

REPUBLICATION

DESIGN LAW ¹
NO. 129/1992

CHAPTER I - GENERAL PROVISIONS

Art. 1. (1) The rights in designs shall be acquired and protected on the territory of Romania by the registration with the State Office for Inventions and Trademarks, hereinafter called *OSIM*, pursuant to the provisions of the present Law.

(2) This Law shall apply to the designs which are the object of a registration or an application for registration in Romania, or with effects in Romania as a consequence of Community or international protection.

(3) Foreign persons having their domicile or registered office outside the territory of Romania shall benefit by the provisions of this Law under the international design conventions to which Romania is a party.

Art. 2 - Within the meaning of this Law, the terms or expressions below are defined as follows:

a) the *Hague Agreement* - the agreement concerning the international industrial design deposit, adopted at the Hague on November 6, 1925, with the subsequent amendments and completions, to which Romania adhered through the Law no. 44/1992;

b) *author* - the natural person or group of natural persons, constituted according to an agreement, that created the design;

c) *certificate of registration* - the title of protection granted by OSIM for the registered designs;

¹ Republished within the meaning of Art. IV of the Law no. 280/2007 for amending and completing the Industrial Design Law no.129/1992 published in the Official Gazette of Romania no. 729 of 26.10.2007, the texts being given a new numbering.

Law no. 129/1992 was also republished in the Official Gazette of Romania, Part I, no. 193 of 26 March 2003 and it has also been modified by the Emergency Government Ordinance no. 190/2005 for taking some measures necessary in the European integration process, published in the Official Gazette of Romania, Part I, no. 1179 of 28 December 2005, approved with the corresponding amendments and completions by the Law no. 332/2006, published in the Official Gazette of Romania, Part I, no.629 of 20 July 2006.

d) *design* - the appearance of a product or of a part thereof, in two or three dimensions, resulting from the combination of the main features, particularly lines, outlines, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

e) *Community design* - the design protected under the Regulation no. 6/2002/EC, published in the Official Journal of the European Communities no. L3 of 5 January 2002 by the Office for the Harmonization in the Internal Market, with effects throughout the territory of the European Communities;

f) *immaterial details* - those graphic or shape elements that do not determine the individual character of the design;

g) *registration* - the way of acquiring the rights on designs under this Law or the international conventions to which Romania is a party;

h) *professional representative* - the person who practises the profession of industrial property attorney under the conditions provided for by the law and who may represent an interested party in the proceedings before OSIM;

l) *product* - any article produced through an industrial or handicraft process containing inter alia elements designed to be assembled in a complex product, packages, forms of presentation, arrangements, graphic symbols, typographic symbols; the computer programs shall not be deemed as a product;

j) *complex product* - a product comprising multiple elements replaceable in a manner which allows disassembly and reassembly of the product;

k) *applicant* - the natural person or legal entity who requests for the registration and the issuance of a certificate of registration of a design with OSIM;

l) *holder*- the natural person or legal entity having the rights conferred by the registration of the design and for which the certificate of registration is issued.

Art. 3. - (1) The right to be granted the certificate of registration shall vest in the author of the design or his successor in title for the independently created designs.

(2) If several persons have created the same design independently of one another, the right to be granted the certificate of registration shall vest in the person who first filed the application for registration with OSIM.

(3) Where the design was created as a consequence of a contract with a creative mission or by employees, in the execution of their employment duties, the right to be granted the certificate of registration shall vest in the person who commissioned the carrying out of the design.

Art. 4. - In the absence of proof to the contrary, the applicant shall be deemed to have the right to be granted the certificate of registration of the design.

Art. 5 - (1) The rights in a design acquired under this Law shall not prejudice the rights in unregistered designs, trademarks and other distinctive signs, patents and utility models, typographic symbols, topographies of semiconductor products.

(2) The protection of the design registered under this Law shall not exclude or prejudice the protection thereof by copyright.

CHAPTER II - REQUIREMENTS FOR THE PROTECTION OF DESIGNS

Art. 6 - (1) The object of the application may be registered to the extent in which it constitutes a design, within the meaning of Art. 2, is new and has individual character.

(2) A design shall be deemed to be new if no identical design was rendered available to the public prior to the date of filing the application for registration or, if the priority was claimed, before the priority date.

