instance*

#### Article 93

(1) The court of second instance shall decide on appeals lodged against decisions of the court of first instance in accordance with the provisions of the Code of Civil Procedure except that it may also take limited evidence at a hearing.

(2) The court of second instance shall decide on appeals at a hearing if an adverse party also takes part in the proceedings.

#### *Exclusion of Request for Reconsideration*

#### Article 94

No request for reconsideration is admissible in respect of final court decisions on the amendment of decisions of the Hungarian Patent Office.

#### *Rules Governing Trademark Litigation*

#### Article 95

(1) The Metropolitan Court shall have jurisdiction and exclusive competence in court proceedings concerning trademark infringement. In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in Article 78(2).

(2) In trademark litigation, provisional measure shall be considered necessary to protect the petitioner's rights deserving special appreciation if the petitioner proves that the trademark is protected, and he is the proprietor of the trademark or a user entitled to institute proceedings for infringement in his own name.

(3) Paragraph (2) shall not apply where six months have already elapsed from the beginning of trademark infringement or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(4) The court shall decide on the provisional measures out of turn, however, not later than within 15 days from the filing of a request to this effect.



(5) Where in the course of proceedings for trademark infringement one of the parties has already made the facts likely to a due extent, the court may, at the request of the party producing evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(6) In proceedings for trademark infringement the court may subject the ordering of preliminary production of evidence to providing security.

(7) Any other trademark litigation not mentioned under paragraph (1) shall be heard by the county courts (or Metropolitan Court).

(8) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to under paragraphs (1) and (7), with the exceptions laid down in Articles 80, 81 and 85 of this Law.

## **PART IV. COLLECTIVE MARKS AND CERTIFICATION MARKS ➡**

### **CHAPTER XIII. Collective Marks ➡**

#### *Collective Marks*

#### Article 96

(1) Collective marks are marks that are capable of distinguishing goods or services of the members of a social organization, public body or association (hereinafter referred to together as "social organization") from the goods or services of other undertakings according to the quality, origin or other characteristics of goods or services bearing the collective mark.

(2) In the case of collective marks protection shall be granted for a sign even if it consists exclusively of the indication of the geographical origin of the goods or services.

(3) A sign shall be excluded from trademark protection as collective mark

(a) if it is liable to mislead the public as to its character or importance, in particular if, in the case of registration, consumers might deem it other than a collective mark;

(b) if the regulations governing its use contain provisions contrary to public policy, morality or law.

(4) The right to the protection of a collective mark shall belong to the social organization, whose members shall be entitled to use the collective mark.

(5) The proprietor social organization itself may not use the collective mark, it shall, however, control use by the members.

(6) Use of a collective mark by any member of the social organization shall be deemed to constitute use within the meaning of Article 18.

#### *Regulations Governing Use of Collective Marks*

## Article 97

(1) A sign shall be granted protection as a collective mark if its use is governed by regulations complying with the requirements laid down in paragraphs (2) and (3). The regulations shall be established by the social organization being the proprietor of the collective mark.

(2) The regulations shall specify:

(a) the name and seat of the social organization,

(b) information on the members authorized to use the mark, including their names, addresses and seats,

(c) the conditions of membership,

(d) the conditions of use of the collective mark,

(e) the prescriptions relating to the control of the use of the collective mark,

(f) the order of proceedings against unauthorized use of the collective mark.

(3) If the collective mark consists exclusively of an indication of geographical origin, the regulations must provide that any person whose goods or services originate in the geographical area concerned shall be authorized to become a member of the social organization.

(4) The application for a collective mark shall contain the regulations. With respect to collective marks, the data indicated in paragraph 2(b) shall also be recorded in the Trademark Register. The regulations and the amendments thereof shall be attached to the entry in the Register relating to the collective mark.

### *Assignment of the Protection of Collective Marks*

## Article 98

(1) Assignment of the protection of collective marks shall require the recordal in the Trademark Register of the relevant written contract and of the change of proprietorship.

(2) The protection of collective marks may not be assigned if after the assignment the requirements set out in Article 96 were not satisfied or the sign became excluded from protection as collective mark.

