

Act XLVIII of 2001 on the legal protection of designs

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In order to improve the competitiveness of the Hungarian national economy, to develop the domestic design culture and to acknowledge designers both morally and financially, in conformity with the international obligations of the Republic of Hungary in the field of the protection of intellectual property and with the obligation of approximation to European Community legislation, the Parliament enacts the following Act on the legal protection of designs:

PART ONE. DESIGN AND DESIGN PROTECTION ➔

Chapter I. Subject Matter of Design Protection ➔

Protectable designs

Section 1

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

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

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

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

Novelty

Section 2

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

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

Individual character

Section 3

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

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

Common provisions relating to novelty and individual character

Section 4

(1) A design shall be deemed to have been made available to the public if it has been published, exhibited, put on the market or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the Republic of Hungary².

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

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

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

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

Section 5

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

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

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

(2) Within the meaning of paragraph (1) 'normal use' shall mean use by the consumer or the end user, excluding maintenance, servicing or repair work.

Grounds for refusal

Section 6

(1) Features of appearance of a product which are solely dictated by its technical function shall not be granted design protection.

(2) Features of appearance of a product may not be granted design protection which must necessarily be reproduced in their exact form and dimensions in order to permit the product to which the design is applied and/or in which it is incorporated (hereinafter referred to as 'the product according to the design') to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

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

Section 7

A design shall not be granted protection if it is contrary to public policy or to public morality.

Section 8

(1) A design shall not be granted protection if

(a) it constitutes an unauthorised use of State emblems or other emblems of an authority or international organisation as defined in the Paris Convention for the Protection of Industrial Property;

(b) it contains medals, emblems, armorial bearings, not covered by subparagraph (a), or official signs and hallmarks indicating authentication and warranty the use of which is of public interest;

(2) Protection shall be granted with the consent of the competent authority to designs of which the emblems defined in paragraph (1) constitute only an element.

Section 9

(1) A design shall not be granted protection if it is identical with a design which has been

made available to the public after the date of priority and to which protection has been granted with an earlier date of priority.

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

Section 10

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

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

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

Designs eligible for protection

Section 11

Design protection shall be granted to a design if

- (a) it satisfies the requirements of Sections 1 to 5;
- (b) it is not excluded from protection under Sections 6 to 9;
- (c) it is not excluded from protection under Section 10, or the holder of the earlier right does not make any observations against its protection under Section 10; and
- (d) the application therefor complies with the requirements laid down by this Act.

Chapter II. Rights and obligations CONFERRED BY a design and THE design protection ➡

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

Section 12

- (1) The person who has created the design shall be deemed to be the designer.
- (2) Unless a final court judgement rules to the contrary, the person mentioned as such in the application filed at the accorded date of filing shall be deemed to be the designer.
- (3) If two or more persons have created a design jointly, their shares of authorship shall be regarded as equal unless otherwise indicated.
- (4) Unless a final court decision rules to the contrary, the shares of authorship stated in the application filed at the accorded date of filing or as determined in paragraph (3) shall be deemed applicable.

(5) The designer shall have the right to be mentioned as such in the design protection documents. Published design protection documents shall not mention the designer if he so requests in writing.

(6) The designer shall be entitled to institute legal proceedings under the Civil Code against any person contesting his authorship or otherwise infringing his moral rights deriving from the design.

(7) Prior to the publication of the design application, the design may only be disclosed with the consent of the designer and/or his successor in title.

Right to design protection

Section 13

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

(2) Unless a final court judgement or other official decision rules to the contrary, the right to design protection shall belong to the person who filed the application with the earliest date of priority.

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

(4) With respect to the joint right to design protection and joint design protection, the provisions of the Act on the protection of inventions by patents (hereinafter referred to as 'the Patent Act') concerning the joint right to a patent and joint patent shall apply *mutatis mutandis*.

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

Service designs and employee designs

Section 14

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

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

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

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

other way.

(5) In any other matters pertaining to service and employee designs and to the remuneration of the designer, the provisions of the Patent Act on service and employee inventions shall apply *mutatis mutandis*, with the following exceptions:

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

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

(c) remuneration shall only be due to the designer for the exploitation of a service design to which design protection extends.

(6) In the case of designs created by persons working in public service, by persons in service relationship³ or by members of a co-operative working within the framework of a legal relationship of an employment nature, the provisions of paragraphs (1) to (5) shall apply *mutatis mutandis*.