(3) The designs shall be deemed to be identical if their characteristic features differ only in immaterial details.

(4) A design shall be deemed to have individual character if the overall impression it produces on the informed user differs from the one produced on such a user by any design rendered available to the public before the date of filing the application for registration, or before the priority date, if the priority was claimed.

(5) In assessing the individual character, the degree of freedom of the author in developing the design shall be taken into account.

(6) If a design applied to a product or incorporated in a product constitutes a component of a complex product, this shall only be deemed to be new and have individual character, if the following conditions are fulfilled cumulatively:

a) once incorporated into the complex product, the component part remains visible during the normal use of the product; *normal use* means the use by the end user, excluding the maintenance and repairs;

b) the characteristics of the visible component part characteristics fulfil themselves the conditions concerning the novelty and the individual character.

Art. 7 - (1) Within the meaning of Art. 6, a design is deemed to have been rendered

available to the public, if it has been published or disclosed in any other way, exhibited, employed in the commerce, except for the case where such actions could not reasonably become known in the normal course of the activity of the circles specialized in the sector concerned within the European Community, prior to the date of filing the application for registration, or prior to the priority date, if a priority has been claimed. However, a design shall not be deemed to have been rendered available to the public, for the sole reason that it has been disclosed to a third party in explicit or implicit confidentiality conditions.

(2) For the purpose of applying Art. 6, paragraphs (2) and (4), disclosure shall not be deemed to have occurred, if the design for which protection is claimed has been rendered available to the public:

(a) by the author, the successor in title thereof or a third party, as a consequence of the information offered by the author, or of the action performed by him or by his successor in title;

(b) within twelve months before the date of filing the application for registration or on the priority date, if a priority has been claimed.

(3) The provisions of paragraph (2) shall also apply if the disclosure of the design was made through an abuse to its author or to his successor in title.

Art. 8 - (1) Designs determined exclusively by a technical function cannot be registered.

(2) There cannot be registered a design which must be reproduced in the exact shape and dimensions in order to allow the product it is incorporated in or the product to which it applies to be mechanically connected or placed in, around or on another product, so as to allow either product to perform its function.

(3) Designs allowing multiple assemblies or connections between interchangeable products within modular systems can be registered.

Art. 9 - Designs contrary to public order and morality shall be excluded from the protection.

CHAPTER III - REGISTRATION AND GRANT OF THE TITLE OF PROTECTION

Art. 10 - (1) The application for registration of a design shall contain the following:

a) request for the registration of the design;

- b) applicant's identification data;
- c) number of designs for which protection is claimed;
- d) indication of the products which incorporate the design, if appropriate;
- e) description of the novel characteristic elements of the design for which protection is claimed, as they appear in the filed graphic representations;
- f) the authors' names or a statement on the applicant's responsibility that the authors have waived their right of being mentioned in the application and/or in the design publications;
- g) graphic representations of the design in three copies.

(2) The application for registration may further contain, if appropriate, other elements which do not represent a condition for the regular deposit date:

- a) identification data of the professional representative, if designated in the application for registration;
- b) priority documents, if one of the priorities provided for in Art. 16 and 17 is claimed;
- c) request for deferment of publication;
- d) power of attorney for representation before OSIM;
- e) statement indicating the information which, according to the applicant's knowledge, allows to prove the fulfilment of the conditions to grant the protection for the design whose registration is claimed.

Art. 11 - (1) The graphic representations shall completely render the design which is the object of the application for registration, so as to point out its aesthetic features. Otherwise, the application for registration shall be rejected. The graphic representations shall be of sufficient quality to emphasize the design details and make its publication possible.

(2) In case of a two-dimensional design, the graphic representations may be accompanied by three specimens.

(3) Sketchy or undetailed graphic representations of designs shall not be accepted for registration.

Art. 12. - (1) The application for registration and the description presented according to Art. 10 and drawn up in Romanian, accompanied by the graphic representations of the design, or if appropriate, by specimens, shall be filed with OSIM and constitute the regular national deposit.

(2) OSIM shall register the application, if at least the following are submitted: an application containing the request for the registration of the design, the applicant's identification data and the graphic representations or the specimens, in one copy.