### *Lapse of Protection of Collective Marks*

## Article 99

(1) The protection of collective marks shall also lapse in the event of the dissolution of the proprietor of the collective mark without successor in title. The protection shall lapse on the day of the dissolution of the proprietor.

(2) Any person may request a decision on the lapse of protection under paragraph (1).

(3) The protection of collective marks shall also lapse - on the day indicated in the decision on lapse - where the proprietor does not take the necessary action in order to stop the use of the collective mark contrary to the regulations.

(4) Where a sign may not be granted protection as collective mark under Article 96(3), the collective mark shall be cancelled. If a sign becomes excluded from protection under Article 96(3), lapse of the protection of the collective mark shall be declared with retroactive effect to the filing date of the request for a decision on lapse.

#### *Enforcement of Rights Deriving from the Protection of Collective Marks*

##### Article 100

Persons who are authorized to use the collective mark by reason of their membership may bring an action against an infringer only with the consent of the proprietor; they may, however, intervene in the proceedings instituted by the proprietor.

### **CHAPTER XIV. Certification Marks ➡**

#### *Certification Marks*

##### Article 101

(1) Certification marks are trademarks that distinguish goods or services of specified quality or of other characteristics from other goods or services by attesting to such quality or characteristic.

(2) Protection of certification marks shall not be obtained by

(a) an undertaking which produces, puts on the market or imports the goods or supplies the services for which the trademark is registered;

(b) an undertaking which - pursuant to the Law on the Prohibition of Unfair Market Practices and of the Restriction of Competition - is not independent of the undertaking under subparagraph (a);

(c) an undertaking with which the undertaking under subparagraph (a) is in a lasting legal relationship in respect of the goods or services for which the mark is registered.

(3) The proprietor itself may not use the certification mark, it shall, however, authorize its use with respect to the goods or services complying with the prescribed quality requirements or with other characteristics.

(4) A certification mark shall be granted protection if it is accompanied by regulations satisfying the requirements set out under paragraph (5).

(5) The regulations shall specify:

(a) the name and seat of the proprietor,

(b) the quality requirements relating to the goods or services for which the mark is registered,

- (c) the rules of the certification of quality,
- (d) the conditions of use of the mark,
- (e) the prescriptions relating to the control of the use of the mark,
- (f) the order of proceedings against unauthorized use of the mark.

(6) For the regulations, application and registration, the use and assignment of the certification mark, for the lapse of the protection of the certification mark and for the enforcement of rights deriving from the protection of such marks, the provisions relating to collective trademarks and to their protection shall apply *mutatis mutandis*.

(7) For the use of certification marks the provisions of special legislation on the certification of quality or of other characteristics shall also apply.

## **CHAPTER XV. Application of Provisions Relating to Trademarks to Collective and Certification Marks ➡**

### *Application of Provisions Relating to Trademarks*

#### Article 102

Matters relating to collective and certification marks and to their protection that are not covered by this part shall be governed by the provisions relating to trademarks and to their protection.

## **PART V. PROTECTION OF GEOGRAPHICAL INDICATIONS ➡**

### **CHAPTER XVI. Subject Matter of Protection, Rights Conferred, Infringement and Lapse of Protection ➡**

#### *Protectable Geographical Signs and Appellations of Origin*

#### Article 103

(1) Geographical signs and appellations of origin which are used in the course of trade to identify the geographical origin of a product shall be granted protection as geographical indications.

(2) Geographical sign means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein the specific quality, reputation or other characteristics of which are due essentially to that geographical origin, and the production, processing and preparation of which take place in the defined geographical area.

(3) Appellation of origin means the geographical name of a region, locality or, in exceptional cases, a country which serves to designate a product originating therein the specific quality, reputation or other characteristics of which are due exclusively or essentially to the geographical environment, with its inherent natural and human factors, and the production,

processing and preparation of which take place in the defined geographical area.

#### Article 104

Geographical indications of agricultural products and foodstuffs shall be granted protection if the products bearing the geographical indication comply also with the conditions specified in the product specification provided for by special legislation.

