

Law on Utility Models

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(No. 478 of September 24, 1992)

The Federal Assembly of the Czech and Slovak Federal Republic
passed the following law:

Basic Provisions



1. Technical solutions which are new, exceed the framework of mere professional skill and are industrially applicable shall be protected as a utility model.

2. According to the present Law the following shall not be deemed to be technical solutions:

- a) discoveries, scientific theories and mathematical methods,
- b) mere exterior modifications of products,
- c) plans, rules and methods of performing intellectual activities,
- d) computer software,
- e) mere statement of an information.

3. Utility models cannot be used for protecting the following:

- a) technical solutions which are at variance with the general interest, particularly the principles of humanity and public morality,
- b) plant varieties, animal breeds as well as biological reproductive materials,
- c) production processes or work activities.

(1) A technical solution is new if it is not part of the state of the art.

(2) The state of the art for the purposes of the present law is deemed to be everything which has been published prior to the date on which the applicant claimed the right of priority (see Section 9).

(3) The state of the art is not such publication of the applicant's

work or that of his legal predecessor which took place not less than six months before filing an application for a utility model.

S. A technical solution is industrially realizable if it can be used repeatedly in economic activities.

6. (1) The author or his legal successor holds the right for protection by a utility model.

(2) The author is the person who has made the utility model by means of his own creative work.

7. Utility models are registered by the Federal Office for Inventions (hereinafter referred to as "the Office") in the Utility Model Register (hereinafter referred to as "the Register").

Application and Registration of a Utility Model



8. (1) Registration of a utility model requires the filing of a written application for a utility model (hereinafter referred to as "Application") with the Office.

(2) An application for a utility model may contain only one technical solution or a set of technical solutions which are mutually linked in such a way that together they constitute a single inventive idea.

(3) The application shall contain the following:

(a) an application form for registration in the Utility Model Register, containing the name of the utility model;

(b) a description of the technical solution or a documentation thereof;

(c) claims for the protection with a clear and precise definition of the subject matter which is to be protected by the utility model.

(4) The application shall give the name of the author of the subject matter of the application of the utility model.

(5) The execution of the application shall conform to a simple form and requirements, published by the Office in the Official Bulletin (hereinafter referred to as "Bulletin")

9. (1) Filing of the application establishes the right of priority for

the applicant.

(2) The applicant shall claim the right of priority - based on an international agreement - already in his application and at the same time he shall state the filing date of the application from which the right of priority is deriving, its number and state in which the application has been filed or the authority with which the application has been filed under an international agreement.

(1) If the applicant has already requested in the Czech and Slovak Federal Republic for granting a patent at the same technical level, he shall have the right in his application to request the recognition of the filing date or even the right of priority deriving from this application for an invention.

1. Notice of the Ministry of Foreign Affairs of the Czechoslovak Socialist Republic No. 64/1975 Coll. of Laws as amended by Notice No. 81/1985 Coll. of Laws on the Paris Convention on the Protection of Intellectual Property of March 20, 1883, revised in Brussels on December 14, 1900, in Washington on June 2, 1911, in the Hague on November 6, 1925, in London on June 2, 1934, in Lisbon on October 31 1958 and in Stockholm on July 14, 1967.

2. Section 2 and the following of the Law on Inventions, Industrial Designs and Rationalization Proposals No. 527/1990 Coll.

The Office shall grant the application for the utility model the date of application or the priority of the original application for the invention if such an application is filed within 2 months of the decision on granting a patent for the invention at the latest, however, 10 months of its filing.

(2) The applicant claiming his rights according to Section 1 shall be obliged - within a period of 2 months from filing the application for a utility model - to present a duplicate of the application for an invention the date of filing or priority of which he is claiming, otherwise the right expires.

(3) Failure to comply with a time limit set in paragraph 1 may not be excused.

11. (1) If the application fulfills conditions stipulated in Section 8 and

if its subject matter is not evidently at variance with Section 2, 3 and 5, the Office shall record the utility model in the Register.

(2) Recording of the utility model into the Register establishes its protection according to the present Act. Upon recording the utility model into the Register, the Office shall issue the applicant - who by registration of the utility model became the owner of said utility model - a certificate of recording the utility model in the Register and shall announce recording of the utility model in the Register in the Official Gazette. After recording the utility model in the Register, the Office shall publish document listed in Section 8, paragraph 3, letters (b) and (c).