(3) If the additional documents required for constituting the regular national deposit according to paragraph (1) are not filed within two months from the filing of the application for registration in compliance with paragraph (2), the application for registration shall be rejected.

(4) The date of the regular national deposit shall be the date of filing the documents provided for in paragraph (2) or the date resulting from the design treaties or conventions to which Romania is a party.

(5) The application for registration bearing the filing date shall be entered the Register of the filed applications.

(6) The Register of the filed applications may be kept in both paper and electronic format.

Art. 13 - (1) In the proceedings before OSIM the applicant for a certificate of registration or his successor in title may be represented by an authorized industrial property attorney.

(2) For persons not having the domicile or registered office on the territory of Romania, the representation under paragraph (1) is compulsory, except for the application filing procedure.

Art. 14 - (1) A multiple deposit may include several designs intended to incorporation in the same category of products, in compliance with the international classification.

(2) The designs which are the object of a multiple deposit shall meet the condition of unity of design, unity of production and unity of use, or shall belong to the same set or composition of items.

Art. 15 - The regular national deposit shall ensure the applicant a right of priority, starting on the date of constituting the deposit, in relation to any subsequent deposit concerning the same design.

Art. 16 - (1) The natural persons or legal entities of the States party to the conventions to which Romania is also a party shall benefit by a six-month right of priority starting on the date of the first deposit, if they apply for protection in respect of the same design within that six-month period of time.

(2) A six-month right of priority based on the utility model deposit shall be recognized.

Art. 17 - Where certain goods and services have been exhibited by the applicant within

an official or officially recognized international exhibition, within the meaning of the Convention on international exhibitions signed in Paris on 22 November 1928 and ratified by Romania through the Law no. 246/1930, with the subsequent amendments and completions, the exhibition being organized on the territory of Romania or in a Member State of Paris Convention for the protection of industrial property, in the form revised in Stockholm on 14 July 1967, the applicant shall enjoy a priority right as from the date of presenting the said good within the exhibition, provided that an application for design registration in respect of said products has been filed with OSIM within six months from the date of presenting the good in the exhibition.

Art. 18. - The priorities provided for in Articles 16 and 17 shall be recognized, if claimed at the time of filing the application, and if attested by priority documents, within three months from the date of filing the application.

Art. 19. - (1) The applications for registration filed with OSIM shall be subjected to a preliminary examination that shall assess:

a) compliance with the conditions of form of the application, provided for in Art. 10 paragraph (1);

b) compliance with the conditions stipulated for the graphic representations, provided for in Art. 11;

c) compliance with the conditions stipulated for the other documents or acts, enclosed with the application provided for in Art. 10 paragraph (2);

d) payment of the fees in the amount and within the time limits stipulated by the law.

(2) In case the deficiencies are not remedied within the time period granted by OSIM, the application shall be rejected, or, if appropriate, the priority shall not be recognized.

(3) If any deficiencies are ascertained, they shall be notified to the applicant granting him a time limit necessary to remedy them.

(4) Upon request by OSIM the applicant shall divide the applications that do not comply with the conditions for a multiple deposit.

(5) The applicant is obliged to divide the application within the period of time granted by OSIM, by constituting a regular national deposit for each group of designs that complies with the provisions of Art. 14.

(6) In case the applicant does not divide the application within the granted period of time, OSIM shall divide the application *ex officio* into more applications and shall examine only the first application, while the others shall be rejected.

(7) The divided applications may only be filed for the elements that do not go beyond the limits of the initial application. The divided applications shall be considered as having been filed on the date of filing the initial application.

Art. 20 - (1) The application for registration of the design as well as the black-and-white, or if required, the colour reproduction, photograph or any graphic representation thereof shall be published in the Official Industrial Property Bulletin of OSIM, in electronic format, within maximum four months from the date of constituting the regular national deposit.

(2) The publication provided for in paragraph (1) may be deferred at the applicant's request for a period not exceeding thirty months, calculated from the date of filing the application or from the date of priority, if the priority is claimed.

(3) The publication of the international applications by the World Intellectual Property Organization shall be considered to be a publication under paragraph (1).