#### *Grounds for Exclusion*

#### Article 105

(1) A geographical indication shall not be granted protection if in the course of trade it has become the common name of a product irrespective of whether or not the product originates in the place specified by the geographical indication.

(2) After its registration, a geographical indication may not become the common name of a product.

#### Article 106

(1) A geographical indication shall not be granted protection

(a) with respect to identical goods if the geographical indication with the later date of priority is identical with an earlier geographical indication or trademark;

(b) with respect to identical or similar goods, if the geographical indication with the later date of priority is identical with, or similar to, the earlier geographical indication or trademark and exists a likelihood of confusion on the part of the consumers;

(c) with respect to not similar goods if the geographical indication with the later date of priority is identical with, or similar to, an earlier trademark having a reputation in the country where the use of the later sign would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark.

(2) A geographical indication shall not be refused protection if it conflicts with an earlier trademark which has not been used by the proprietor in accordance with the provisions of Article 18.

(3) A geographical indication shall not be granted protection if it would conflict with an earlier copyright or industrial property right of others, including conflict with the name of a protected plant variety or animal breed.

(4) A geographical indication shall not be refused protection in accordance with paragraphs (1) and (3) if the proprietor of the earlier trademark or variety denomination consents to the registration of the later sign under the provisions of Article 7.

#### *Registrability, Right to Protection*

#### Article 107

(1) Protection shall be granted for a geographical indication if

(a) it satisfies the requirements of Articles 103 and 104 and is not excluded from protection under the terms of Articles 105 and 106 and

(b) the relevant application complies with the requirements laid down by this Law.

(2) Any natural or legal person or a company without legal personality may apply for the protection of a geographical indication which produces, processes or prepares, in the defined geographical area, a product for the designation of which the geographical indication is used.

(3) The protection of a geographical indication shall belong jointly to the persons who produce, process or prepare products in accordance with paragraph (2) (hereinafter referred to as "proprietors").

(4) Foreigners shall be entitled to the protection of a geographical indication only on the basis of an international agreement or subject to reciprocity. In the matter of reciprocity, the standpoint of the President of the Hungarian Patent Office shall be decisive.

#### *Establishment and Term of Protection*

##### Article 108

(1) Protection of the geographical indication shall begin with the registration, with retroactive effect to the filing date of the application.

(2) Protection of geographical indications shall be unlimited in time.

#### *Rights Conferred by the Protection*

##### Article 109

(1) Protection shall afford the proprietors the exclusive right to use the geographical indication. Only the proprietors may use the geographical indication, they may not grant a license of use.

(2) On the basis of the exclusive right of use, any of the proprietors shall be entitled to bring an action against any person who, in the course of trade,

(a) uses the protected geographical indication or a denomination liable to create confusion with respect to products not originating in the defined geographical area;

(b) uses the protected geographical indication with respect to goods not included in the list of products but similar to those and therefore takes unfair advantage of, or infringes the repute of the protected geographical indication.

(c) imitates or evokes in any manner whatsoever the protected geographical indication, even if the true origin of the product is indicated or if the protected name is translated or accompanied by various affixes;

(d) uses any false or misleading indication as to the provenance, origin, nature or essential characteristics of the product, no matter where it is indicated (e.g. on the packaging, advertising material or documents relating to the product concerned);

(e) performs any other act liable to mislead the public as to the true origin of the product.

### *Infringement of Protection*

#### Article 110

(1) Any person who unlawfully uses a protected geographical indication in contravention of the provisions of Article 109, commits infringement.

(2) Any one of the proprietors may also institute proceedings for infringement individually. Proceedings for infringement may also be instituted by interest groups of the proprietors and by organizations for the protection of consumers.

(3) For the civil remedies available against the infringer the provisions of Article 27, and for the customs law consequences of infringement the provisions of Article 28 shall apply mutatis mutandis.

### *Lapse of Protection*

#### Article 111

(1) Protection of a geographical indication shall lapse

(a) if protection is cancelled, with retroactive effect to the filing date of the application;

(b) if the proprietors have violated the requirements laid down in the product specification, with retroactive effect to the date of starting the procedure for a declaration of lapse.