(3) If the application does not correspond to requirements listed in Section 8, the Office shall request the applicant to remedy the defects within a set time limit. If the applicant fails to remedy the cited defects within that time, the Office shall terminate the procedure involving the application. When setting the above time limit, the applicant shall be notified of this consequence.

(4) If the application contains a subject listed in Sections 2 and 3 or if the subject matter of the application is evidently at variance with Section 5, the Office shall reject the application. The applicant shall be notified of such a consequence prior to issuing such a decision.

(5) Adaptations and changes made in the application of the utility model shall not exceed the framework of its original presentation.

(6) Until recording of the utility model into the Register, the applicant may divide the application for the utility model. The Office gives applications for the separated utility models the right of priority of the original application for the divided utility model if the separated applications do not extend beyond the scope of its original application and if they are presented within 3 months from a written communication of the applicant that he plans to divide the filed application.

For filing applications for the separated utility models, the applicant is obliged to pay an administrative fee according to special

provisions.

(7) Upon request of the applicant, the Office shall postpone recording a utility model in the Register for a period of at most 15 months from the date of filing the utility model.

Effect of Utility Model

(1) No person may manufacture, place into circulation or use the technical solution protected by the utility model as part of his entrepreneurial activities, without the consent of the owner of the utility model.

(2) The owner of the utility model is entitled to render a consent (license) for using the technical solution protected by the utility model to other persons or to transfer the utility model into them.

(3) Rights following from a patent granted on the basis of an application for an invention with a later priority shall not be exercised in case of a collision without the consent of the owner of the utility model.

13. (1) The utility model shall not be effective against persons who used its technical solution protected by the utility model independently of the author or owner of the utility model prior to the origin of priority rights or who verifiably undertook measures to this end (hereinafter referred to as "prior user") .

(2) If an agreement is not reached, the prior user may request a court that the owner of the utility model recognize his rights.

14. (1) If a license agreement for the utility model has not been concluded, the Office may grant a forced license:

(a) if the owner of the utility model does not make use of its subject matter at all or only insufficiently and if he cannot justify his inactivity by proper reasons; such a forced license cannot be granted prior to expiration of 4 years since the filing of the application of the utility model or 3 years since its registration, with priority being given to the later expiration date;

(b) for reasons of endangering an important public interest.

(2) Granting of a forced license does not affect the right of the owner of the utility model to reimbursement of the license price.

Term of Validity of Utility Model

15. (1) The validity of a utility model shall be 4 years from the date of filing the application for the utility model or from filing an earlier patent application of an identical subject (Section 10).

(2) Upon request of the owner of the utility model the Office shall prolong the time validity of registration of the utility model twice always for another 3 years.

It may applied for prolongation of the time of validity of the utility model at the earliest during the last year of its validity.

(4) If the utility model is registered after expiration of a time limit set in paragraph I, the Office shall prolong the time validity of the utility model without the request of the owner of the utility model.

16. The utility model lapses if:

- (a) the time of its validity expires,
- (b) the owner of the utility model abandons it; in such a case the protection ceases on the day a written declaration to this effect is received by the Office.

Cancellation of Utility Model

17. (1) Upon a proposal of anybody, the Office shall cancel a utility model from the Register if:

- (a) its technical solution is not suitable for protection according to Sections 1 and 3,
- (b) the subject matter of the utility model is already protected by a patent or utility model of an earlier priority right
- (c) the applicant or owner of the utility model is a person not entitled to protection according to stipulations of Section 6
- (d) the subject matter of the utility model goes beyond the original application of the utility model.

(2) Cancellation of a utility model from the Register has the same effect as though the utility model were not recorded in the Register.

(3) A utility model can also be cancelled from the Register after lapsing of the utility model (Section 16) if the proposer proves a legal interest in the matter.

18. (1) The proposal for cancellation of a utility model from the Register shall be filed with the Office in two copies.

(2) The proposal for cancellation of the utility model from the Register shall be properly substantiated and material proof, on which the proposal is based, shall be simultaneously presented.

(3) The Office shall call on the owner of the utility model to express his views on the proposal for cancellation of the utility model from the Register within a given deadline. The owner of the utility model shall present his views on the proposal for cancellation of the utility model from the Register in two written copies.