Establishment of design protection

Section 15

(1) Design protection shall begin with the publication of the design application. The protection shall be effective retroactively from the date of filing.

(2) Protection resulting from publication shall be provisional. It shall become definitive if design protection is granted to the applicant.

Rights conferred by design protection

Section 16

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

(2) On the basis of the exclusive right of exploitation, the holder of the design right shall be entitled to prevent any person not having his consent from exploiting the design.

(3) Exploitation shall cover, in particular, the manufacture, use, putting on the market, offering for sale, importation, exportation of the product according to the design and the stocking of such product for those purposes.

Limitations of the design protection

Section 17

(1) Design protection shall not entitle the holder of the design right to prohibit a third person from

- (a) acts done privately or for non-commercial purposes;
 - (b) acts done for experimental purposes, including experiments and tests necessary for the authorisation of the marketing of the product constituting the subject matter of the design;
 - (c) acts done for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice, do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
- (2) Subject to reciprocity, design protection shall have no effect with respect to means of transport which are in transit in the territory of the country or to goods of foreign origin which are not put on the market in the country. The President of the Hungarian Patent Office shall be competent to give a ruling on matters of reciprocity.

Exhaustion of the rights conferred by design protection

Section 18

The exclusive right of exploitation conferred by design protection shall not extend to acts concerning a product put on the domestic market⁴ by the holder of the design right or with his express consent.

Term of design protection

Section 19

- (1) Definitive design protection shall have a term of five years beginning on the date of filing.
- (2) Design protection shall be renewable for further periods of five years each, four times at the most. In the event of renewal, the new period of protection shall begin on the date following the date of expiration of the previous period.
- (3) Protection shall not be renewable after the expiration of twenty-five years from the date of filing.

Scope of design protection

Section 20

- (1) The scope of design protection shall be determined by features affecting the appearance of the whole or a part of the product which can be determined on the basis of the photograph, drawing or other graphical representation deposited in the Design Register (hereinafter referred to together as 'representation') and the partial disclaimer [paragraph (2) of Section 48], if any.
- (2) The scope of the design protection shall extend to all designs which do not produce a different overall impression on the informed user.
- (3) In assessing the scope of protection, the degree of freedom of the designer in developing the design shall be taken into consideration, with particular regard to the nature of the product and the characteristics of the industrial or handicraft sector.

The design and design protection as objects of property

Section 21

(1) Rights conferred by a design and the design protection, with the exception of moral rights, may be transferred, assigned and pledged. A right of pledge as a mortgage security shall only be established if the mortgage contract is made in writing and the mortgage is entered in the Design Register.

(2) Under an agreement of exploitation (design license agreement) the holder of the design right licenses the right to exploit a design and the person exploiting the design is required to pay royalties. With respect to design license agreements, the provisions of the Patent Act concerning patent license agreements shall apply mutatis mutandis.

Chapter III. INFRINGEMENT OF DESIGNS AND DESIGN PROTECTION



Infringement of designs

Section 22

Where the subject matter of a design application or design protection has been taken unlawfully from the design of another person, the injured party or his successor in title may claim a statement to the effect that he is entitled wholly or partly to the design protection and may claim damages under the rules of civil liability.

Infringement of design protection

Section 23

(1) Any person who unlawfully exploits a protected design commits infringement of design protection.

(2) The holder of the design right may have recourse to the civil remedies against the infringer in the same way as a patentee, by virtue of the Patent Act, may have recourse thereto against the infringer of his patent.

(3) In the event of the infringement of design protection, the provisions of the Patent Act shall apply mutatis mutandis to the rights of the applicant and of the licensee authorised under a license agreement.

Ruling on lack of infringement

Section 24

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

(2) Where a final ruling on lack of infringement has been given, infringement proceedings in relation to the protection of the specified design may not be instituted in respect of the same

product.

Chapter IV. LAPSE OF DESIGN PROTECTION ➔

Lapse of provisional design protection

Section 25

Provisional design protection shall lapse ex tunc:

- (a) if the design application is definitely rejected;
- (b) if the applicant surrenders protection.

Lapse of definitive design protection

Section 26

Definitive design protection shall lapse:

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

Surrender of design protection

Section 27

(1) The applicant named in the Register of Design Applications or the holder of the design right named in the Design Register may surrender design protection by a written statement addressed to the Hungarian Patent Office.