Art. 21 - (1) Interested parties may oppose, in writing, to the registration of the design with OSIM within two months from the publication, for the reasons provided for in Art. 22, paragraph (3).

(2) OSIM shall notify the opposition to the applicant, by indicating the name of the opponent, as well as the grounds of the opposition as regards the registration of the design.

(3) The applicant may present his observations within a time limit of two months of notification.

(4) The opposition concerning a published design application shall be solved by a board of the Design Division within three months from filing. The board shall issue an admission or rejection report to be taken into consideration during substantive examination.

(5) The settling of opposition can be deferred when:

- a) it is based on a design application for which a decision has not been made;
- b) the opposing design is the subject of an action for annulment, prior to the final case disposition.

Art. 22 - (1) Applications for the registration of designs shall be examined by the Designs Examination Board. Within twelve months from the date of publication of the application, the Board decides to accept or to refuse registration of the design, as the case may be, or may ascertain the renouncement or the withdrawal of the application. The Board shall take the decision to grant the certificate of registration on the basis of an examination report and according to the provisions of Art. 2, 6 and 7.

(2) Registration of designs shall be made in the National Register of Designs and published in the Official Industrial Property Bulletin of OSIM.

(3) The application for the registration of a design shall be refused if:

a) the provisions of the Art. 2, 6 and 7 are not observed;

b) the subject-matter of the application is comprised in the provisions of the Art. 8 and 9;

c) it incorporates, without the holder's permission, a work protected by the Law No. 8/1996 on the Copyright and the Related Rights, including the subsequent amendments and completions, or any other protected industrial property rights;

d) it represents an improper use of any of the items mentioned in the list comprised in the Article 6 ter of the Paris Convention for the Protection of the Industrial Property, in the form revised in Stockholm, on 14 July 1967, to which Romania has adhered by the Decree No. 1.177/1968 or an abusive use of the emblems and escutcheons, others than those mentioned under the Article 6 ter of the Convention.

e) the applicant has not proved to be the person entitled to the registration of the design, within the meaning of Art.3;

f) the design is in conflict with a prior design which has been made available to the public after the filing date of the application for registration or, if a priority is claimed, after the priority date, and which is protected from a date prior to said date by the registration or an application for registration of a Community design, or by a registration of a design or an application for protection in Romania;

g) the design uses a distinctive sign which confers to its holder the right to prohibit such a use;

(4) When a design was refused registration or the right in a design was declared invalid under the provisions of paragraph 3, the design can still be registered or the right in the design can still be maintained in an amended form, provided that in that form the conditions for protection are fulfilled and the design identity is preserved. The registration or maintaining thereof in an amended form may include the registration accompanied by a partial renouncement from the part of the design right holder, or by the record in the Register of Designs of the court decision concerning the partial annulment of the right in the design.

(5) The right in a design may be declared invalid even after the design has lapsed or has been surrendered.

(6) In the examination of the application, the Board shall take into account all the documentary sources existing in OSIM, international design registrations with the World Intellectual Property Organization, Community designs as well as any other documents filed

by interested persons and relevant for the examination procedure. During the examination procedure OSIM may request any additional material required, even specimens in the case of the two-dimensional designs.

(7) The provisions of this Law shall also be applied to the international applications filed according to the Hague Agreement, which extend their effects in Romania, unless otherwise provided.

Art. 23 - When design registration, renewal or recordal of a change in the Register of Designs was obviously made by mistake, OSIM may revoke the registration, renewal or recordal of change within three months, counting from the date of registration or recordal. The substantiated decision of revocation shall be communicated to the interested persons within 30 days.

Art. 24 - (1) Decisions regarding the applications for the registration of the design may be appealed against, in writing and on valid grounds, with OSIM, within 30 days from communication.

(2) The appeal shall be examined within a maximal time limit of three months from its registration, by the Board of Appeal of the Appeals and Policy Making Department of OSIM.

Art. 25 - (1) The decision of the Board of Appeal shall be notified to the parties within 30 days from its pronouncement and may be appealed against before the Law Court of Bucharest, within 30 days from said notification.

(2) The final and irrevocable decisions of the Board of Appeal shall be published in the Official Industrial Property Bulletin of OSIM within 60 days from pronouncement.