(2) The protection shall be cancelled if the geographical indication does not satisfy the requirements laid down in Article 107(1)(a).

(3) Lapse of the protection of a geographical indication for agricultural products and foodstuffs shall be declared if the designated inspection authority establishes serious defects, in relation to the product specification, in the use of the geographical indication which cannot be remedied in any other way.

(4) Should the request for cancellation or for a decision on lapse be rejected by a final decision, a new procedure for the cancellation, or for a decision on the lapse of the same geographical indication on the same grounds may not be instituted by any person.

## **CHAPTER XVII. Procedures Concerning the Protection of Geographical Indications ➡**

### *General Rules of Procedures Before the Hungarian Patent Office*

#### Article 112

(1) The Hungarian Patent Office shall have authority in the following matters concerning geographical indications:

a) registration of geographical indications;

b) cancellation of protection and decision on lapse;

c) recording of applications for the protection of geographical indications and of registered geographical indications;

d) official information on the protection of geographical indications.

(2) For the procedures before the Hungarian Patent Office the provisions of Chapters VII and VIII shall apply *mutatis mutandis*, except that the Office shall proceed in the form of a board in procedures for cancellation and for a decision on lapse.

#### *Procedure for Registration of Geographical Indications*

##### Article 113

(1) The application for registration shall contain a request, the name of the geographical indication, the list of products, other documents, and - in the case of geographical indications concerning agricultural products and foodstuffs - the product specification. Detailed formal requirements to be complied with by applications shall be laid down by special legislation.

(2) An application for the registration of a geographical indication shall be subject to the payment of a filing fee determined by special legislation; the fee shall be payable within two months after the date of filing.

(3) For the procedure for the registration of geographical indications the provisions of Chapter IX shall apply *mutatis mutandis*; in the case of geographical indications for agricultural products and foodstuffs the provisions of special legislation shall also apply.

#### *Procedure for Cancellation and for Decision on Lapse*

##### Article 114

For the procedure for cancellation of the protection of geographical indications the provisions of Articles 72 to 74, and for the procedure for a decision on lapse the provisions of Articles 75 and 76 shall apply *mutatis mutandis*.

#### *Court Proceedings Concerning Protection of Geographical Indications*

##### Article 115

In court proceedings concerning the protection of geographical indications the provisions of Chapters XI and XII shall apply *mutatis mutandis*.

#### *Inspection of Geographical Indications of Agricultural Products and Foodstuffs*

##### Article 116

Inspection in accordance with the requirements under Article 104 of the use of geographical indications of agricultural products and foodstuffs indicated in the course of trade shall fall within the competence of the authority designated by special legislation.



## **PART VI. FINAL PROVISIONS ➡**

### **CHAPTER XVIII. Entry Into Force; Transitional and Amended Provisions ➡**

#### *Rules Establishing Provisions Concerning the Entry Into Force of this Law and Transitional Provisions*

##### Article 117

(1) This Law shall enter into force on July 1, 1997; its provisions shall apply - with the exceptions set out in paragraph (2) - only in procedures started after its entry into force.

(2) The provisions of Article 42 shall also apply mutatis mutandis to pending matters.

(3) Use of a trademark before the entry into force of this Law shall be subject to the previously applicable provisions with respect to the scope of trademark protection, the concept of the use of a trademark and trademark infringement.

(4) The time limits prescribed by this Law for legal consequences attached to acquiescence and failure to use the trademark shall begin on the day of the entry into force at the earliest. On the basis of the previously applicable provisions lapse of trademark protection may also be declared even if the five years during which the trademark has not been used in the country expires after the entry into force of this Law.

##### Article 118

(1) By way of derogation from Article 103(3), certain geographical names, traditionally used for foodstuffs, shall be treated as appellations of origin even if the live animals, meat and milk used as raw materials for the production of the foodstuffs concerned come from a geographical area larger than, or different from the processing area, provided that

(a) the breeding area may be determined,

(b) special conditions for the production of the raw materials exist, and

(c) there are inspection arrangements to ensure that those conditions are adhered to.