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

(3) If protection has been granted for several designs, surrender shall also be possible in respect of a part of those designs.

(4) Withdrawal of the surrender of design protection shall have no legal effect.

Invalidation and limitation of the design protection

Section 28

(1) Design protection shall be declared invalid:

(a) if the subject matter of the design protection does not satisfy the requirements laid down in Sections 1 to 10;

(b) if the representation deposited in the Design Register does not present the design in a manner prescribed by this Act (Section 39);

(c) if the subject matter of design protection differs from the design presented in the application filed at the accorded date of filing or, in case of division, in the divisional application;

(d) if design protection has been granted to a person not entitled to it under this Act.

(2) Instead of invalidation, design protection may be maintained in an amended form [paragraphs (1) and (2) of Section 48], provided that with the amendment no ground for invalidation subsists.

(3) If, in case of design protection granted for several designs, the grounds for invalidation affect some of the designs under design protection, the design protection shall be limited to the rest of the designs.

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

Reclaiming of royalties

Section 29

If definitive design protection lapses ex tunc, only the part of the royalties paid to the holder of the design right or the designer that was not covered by the profits derived from the exploitation of the design may be reclaimed.

PART TWO. PROCEDURES BEFORE THE HUNGARIAN PATENT OFFICE ➡

IN DESIGN MATTERS

Chapter V. GENERAL PROVISIONS GOVERNING DESIGN PROCEDURES ➡

Competence of the Hungarian Patent Office

Section 30

The Hungarian Patent Office shall have competence in the following design matters:

(a) grant of design protection,

(b) renewal of design protection,

- (c) division of design protection,
- (d) decision on lapse of design protection,
- (e) invalidation of design protection,
- (f) decision on lack of infringement,
- (g) registration of design applications and design protection,
- (h) official information.

Application of the general rules of administrative procedure

Section 31

The Hungarian Patent Office shall proceed in design matters under its own competence, with the exceptions laid down by this Act, by applying the provisions of the Act on the general rules of administrative procedure.

Decisions of the Hungarian Patent Office

Section 32

(1) In invalidation procedures and in procedures for a decision on lack of infringement, the Hungarian Patent Office shall proceed in the form of a board of three members; the board shall act on a majority.

(2) Decisions on merits of the grant of the design protection, of the renewal of the design protection, of the division and lapse of the design protection, of the invalidation of design protection and of lack of infringement shall be considered substantive decisions.

(3) Decisions of the Hungarian Patent Office shall become final upon service unless its review is requested.

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

(5) The decisions of the Hungarian Patent Office in design matters may be repealed or altered by the court in accordance with the provisions of Chapter IX.

Other general provisions governing design procedures

Section 33

(1) Subject to paragraphs (2) and (3), in issues not regulated in Sections 30 to 32 the general provisions governing patent procedures shall apply mutatis mutandis to design matters before the Hungarian Patent Office.

(2) In design matters 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 [Section 40(2)];

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

(3) In design matters the provisions on the treatment of patent applications as State secret shall not apply.

Chapter VI. Registration of design Matters, Information to the Public ➡

Register of Design Applications, Design Register

Section 34

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

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

(a) registration number of the design;

(b) reference number;

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

(d) denomination of the product according to the design;

(e) name (official designation) and address (principal place of business) of the holder of the design right;

(f) name and principal place of business of the representative;

(g) name and address of the designer;

(h) date of filing;

(i) priority data;

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

(k) renewal or division of the design protection;

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

(m) exploitation licenses.

(3) Any right in relation to design protection may only be invoked against a third person who acquired his right in good faith and for a consideration, if it has been recorded in the Design

Register.

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

(5) The provisions of the Patent Act on the recording of entries in the Patent Register shall apply mutatis mutandis to entries in the Design Register.

(6) Following publication of the applications, the provisions of paragraphs (3) to (5) shall apply mutatis mutandis to the Register of Design Applications.