(3) The parties may appear before the Board of Appeal personally or may be represented by an attorney-at-law, a legal advisor or an authorized industrial property attorney.

Art. 26 - All decisions issued by OSIM shall be substantiated.

Art. 27 - The issuance of the certificates of registration of the designs shall be made by OSIM on the basis of the final decisions of acceptance of registration, within 30 days from the date on which the decision of acceptance became final and irrevocable.

Art. 28 - (1) The procedures regarding the applications for the registration of designs

and the certificates of registration shall be subject to the payment of fees, in the amount and within the time limits provided for according to the law. The fees shall be paid into the account of OSIM.

(2) Fees payable by natural or legal persons having their domicile or, as the case may be, their registered office abroad, shall be paid in currency into the account of OSIM.

(3) Failure to pay the fees within the legal time limits shall result in non-carrying out the procedure involved or in rejecting the design application.

Art. 29 - (1) The applicant or the holder of the certificate of registration, who failed to observe a time limit regarding the procedures before OSIM for *force majeure* reasons, shall be granted an extension of the time limit if a substantiated request is presented within sixty days from the cessation of the reasons that prevented him from acting, but not later than one year after the expiry of the non-observed time limit.

(2) The provisions of the paragraph (1) shall not apply in the following situations:

- a) priority claiming according to Art. 16-18;
- b) payment of the registration and publication fees;
- c) opposition filing according to Art. 21;
- d) appeals filing according to Art. 24.

(3) The request for extension of the time limit shall be accompanied by the proof of payment of the legal fee.

CHAPTER IV - RIGHTS AND OBLIGATIONS

Art. 30 - Throughout the period of validity of design registration, the holder has the exclusive right to use the design and to prevent any third party not having his consent from using it. The right holder has the right to prohibit third parties to perform, without his permission, the following acts: reproducing, manufacturing, putting on the market or offering for sale, importing, exporting or using a product having the design incorporated or applied thereto or storing such a product for the above mentioned purposes.

Art. 31 - (1) The scope of protection shall be determined by the graphic representations of the registered designs.

(2) The protection granted to a design on the basis of the present Law shall extend to any design that does not produce a different overall visual impression on an informed user.

(3) The degree of freedom of the author in making the design shall be considered in

assessing the scope of protection.

Art. 32 - The rights conferred by Art. 30 shall not apply to:

a) acts performed exclusively in personal, non-commercial, experimental, research or educational purposes, on the condition that these acts are not detrimental to the normal exploitation of the designs and that they mention the source;

b) activities of reproducing in the field of research or education, for making citations or teaching, provided that such activities are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source;

c) equipments existing on the sea or air transportation vehicles registered in another country, when these vehicles temporarily enter the territory of Romania, or importing accessories and spare parts for the purpose of repairing such vehicles or executing repairs in such vehicles;

d) using or taking effective and serious measures for the use of the designs by third parties, within the period from the forfeiture of the holder's rights to the certificate revalidation;

e) use of the designs in good faith within the period from the date of publication of the forfeiture of the holder's rights to the date of publication of the reinstated right.

Art. 33 - The rights arising from the registration of the design shall not be exercised in case of putting on the Community market the products in which the protected designs are incorporated or to which they are applied when said products have been previously put on the market by the holder of the certificate of registration or with his consent.

Art. 34 - (1) Starting on the date of publication of the application, the natural person or legal entity entitled to be granted the certificate of registration shall temporarily enjoy the same rights conferred according to the provisions of Art. 30, until the issuance of the certificate of registration, except for the cases when the application has been rejected or withdrawn.

(2) Violation of the provisions of paragraph (1) shall entail the liability of paying the damages according to the Civil Law by the infringers; the title for the payment of damages may be executed only after the issuance of the certificate of registration of the design.

Art. 35 - (1) The term of protection of a certificate of registration of the design is of ten years starting on the date of constituting the regular deposit and it may be renewed for three successive five-year periods.

(2) Throughout the period of validity of the certificate, the holder of the certificate is liable to pay the corresponding maintenance fees.

(3) OSIM shall grant a period of grace of maximum six months for the payment of the maintenance fees, for which increased fees shall be levied.

(4) Failure to pay these fees shall entail the forfeiture of the holder's rights.