(2) Protection of geographical indications of traditional foodstuffs under paragraph (1) may be claimed within two years from the entry into force of this Law.

(3) By virtue of this Law, protection shall also be afforded to appellations of origin which were recorded, before the entry into force of this Law, in the national register kept under the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. These appellations of origin shall be recorded in the Register of Geographical Indications and relevant information shall be given in the official journal of the Hungarian Patent Office.

#### *Repealed Provisions*

##### Article 119

Simultaneously with the entry into force of this Law, the following shall be repealed:

(a) Law No. IX of 1969 on Trademarks (hereinafter referred to as "the Trademark Law"), Article 23(2) of Law No. LXVIII of 1992 and Articles 7 and 8 of Law No. VII of 1994;

(b) Article 27(3) of Law No. XC of 1995 on Foodstuffs;

(c) Article 117(a) of Law No. XXXIII of 1995 on the Protection of Inventions by Patents, Article 170 of Law No. XCVI of 1995 on Insurance Companies and Insurance Activities, further Article 211(7) of Law No. C of 1995 on Customs Law, Customs Procedures and Customs Administration;

(d) Joint Decree No. 2/1970 (VII.1.) OMFB-IM on the Implementation of the Trademark Law;

(e) Decree No. 4/1970 (VII.1.) IM on Court Proceedings in Trademark Cases.

#### *Amended Provisions*

#### Article 120

Simultaneously with the entry into force of this Law,

(a) the following provisions shall be substituted for Article 3(6) of Law No. IV of 1957, amended several times, on the General Rules of Administrative Procedure:

"(6) Unless otherwise provided by legislation, this Law shall apply to matters relating to national defence, foreign trade administration, social insurance, industrial property protection, tax, revenue and customs administration, to procedures of the Office of Economic Competition concerning competition supervision, and to matters laid down in the Law on the Establishment of Prices and in the Law on Insurance Companies and Insurance Activities.";

(b) The following subparagraphs (d) and (e) shall be added to Article 52(1) of Copyright Act No. III of 1969 as amended several times, simultaneously the marking of the present subparagraph (d) shall change into (f):

(In case of infringement of his copyright the author may, according to the circumstances of the case, have recourse to the following civil remedies:)

"(d) demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing things and in the supply of infringing services and of their channels of use;

(e) require reimbursement of the enrichment obtained by infringement;"

(c) The following paragraphs (3)-(7) shall be added to Article 52 of the Copyright Act:

"(3) In copyright litigation, provisional measure shall be considered necessary to protect the petitioner's rights deserving special appreciation if the petitioner proves that the work is protected by copyright, and he is the author, the successor in title to the author, or a user of the work or an organization dealing with the common administration of copyrights

who/which is entitled to institute proceedings for infringement in his/its own name.

(4) Paragraph (3) shall not apply where six months have already elapsed from the beginning of the infringement of copyright or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, however, not later than within 15 days from the filing of a request to this effect.

(6) Where in the course of proceedings for infringement of copyright one of the parties has already made the facts likely to a due extent, the court may, at the request of the party producing evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(7) In proceedings for infringement of copyright the court may subject the ordering of preliminary production of evidence to providing security."

(d) The following provisions shall be added to the second sentence of Article 3(1) of the Decree-Law No. 28 of 1978 on the Protection of Industrial Designs, as amended several times (hereinafter referred to as "the Designs Law"):

"A mortgage may be established by contract made in writing and registered in the Design Register."

(e) The following sentence shall be added to Article 11(2) of the Designs Law:

"He may demand furthermore that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution."

(f) The following paragraphs (3)-(7) shall be added to Article 20 of the Designs Law, simultaneously the numbering of the present paragraph (3) shall change into (8):

"(3) In design litigation, provisional measure shall be considered necessary to protect the petitioner's rights deserving special appreciation if the petitioner proves that the design is protected, and he is the owner of the design protection, or an exploiter of the design entitled to institute proceedings for infringement in his own name.

(4) Paragraph (3) shall not apply where six months have already elapsed from the beginning of the infringement of design protection or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, however, not later than within 15 days from the filing of a request to this effect.