Information to the public

Section 35

In the official journal of the Hungarian Patent Office the following data and facts relating to design applications and design protection shall be published, in particular:

(a) communication of certain data, the name and address of the applicant and the representative, the reference number of the application, the date of filing and the date of priority where the latter is different, as well as the denomination of the product according to the design;

(b) in case of communication of data of international applications, the number of the international publication in addition to the data listed in paragraph (a);

(c) publication of the design application, the data listed in paragraph (a) and the name of the designer, the international classification code of the product according to the design under the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter referred to as 'the international classification') and the representation of the design;

(d) after the grant of design protection, the registration number, the name and address (principal place of business) of the holder of the design right, the name and principal place of business of the representative, the reference number, the date of filing and the date of priority, the denomination of the product according to the design and its international classification code, the name and address of the designer and the date of the decision on grant;

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

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

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

Chapter VII. procedure for granting Design Protection ➔

Filing of design application and its requirements

Section 36

(1) The procedure for the grant of design protection shall begin with the filing of a design application with the Hungarian Patent Office.

(2) A design application shall contain a request for the grant of protection, the representation of the design, the denomination of the product according to the design and, if necessary, other relevant documents.

(3) Detailed formal requirements, which design applications are to be complied with shall be laid down by special legislation.

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

(5) Until publication, the applicant may withdraw the design application in compliance with the provisions of Section 27. The Hungarian Patent Office shall take note of the withdrawal by a decision.

Date of filing

Section 37

(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 design protection is sought,
- (b) information identifying the applicant,
- (c) the representation of the design and the denomination of the product according to the design, even though they do not comply with other requirements.

(2) Instead of filing the representation of the design and the denomination of the product according to the design, reference to a priority document shall suffice to accord a date of filing for the application.

Unity of the design

Section 38

(1) A design application may seek protection for one design only or for a group of designs linked by common features affecting the overall impression produced on the informed user, provided that the products according to the designs belong to the same class of the international classification.

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

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

Representation of the design

Section 39

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

Priority

Section 40

(1) The date establishing priority shall be:

(a) generally, the date of filing of the design application (application priority),

(b) in the cases defined in 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 Official Gazette, the starting day of displaying the design 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 design application for the same design, which is not earlier than 6 months prior to the current filing, provided that there was no other priority claimed in relation thereto (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. With respect to the certification of exhibition, the provisions of the Patent Act relating to the certification of exhibition shall apply *mutatis mutandis*.

(3) If internal priority is claimed, the previous design application shall be deemed withdrawn.

(4) If one or more priorities are claimed with respect to a design application seeking protection for several designs, such priority shall cover only those designs that are presented by the application establishing the given priority in accordance with Section 39.

Examination on filing

Section 41

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

(a) the application satisfies the requirements for according a date of filing (Section 37),

(b) the filing fee has been paid [Section 36(4)].

(2) In any other matters, the provisions of the Patent Act relating to examination on filing shall apply *mutatis mutandis* to examination on filing of a design application.

Communication of certain data

Section 42

If, either on filing or as a result of a remedy, a design application complies with the requirements prescribed for according a date of filing, the Hungarian Patent Office shall publish the official information specified in Section 35(a) in its official journal (communication of certain data).

Examination as to formal requirements

Section 43

If a design application satisfies the requirements examined under Section 41(1), the Hungarian Patent Office shall examine whether the formal requirements of Section 36(2) and (3) have been satisfied. With respect to this examination, the provisions of the Patent Act relating to examination as to formal requirements shall apply *mutatis mutandis*.

Novelty search

Section 44

(1) If a design application satisfies the requirements laid down in Section 41(1), the Hungarian Patent Office shall carry out a novelty search and shall draw up a search report on the basis of the representation of the design, with due regard to the denomination of the product according to the design.

(2) The search report shall mention those documents and data which may be taken into consideration in deciding whether the design represented in the application is new and has individual character.

(3) The search report together with copies of any cited documents shall be sent to the applicant upon request and on payment of a fee.

Publication

Section 45

(1) A design application shall be published after the expiry of nine months from the earliest date of priority.

(2) At the request of the applicant, the application may be published at an earlier date if it satisfies the requirements of Section 41(1).

(3) At the request of the applicant, publication shall be deferred. The request therefor shall be submitted not later than two months before the expiry of the period applicable under paragraph (1) or of the period of the previous deferment. If the request for deferment of publication is withdrawn, the design application shall be published at the expiry of the period applicable under paragraph (1) or immediately.

(4) Publication of a design application may not be deferred for more than 30 months from the earliest date of priority.