(5) The forfeiture of the holder's rights shall be published in the Official Industrial Property Bulletin of OSIM.

(6) In case of forfeiture of the holder's rights, the holder may request OSIM to revalidate the certificate of registration for justified reasons, within six months from the date when the forfeiture occurred.

Art. 36 - The exclusive right of exploitation arising from the design registration shall cease in the following situations:

a) at the expiry of the period of validity;

b) by cancellation of the certificate of registration;

c) by forfeiture of the holder's rights;

d) by renunciation by the holder of the certificate of registration.

Art. 37 - The holders of the certificates of registration of designs may affix the D sign, namely the capital "D" inscribed inside a circle and accompanied by the holder's name or by the number of the certificate, on the products.

Art. 38 - (1) The right to be granted the certificate of registration of the design, the rights arising from the application for registration of the design, as well as the rights arising from the registration are transferable wholly or in part.

(2) The transfer may be made by succession, assignment or licence.

(3) The transfer shall be recorded with OSIM in the Register of designs and shall produce effects in respect of the third parties only starting on the date of publication of the notice of transfer in the Official Industrial Property Bulletin.

(4) The recordal of transfer of rights concerning disputed designs shall be deferred up to the date on which court decisions thereon remain final and irrevocable.

Art. 39 - (1) The author as the holder of the certificate of registration of the design shall enjoy the patrimonial rights established on the basis of a contract with the persons who exploit the design.

(2) In the case of concluding a contract of assignment, the author's patrimonial rights shall be established in this contract.

Art. 40 - International applications under the Hague Agreement shall be filed with the World Industrial Property Organization, directly or through OSIM.

Art. 41 - (1) The author is entitled to have his name, first name and position mentioned in the issued certificate of registration, as well as in any other documents or publications concerning the design.

(2) The data contained in the certificate of registration shall be entered in his employment record.

Art. 42 - (1) The registration of the design may be declared invalid, wholly or in part, at the request of an interested person, for the grounds provided for in Art. 22, paragraph (3).

(2) Invalidation may be requested during the entire period of validity of the certificate of registration and shall be judged by the Law Court of Bucharest.

(3) The invalidation decision shall be filed with OSIM and shall be published within a time limit of two months since filing.

Art. 43 - Litigations concerning the status of author of the design, the status of holder of the certificate of registration, those concerning the patrimonial rights deriving from the assignment or licence contracts are the competence of the judicial instances, according to the Civil Law.

CHAPTER V - COMMUNITY DESIGNS

Art. 44 - Community designs shall enjoy protection on the territory of Romania under the Council Regulation (EC) no.6/2002 on Community designs, published in the Official Journal of European Communities no. L 3 of 5 January 2002.

Art. 45 - Community design applications may be filed directly with the Office for Harmonization in the Internal Market or through OSIM.

Art. 46 - When a Community design application is filed with OSIM under Art. 35 of the Council Regulation (EC) no.6/2002 on Community designs, OSIM shall write on the application the date of receiving and, without examination, shall forward the application to the Community Office within two weeks, subject to the payment of a fee in an amount of 70 lei.

Art. 47 - Litigations on Community designs, for which the Council Regulation (EC) no.6/2002 on Community designs assigns the competence to the Community design courts, under Art. 80, paragraph (1) of said Regulations, shall be under the jurisdiction of the Law Court of Bucharest which solves first instance causes.

CHAPTER VI - ATTRIBUTIONS OF THE STATE OFFICE FOR INVENTIONS AND TRADEMARKS IN THE FIELD OF THE DESIGN PROTECTION

Art. 48 - OSIM is the specialized governmental body, with sole authority on the territory of Romania, for ensuring the protection of designs.

Art. 49 - OSIM shall have the following attributions in the field of design protection:

- (a) granting protection through the certificate of registration of the design;
- (b) keeping the Register of filed applications and the Register of designs;
- (c) conducting, upon request, documentary search on published designs and mediation services;
- (d) conducting relations with equivalent governmental organizations and with

specialized international organizations a member of which is Romania;

(e) informing the European Commission on national legal provisions adopted for complying with the provisions of the Directive 98/71/EC;

(f) providing assistance in the field of industrial property on request, organizing training courses for specialists in the same field;

(g) periodically editing and publishing information relating to designs, in the Official Industrial Property Bulletin of OSIM.