(6) Where in the course of proceedings for infringement of design protection one of the parties has already made the facts likely to a due extent, the court may, at the request of the party producing evidence, require the adverse party to present the document and other exhibits in his possession and to make inspection possible.

(7) In proceedings for infringement of design protection the court may subject the ordering of preliminary production of evidence to providing security."

(g) The following provisions shall be substituted for Article 17(1) of Law No. XXXVIII of 1991 on Utility Model Protection:

"(1) With respect to succession in title, to the encumbrance of rights deriving from the utility model and from utility model protection, as well as to exploitation contracts, the provisions of the Patent law shall apply *mutatis mutandis*."

(h) The following paragraph (3) shall be added to Article 1 of Law No. XXXII of 1995 on Patent Attorneys:

(3) Where in industrial property matters legal representation is mandatory for a party, this requirement shall be met if the party is represented by a patent attorney."

(i) The following paragraph (2) shall be added to Article 25 of Law No. XXXIII of 1995 on the Protection of Inventions by Patents (hereinafter referred to as "the Patent Law"), simultaneously the present text shall be numbered (1):

"(2) "A mortgage may be established by contract made in writing and registered in the Patent Register."

(j) The following subparagraph (d) shall be added to Article 35(2) of the Patent Law, simultaneously the marking of the present subparagraphs (d) and (e) shall change into (e) and (f):

"(d) may demand that the infringer give information on the identity of third persons involved in the production and distribution of the infringing goods and in the supply of infringing services and of their channels of distribution.";

(k) The following provisions shall be substituted for Article 104 of the Patent Law:

"Article 104. (1) The Metropolitan Court shall have jurisdiction and exclusive competence in court proceedings concerning the grant, modification or cancellation of a compulsory license, the establishment of prior or continued use and concerning the infringement of an invention or a patent.

(2) In such proceedings, the chamber of the Metropolitan Court shall be composed as laid down in Article 87.

(3) ) In patent litigation, provisional measure shall be considered necessary to protect the petitioner's rights deserving special appreciation if the petitioner proves that the invention is patented, and he is the patentee or an exploiter entitled to institute proceedings for infringement in his own name.

(4) Paragraph (3) shall not apply where six months have already elapsed from the beginning of patent infringement or 60 days from the date on which the petitioner became aware of the infringement and of the identity of the infringer.

(5) The court shall decide on the provisional measures out of turn, however, not later than within 15 days from the filing of a request to this effect.

(6) Where in the course of proceedings for patent infringement one of the parties has already made the facts likely to a due extent, the court may, at the request of the party producing evidence, require the adverse party to present the document and other exhibits

in his possession and to make inspection possible.

(7) In proceedings for patent infringement the court may subject the ordering of preliminary production of evidence to providing security.

(8) Any other patent litigation not mentioned under paragraph (1) shall be heard by the county courts (or Metropolitan Court).

(9) The general provisions of the Code of Civil Procedure shall apply in the court proceedings referred to under paragraphs (1) and (8), with the exceptions laid down in Articles 89, 90, 94 and 95(3) of this Law."

#### *Authorization*

##### Article 121

(1) The Government shall be authorized to

(a) establish by decree the measures applicable in case of infringement of intellectual property rights in procedures concerning customs administration;

(b) establish by decree the detailed rules concerning the protection of geographical indications of agricultural products and foodstuffs.

(2) The Minister of Justice shall be authorized to establish by decree, in agreement with the president of the Hungarian Patent Office, the detailed formalities for trademark applications and for applications for the protection of geographical indications.

#### *Approximation to European Community Law*

##### Article 122

Pursuant to Article 3 of Law No. I of 1994 promulgating the Europe Agreement signed in Brussels on December 16, 1991 on ...association between the Republic of Hungary and the European Communities and the Member States, the Law contains regulation compatible with the following laws of the European Communities:

(a) Council Directive 89/104/EEC to approximate the laws of the Member States relating to trade marks;

(b) Council Regulation 2081/92/EEC on the Protection of Geographical Indications and Designations of origin for Agricultural Products and Foodstuffs.