(5) A fee prescribed by special legislation shall be paid for the deferment of publication within two months from the filing of the request therefor.

(6) If the fee for the deferment of publication has not been paid upon filing the request, the Hungarian Patent Office shall invite the applicant to fulfil that requirement within the period specified in paragraph (5). The request shall be deemed to be withdrawn in case of failure thereof.

(7) Publication shall be made by giving information to the public in the official journal of the Hungarian Patent Office as laid down in Section 35(c).

(8) The applicant shall be notified of the publication.

Observations

Section 46

(1) After publication any person, except for paragraph (2), may file an observation with the Hungarian Patent Office in the procedure for the grant of design protection to the effect that the design or the application therefor does not comply with any of the requirements for protection.

(2) Only the holder of an earlier right may file an observation on the basis of Section 10.

(3) The Hungarian Patent Office shall take into consideration that a design is excluded from protection on the basis of Section 10 only if the holder of the earlier right files an observation to this effect.

(4) Observations shall be taken into consideration when the requirement objected to in the observation is examined, unless they are made by a person not entitled to file an observation.

(5) The person submitting the observation shall not be a party to the procedure for the grant of design protection. That person shall be notified of the outcome of his observation by sending him the decision on the grant of design protection.

Substantive examination

Section 47

(1) If a design application satisfies the requirements laid down in Section 41(1), the Hungarian Patent Office shall carry out a substantive examination of the design application.

(2) The substantive examination shall assess

(a) whether the design meets the requirements of Sections 1 to 5 and whether it is not excluded from design protection under Sections 6 to 9, or, as a consequence of an observation of the holder of the earlier right to this effect under Section 10, and

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

(3) If a design application does not meet the requirements examined under paragraph (2),

the applicant shall be invited, according to the nature of the objection, to remedy the defects, to submit comments or to divide the application.

(4) A design application shall be rejected in whole or in part if it does not meet the examined requirements even after the remedy of the defects or the submitting of comments.

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

(6) If the applicant fails to reply to the invitation or to divide the application, he shall be deemed to have withdrawn the application or, after publication of the application, to have surrendered provisional protection.

Amendment and division

Section 48

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

(2) A statement of the applicant to the effect that a particular part of the representation does not belong to the design and protection is not claimed therefor shall be considered to be an amendment.

(3) The applicant shall be entitled to amend the application as laid down in paragraph (1) as long as the decision on the grant of design protection does not become final.

Section 49

(1) If the applicant has claimed protection for several designs in a single application, he may divide the application, retaining the date of filing and any earlier priority, if any, as long as the decision on the grant of design protection does not become final.

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

(3) If the fee for division has not been paid upon filing the request, the Hungarian Patent Office shall invite the applicant to fulfil that requirement within the period specified in paragraph (2). The request shall be deemed to be withdrawn in case of failure thereof.

Grant of design protection

Section 50

(1) If the design application and the design to which it relates meet all the requirements of the examination [Section 47(2)], the Hungarian Patent Office shall grant protection for the subject matter of the application after the expiry of one month from the date of publication.

(2) The grant of protection shall be recorded in the Design Register (Section 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Section 35).

(3) After the grant of protection, the Hungarian Patent Office shall issue a design certificate to which the extract from the Register shall be annexed.

Chapter VIII. Other Procedures in design Matters ➔

Renewal procedure

Section 51

(1) Design protection shall be renewed [Section 19(2)] by the Hungarian Patent Office at the request of the holder of the design right. Renewal of protection granted for several designs may also be requested in respect of only a part of those designs (partial renewal).

(2) The request for renewal shall indicate the registration number of the design protection to be renewed and, in the case of partial renewal, the designs concerned.

(3) The request for renewal may be submitted not earlier than six 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 request therefor.

Section 52

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

(2) The request for renewal shall be rejected if it does not comply with the requirements specified in the invitation even after the remedy of the defects or the submitting of comments. Where the requesting party does not reply to the invitation within the fixed time limit, the request for renewal shall be deemed withdrawn.

(3) If the fee for the request for renewal has not been paid, the Hungarian Patent Office shall invite the requesting party to fulfil that requirement within the period specified by this Act. The request shall be deemed to be withdrawn in case of failure thereof.

Section 53

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

(2) The renewal shall be recorded in the Design Register (Section 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Section 35).