CHAPTER VII - LIABILITIES AND SANCTIONS

Art. 50. - The unlawful assumption, in any way, of the status of author of a design shall constitute an offence and shall be punished by imprisonment for six months to two years or by a fine of 1500 to 3000 lei.

Art. 51 - In case that a decision of the law court established that another person than the one mentioned in the application for registration or in the certificate of registration is entitled to be granted the certificate of registration, OSIM shall issue the certificate of registration to the entitled person and shall publish the change of the holder.

Art. 52 - (1) The unlawful performance of any act provided for in Art. 30 after design registration shall constitute the offence of counterfeiting and shall be punishable by imprisonment for six months to five years.

(2) Where the acts referred to in paragraph (1) are liable to represent a danger to public safety or health, they shall be punishable by imprisonment for two to ten years and interdiction of rights.

(3) Criminal investigation authorities may initiate ex officio, during preliminary acts, the required measures for seizing the products incorporating counterfeited designs and for preserving the evidences according to the civil law and the special provisions in the field.

(4) For the caused prejudices, the holder shall be entitled to damages according to the

civil law, and he may apply to the competent law court to order the seizure, or, as the case may be, the destruction of the counterfeited products; these provisions shall also apply to materials and equipments that were directly used for committing the offence of counterfeiting.

Art. 53 - (1) The holder of a registered design may ask the law court:

a) to order precautionary measures, when there is a risk of infringement of the rights in a registered design and if this infringement is likely to cause an irreparable prejudice or if there is a risk of destruction of evidence;

b) to order, immediately after the customs clearance procedures, measures for ceasing the infringement of the rights in a design committed by a third party when putting on the market imported goods that imply a prejudice to these rights.

(2) For ordering precautionary measures, the provisions of the civil law are applicable. In taking the precautionary measures ordered by the law court, a guaranty to be set out by the plaintiff, in an amount sufficient to prevent the abuses, may be requested.

(3) The law court may ask the plaintiff to provide any possible evidence in order to prove his status of holder of the infringed right or of the right whose infringement is unavoidable.

(4) If the evidence in support of the plaintiff's claims is under the control of the defendant, the law court may order that the defendant should produce the evidence under confidential conditions, in accordance with the law.

(5) The law court may order that the infringer of the rights conferred by the certificate of registration should provide immediate information regarding the origin and the circuits of distribution of the counterfeited goods as well as the identity of the manufacturer or of the trader, on the condition that this measure should not be exaggerated as against the gravity of the prejudice caused to the holder's right.

Art. 54 - The customs authorities may order, either *ex officio* or upon request by the holder of the registered design, the suspension of the customs clearance procedures on the importation of the goods, in the cases referred to in Art. 53, until the pronouncement of the decision of the law court.

Art. 55 - The certificates of registration of designs in force represent intangible assets

and may be registered in the patrimony of the holder as a legal person.

Art. 56 - (1) At the request of the law court, OSIM is obliged to forward the necessary documents, papers and information for the judgment of the cause vested in it.

(2) The summoning of right holders is compulsory in any litigation concerning designs.

This Law² transposes the provisions of the Directive 98/71/EC on the legal protection of Community designs, published in the Official Journal of European Communities No. L 289 of 28 October 1998, and creates the legal framework for the direct application of the Council Regulation (EC) No. 6/2002 on Community Designs, published in the Official Journal of European Communities No. L 3/5 January 2002, as from the date of Romania's accession to the European Union.

NOTE:

We reproduce below Art. II and III of the Law 280/2007 which are not incorporated in the republished text of the Law No. 129/1992 and which still apply as specific provisions of the Law No. 280/2007.

Article II - The design applications in respect of which a decision has not been taken yet, shall be solved according to the provisions of this Law.

Article III - (1) This Law shall come into force 30 days after its publication in the Official Gazette of Romania, Part I.

(2) Within the time limit under paragraph (1), the Government shall adopt new Regulations for implementing the republished Design Law no. 129/1992.

² The mention concerning the transposing of the provisions of Community norms is comprised within the Law No.280/2007 for amending and completing the Law 129/1992.