(4) If the owner of the utility model fails to express his views within the stipulated time limit, the Office shall cancel the utility model from the Register.

(5) If the owner of the utility model expresses opposition to cancellation of the utility model from the Register within the given time limit, the Office shall send the owner's expression to the proposer of cancellation of the model from the Register and shall set a date for an oral hearing on the proposal.

(6) Failure of a participant in the proceedings to attend the oral hearing on the proposal for cancellation of the utility model from the Register shall not stand in the way of the Office to take a decision on the proposal.

(7) The Office shall grant the successful participant in the proceedings on cancellation of the utility model from the Register the right to reimbursement of costs necessary for successful application of or defending his rights against the participant who was not successful in the given matter, if the participant applies for such a right before a decision is made on the matter in question.

Forfeiture of Protection

- (1) The Office shall forfeit the owner the utility model if, on the basis of a court decision, it ascertains that the right to the utility model did not appertain to him in the spirit of Section 6.
- (2) Only a person to whom or to whose successor, according to a court decision, pertains the right for protection by a utility model shall be entitled to make a proposal for forfeiture of the protection according to Paragraph 1.
- (3) Upon the proposal of a person to whom pertains the right to protection by utility model filed within 1 month of a valid court decision, the Office shall register such a person as the owner of the utility model.
- (4) If a proposal for transfer according to Paragraph 3 is not filed the Office shall cancel the utility model from the Register on the basis of its authority.

Register

20. (1) The Office shall keep a Register into which it shall record data on applications for utility models and on the registration of utility models.
- (2) The following data of each utility model shall be entered into the Register:
- (a) the number of the entry (certificate),
 - (b) the date of the entry
 - (c) the date of publication of the utility model registration in the Official Gazette,
 - (d) the name of the utility model,
 - (e) the date of filing of the application and, possibly, the date of priority and the file number of the application,
 - (f) the applicant of the utility model (name of person or company) and address (headquarters) or the same data of his representative,

(g) the surname, given name and address of the author of the utility model

(h) the owner of the utility model (name of person or company) and address (headquarters) or the same data of his representative,

(i) the right of prior user

(j) the classification of the utility model under the International Patent Classification,

(k) transfer of the utility model,

(l) license data,

(m) forced license data,

(n) prolongation of the registration validity of the utility model,

(o) cancellation of the utility model from the register,

(p) revoking the protection or its transcription,

(r) lapse of the protection.

(3) The Office shall publish facts concerning utility models as well as official communications and decisions of basic importance in the Official Gazette.

Final Provisions



21. (1) General provisions on administrative procedures shall apply to proceedings in matters of utility models with deviations listed in the present Law and exemptions of stipulations concerning suspension of proceedings, declaration of one's word of honour, schedules for taking decisions and measures against inactivity.

(2) The rights to the utility model, co-owner relations, registration of license agreements on utility models, transfer of utility models, relations with other countries, representation in proceedings before the Office, staying proceedings, waiving the failure to observe a deadline, inspecting documents, declaratory judgement, registering utility models kept secret according to special regulations, corrective proceedings and infringement of rights are covered by stipulations similar to those of the law on inventions, industrial

designs and rationalization proposals.

(3) The Office collects administrative fees for the individual legal acts according to the present Law.

22. This Law shall enter into force on the day of proclamation.

3. Sections 29, 39, 49 and 50 of Law No. 71/1967 Coll. of Laws on administrative procedures (Administrative Code).

4. Sections 8 to 10, 14 to 16, 64 to 68, 70 to 71 and 75 Paragraph 1 of Act No. 527/1990 Coll. of Laws and Section 19 of the Decree of the Federal Office for Inventions No. 550/1990 Coll. of Laws.

5. Law No. 105/1951 Coll. of Laws on administrative fees, as amended by the legal measure of the Presidium of the National Assembly No. 138/1960 Coll. of Laws.

Notice of the Ministry of Finance of the Czech and Slovak Federal Republic, Ministry of Finance of the Czech Republic and Ministry of Finance of the Slovak Republic No. 570/1990 Coll. of Laws on administrative fees, as amended by the Notice of the Ministry of Finance of the Czech and Slovak Federal Republic, Ministry of Finance of the Czech Republic and Ministry of Finance of the Slovak Republic No. /1991 Coll. of Laws.