Procedure for division

Section 54

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

(2) A request for division of design protection shall be filed in as many copies – in

conformity with each other and with the manner of division – as the number of the parts is into which the initial protection is to be divided.

(3) The request for division shall contain the registration number of the initial design protection; the provisions concerning the requirements for design applications [Section 36(2) and (3)] shall apply *mutatis mutandis* to the request and its supporting documents.

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

Section 55

(1) If the request for division does not comply with the requirements laid down in Section 54(1) to (3), the holder of the design right shall be invited to remedy the defects.

(2) The request for division shall be rejected if it does not comply with the requirements specified in the invitation even after the remedy of the defects or the submitting of comments. If the holder of the design right does not reply to the invitation, the request for division shall be deemed withdrawn.

(3) If the fee for the request for division has not been paid, the Hungarian Patent Office shall invite the holder of the design right to fulfil that requirement within the period specified by this Act. The request shall be deemed to be withdrawn in case of failure thereof.

Section 56

(1) If the request meets the requirements laid down in Section 54, the Hungarian Patent Office shall divide design protection.

(2) The division of design protection shall be recorded in the Design Register (Section 34), and information shall be given thereon in the official journal of the Hungarian Patent Office (Section 35).

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

Invalidation procedure

Section 57

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

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

(3) The request for invalidation shall be filed with the Hungarian Patent Office with a copy for each holder of the design right 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 paid for the request for invalidation within two months from the filing of the request.

(5) If the request for invalidation does not comply with the requirements laid down in this Act, the requesting party shall be invited to remedy the defects; if the fee for the request has not been paid, the requesting party shall be invited to fulfil that requirement within the period specified by this Act. Failure to remedy the defects shall result in the request for invalidation being deemed withdrawn.

Section 58

(1) The Hungarian Patent Office shall invite the holder of the design right to submit comments on the request for invalidation. Following written preparatory work, it shall decide at a hearing on the invalidation, maintenance in an amended form, limitation of the design protection or refusal of the request.

(2) If there are several requests for the invalidation of the same design protection, they shall be dealt with together, if possible.

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

(4) The losing party shall bear the costs of the invalidation procedure.

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

Procedure for a decision on lack of infringement

Section 59

(1) A request for a decision on lack of infringement (Section 24) shall be filed with the Hungarian Patent Office with a copy for each holder of the design right plus one additional copy. The request shall contain the representation of the product exploited or intended for exploitation, as well as the representation of the design of the protection involved.

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

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

(4) If the request for a decision on lack of infringement does not comply with the requirements laid down by this Act, the requesting party shall be invited to remedy the defects; if the fee for the request has not been paid, that party shall be invited to fulfil that requirement within the period specified by this Act. Failure to remedy the defects shall result in the request for a decision on lack of infringement being deemed withdrawn.

Section 60

(1) The Hungarian Patent Office shall invite the holder of the design right to submit comments on the request for a decision on lack of infringement. Following written preparatory work, it shall decide at a hearing whether the request shall be admitted or refused.

(2) The requesting party shall bear the costs of the procedure for a decision on lack of infringement.

PART THREE. COURT PROCEEDINGS IN DESIGN CASES ➔

Chapter IX. Review of Decisions of the Hungarian Patent Office ➔

Request for review

Section 61

(1) Upon request, the court may repeal or alter (hereinafter referred to together as 'review') decisions on merits taken by the Hungarian Patent Office [Section 32(2)], as well as its decisions declaring interruption of procedure, suspending procedure or furnishing a basis for entries in the Register of Design Applications or the Design Register.

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

(a) who was a party to the procedure before the Hungarian Patent Office, or

(b) who has legal interest in the review of the decision and has submitted an observation in the procedure before the Hungarian Patent Office (Section 46).

(3) Review of a decision on the invalidation of design protection may also be requested by the designer of a service design. Review of a decision on the grant and invalidation of design protection may be requested by the public prosecutor under Section 7 or 8.

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

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

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

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

Other rules governing court proceedings

Section 62

The provisions on court proceedings for the review of decisions taken by the Hungarian Patent Office in patent matters shall apply in court proceedings for the review of decisions taken by the Hungarian Patent Office in design matters.

Chapter X. DESIGN LITIGATION ➔

Rules governing design litigation

Section 63

(1) Court proceedings concerning the infringement of a design or design protection and the establishment of continued use [Section 65(8)] shall constitute design litigation.

(2) The provisions on patent litigation shall apply mutatis mutandis to design litigation.

(3) In any other design litigation not mentioned in paragraph (1), the county courts (Metropolitan Court) shall proceed by applying mutatis mutandis the rules governing patent litigation.

PART FOUR. FINAL PROVISIONS ➔

Chapter XI. ENTRY INTO FORCE; MISCELLANEOUS, TRANSITIONAL AND AMENDING PROVISIONS ➔

Relationship to copyright

Section 64

Protection of a design provided for in this Act shall be without prejudice to the copyright protection under special legislation of the design as an artistic work.

Rules establishing provisions concerning the entry into force of this Act and transitional provisions

Section 65

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

(2) The provisions relating to restitutio in integrum shall also apply mutatis mutandis to pending matters.

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

(4) Exploitation commenced before the entry into force of this Act shall be subject to the previously applicable provisions with respect to the rights conferred by and the scope, limitations and infringement of the design protection to the extent of the exploitation at the date of the entry into force of this Act.

(5) Renewal of design protection valid at the date of entry into force of this Act shall be subject to the provisions of this Act. This provision shall apply mutatis mutandis if the date of expiration of the term of protection is not earlier than six months prior to the date of entry into force of this Act and no request for renewal was filed according to the previously applicable provisions until the entry into force of this Act.

(6) If design protection extended before the entry into force of this Act is renewed after the

entry into force thereof, the provisions of this Act shall apply to the invalidation of design protection, provided that in the case of invalidation design protection shall lapse with retroactive effect to the date of expiration of the extended protection.

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

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

(9) Invalidation of re-established design protection shall be subject to the provisions of this Act except that in the case of invalidation design protection shall lapse with retroactive effect to the date of entry into force of this Act.

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

(11) Any mention of industrial design or industrial design protection in legislation shall mean design or design protection.

Repealed provisions

Section 66

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

(a) Law Decree No. 28 of 1978 on the protection of industrial designs, Section 40 of Act XXXVIII of 1991, Sections 9 to 11 of Act VII of 1994, Section 120(d)-(f) of Act XI of 1997 and Section 37(1)-(3) of Act LXXII of 1997;

(b) the words 'the exploitation thereof' in paragraph (2) of Section 17, Section 31 and point (b) of paragraph (1) of Section 38 of Act XXXVIII of 1991 on the legal protection of utility models (hereinafter referred to as 'the Utility Model Act');

(c) the words 'publication or' in Section 6(2) of Act XXXIII of 1995 on the protection of inventions by patents (hereinafter referred to as 'the Patent Act');

(d) Section 1(5) of Act LXXVI of 1999 on copyright (hereinafter referred to as 'the Copyright Act').

Amending and transitional provisions

Section 67

(1) Simultaneously with the entry into force of this Act,

(a) Sections 8 and 9 of the Utility Model Act shall be replaced by the following provisions:

"Section 8

The provisions on service and employee inventions shall apply mutatis mutandis to utility models created by persons working in public service, by persons in service relationship⁵ or by members of a co-operative working within the framework of a legal relationship of an employment nature.

Section 9

In any other matters pertaining to the moral rights of the inventor of the utility model and the rights to utility model protection, the provisions of the Act on the protection of inventions by patents (hereinafter referred to as 'the Patent Act') concerning the moral rights of the inventor and the right to a patent shall apply mutatis mutandis."

(b) the following subparagraph (c) shall be added to Section 24(1) of the Utility Model Act:

(Utility model protection shall be declared null and void if)

"(c) the subject matter of utility model protection extends beyond the content of the application as filed at the accorded date of filing or – in the case of division – beyond the content of the divisional application."

(c) Section 30(1) and (2) of the Utility Model Act shall be replaced by the following:

"(1) Where the applicant has already filed a patent application at an earlier date, he may, in his declaration filed within two months after the date of filing of a utility model application for the same subject matter, claim the filing date of the patent application and the right of priority relating to such application (derivation).

(2) The priority and filing dates of the patent application shall only apply by derivation to the utility model application, if the derived utility model application is filed with the Hungarian Patent Office

(a) in the course of the patent application procedure as long as the decision on the grant of a patent does not become final or within three months from the date on which the decision rejecting the patent application becomes final, or

(b) within three months from the date on which the decision on the revocation of a patent for lack of novelty or inventive activity becomes final."

(d) Section 35 of the Utility Model Act shall be replaced by the following:

“Section 35

The Hungarian Patent Office shall carry out the substantive examination of the utility model application with regard to the following aspect:

- (a) whether the subject matter of the application is a utility model;
- (b) whether the subject matter of the application is susceptible of industrial application;
- (c) whether the subject matter of the application is excluded from utility model protection under Section 5(2);
- (d) whether the description meets the requirements laid down by this Act (Section 32);
- (e) whether the application meets the requirement of unity;
- (f) whether priority has been claimed properly.”

(e) the following paragraph (2) shall be added to Section 36 of the Utility Model Act and paragraph (2) shall become paragraph (3):

“(2) If, for the application of Section 2(4), the written description or public use made by or with the consent of the applicant or his predecessor in title was due to the fact that the applicant or his predecessor in title or any other person with their consent have displayed the utility model at an exhibition defined in the communication by the President of the Hungarian Patent Office published in the Hungarian Official Gazette, the provisions of the Patent Act shall apply mutatis mutandis to the declaration and certification of exhibition.”

(f) Section 15(2) of the Patent Act shall be replaced by the following provision and the following paragraph (3) shall be added to Section 15 of the Patent Act:

“(2) The parties may derogate by mutual consent from the provisions relating to the contract of remuneration, in particular from those laid down in Section 13(7)-(9). A contract of remuneration may also be concluded in which a remuneration of a fixed amount is stipulated with respect to the inventions of the inventor to be created or exploited in the future (contract of remuneration aiming at risk sharing).

(3) Matters relating to contracts of remuneration that are not covered by this Act shall be governed by the provisions of the Civil Code.”

(g) Section 17 of the Patent Act shall be replaced by the following:

“Section 17

In the case of inventions created by persons working in public service, by persons in service relationship⁶ or by members of a co-operative working within the framework of a legal relationship of an employment nature, the provisions of Sections 9 to 16 shall apply mutatis mutandis.”

(h) Section 19(6)(b) of the Patent Act shall be replaced by the following:

(The exclusive right of exploitation shall not extend to)

“(b) acts done for experimental purposes relating to the subject matter of the invention, including experiments and tests necessary for the marketing authorisation of the product constituting the subject matter of the invention or the product obtained through the process constituting the subject matter of the invention;”

(i) Section 2(2) and (3) of Act XI of 1997 on the protection of trademarks and geographical indications (hereinafter referred to as ‘the Trademark Act’) shall be replaced by the following:

“(2) A sign shall be excluded from trademark protection if:

a) it is devoid of any distinctive character, in particular if 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)(a) if, either before or after the date of priority, it has acquired a distinctive character.”

(j) Section 3(1)(a) of the Trademark Act shall be replaced by the following:

(A sign may not be granted trademark protection if)

(a) its use would be contrary to public policy or public morality;”

(k) Section 1(4) of the Copyright Act shall be replaced by the following:

“(4) The protection provided by this Act shall not cover laws and regulations, other means of State direction, court and other official decisions, announcements and documents of an authority or other official organs, as well as standards declared mandatory by legislation and other similar regulations.”

(l) Section 6(1) of the Copyright Act shall be replaced by the following:

“(1) In case of a collective work (e.g. a national standard), the copyright shall be transferred by legal succession to the natural or legal person or economic organisation without legal entity at whose initiative and under whose instructions the work was created and who disclosed it to the public under his own name.”

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

(3) With respect to the conditions of nullity of utility model protection valid at the date of entry into force of this Act, the provisions applicable at the date of priority shall be decisive.

(4) The provisions laid down in paragraph (1)(k) and Section 66(d) shall also apply to standards, measures and drafts thereof brought about before the entry into force of this Act, except that utilisation commenced before the entry into force of this Act may be continued

for one year to the extent existing at the date of entry into force.

Authorisation

Section 68

The Minister of Justice shall be authorised to establish by decree, in agreement with the President of the Hungarian Patent Office, the detailed formalities for design applications.

Approximation to European Community legislation

Section 69

The provisions of this Act are fully compatible with Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs, in accordance with Section 3 of Act I of 1994 on the promulgation of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, signed in Brussels on 16 December 1991.