

Law No. VII of 1994 Amending Industrial Property and Copyright Legislation

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Intellectual & Industrial Property, Law (Amendment), 08/02/1994.

In order to meet the international obligations of the Republic of Hungary and to modernize the regulations relating to different forms of intellectual property, the Parliament hereby adopts the following Law.¹

Chapter I. AMENDMENTS TO INDUSTRIAL PROPERTY LEGISLATION



Amendments to Law No. II of 1969 on the Protection of Inventions by Patents

Section I

(1) The following provision shall be substituted for the second sentence of Section 11(1) of the Law No. II of 1969 on the Protection of Inventions by Patents (hereinafter referred to as “the Patent Law”):

“The exclusive right or exploitation shall include the making, using, importing and putting on the market of the subject matter of the invention within the framework of economic activity.”

(2) The following provision shall be substituted for Section 11(3) of the Patent Law:

“In the absence of proof to the contrary, a product shall be deemed to have been obtained by the patented process, if the product is new or a substantial likelihood exists that the product was made by the patented process and the patentee has been unable, despite reasonable efforts, to determine the process actually used. A substantial likelihood that the product was made by the patented process exists, in particular, when the patented process is the only one known.”

Section 2

The following provision shall be substituted for Section 21 of the Patent Law:

“21 If within four years from the date of filing of the patent application, or within three years from the grant of the patent, whichever period expires last, the patentee has not worked the invention in the territory of the country to satisfy the domestic demand or if he has not undertaken serious preparations or has not granted a license for such purpose, a compulsory license shall be granted, on request, to an enterprise having domicile in the

country (Section 685(c) of the Civil Code is relevant for defining persons in this category), unless the patentee justifies the lack of working.

Section 3

The following provision shall be substituted for Section 22 of the Patent Law:

“22 (1) If the patented invention cannot be worked without infringing another patent (hereinafter referred to as “the dominant patent”), a compulsory license shall be granted, on request and to the extent necessary for the working of the dominant patent, to the owner of the dependent patent, provided that the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed in the dominant patent.

(2) Where a compulsory license has been granted under paragraph (1) in respect of a dominant patent, the owner of such patent shall be entitled on reasonable terms to a license to work the invention claimed in the dependent patent according to the common provisions on compulsory licenses.”

Section 4

(1) The following provision shall be substituted for Section 23(1)(a) of the Patent Law:

(Anybody applying for a compulsory license shall establish that the requirements for a compulsory license are complied with, further that:)

“a) the patentee was unwilling to grant a voluntary license to work the patent under appropriate conditions and within a reasonable period of time, and”.

(2) The following provision shall be substituted for Section 23(2) of the Patent Law:

“(2) The scope and duration of a compulsory license shall be established by the court, taking into account the purpose of the working authorized by the compulsory license; a compulsory license may be granted with or without limitation. Unless renounced or cancelled, a compulsory license shall have effect until expiration of the duration fixed by the court or of patent protection. Compulsory licenses shall be non-exclusive; they shall be recorded in the Patent Register.”

(3) The following sentence shall be added to Section 23(3) of the Patent Law:

“The remuneration shall take into adequate account the economic value of the compulsory license. In particular, it shall be commensurate with the remuneration the holder of the compulsory license would have paid on the basis of a contract to work concluded with the patentee, taking into account the licensing conditions applying in the technical field of the invention.”

(4) The following provision shall be substituted for Section 23(5) of the Patent Law:

“(5) If the enterprise holding a compulsory license ceases to exist or if any of its organizational units is separated, the compulsory license shall be transferred to the successor in title. A compulsory license granted in respect of a dominant patent may only be assigned together with the dependent patent. However, a compulsory license may not be assigned or transferred to any other person. The holder of a compulsory license may not grant a license to work.”

(5) The following paragraph (7) shall be added to Section 23 of the Patent Law:

“(7) The patentee may request modification or cancellation of a compulsory license if the circumstances on which it was based cease to exist and are unlikely to recur. Modification or cancellation shall take a form that does not prejudice the legitimate interests of the holder of the compulsory license.”

Section 5

The following second sentence shall be added to Section 40(2) of the Patent Law:

“Detailed formal requirements for patent applications shall be prescribed by special decree.”

Section 6

Sections 6(3)(a) and 24, the words “(a) or” in Section 45(b), the words “fixing the amount of damages for exploitation” in Section 66(1) of the Patent Law and Sections 3(1), 6, 9 and 10 of Joint Decree No. 4/1969(XII.28.)OMFB-IM on the implementation of the Patent Law shall be deleted.

Amendments to Law No. IX of 1969 on Trademarks

Section 7

The following provision shall be substituted for the first sentence of Section 21(2) of the Law No. IX of 1969 on Trademarks (hereinafter referred to as “the Trademark Law”):

“The National Office of Inventions may withdraw or modify its decisions on trademark matters taken on merits only as the result of a request for review made prior to transmittal to the court.”

Section 8

The following provision shall be substituted for Section 37(4) of the Trademark Law:

“(4) The request shall be submitted to the National Office of Inventions which shall forward, it, together with the relevant documents, to the court within fifteen days.”

Amendments to Decree-Law No. 28 of 1978 on the Protection of Industrial Designs

Section 9

(1) The following provision shall be substituted for Section 4(1) of the Decree-Law No. 28 of 1978 on the Protection of Industrial Designs (hereinafter referred to as “the Designs Law”):

“(1) In the event of licensing or transfer, the owner of design protection shall be entitled to a license fee or the purchase price, respectively; where the design is exploited, the author of an employee’s design shall be entitled to remuneration commensurate with the economic result. The amount of the royalty or of the purchase price to be paid to the owner of design protection, as also the amount and other conditions of the remuneration due to the author of the design, shall be governed by contract concluded with the licensee, the transferee or the employer.”

(2) The following provision shall be substituted for Section 4(3) of the Designs Law:

“(3) Disputes concerning remuneration due to the author of an employee’s design shall be within the competence of the court.”

Section 10

(1) The following provision shall be substituted for Section 6(1) of the Designs Law:

“(1) The owner of industrial design protection shall have the exclusive right — as laid down by legislation — to manufacture, put on the market and import a product embodying the design within the framework of economic activity (working) or to grant a license to work to another person.”

Section 11

(1) The following provision shall be substituted for Section 16(4) of the Designs Law:

“(4) The request shall be submitted to the National Office of Inventions which shall forward it together with the relevant documents to the court, within fifteen days.”

(2) In Section 16(3) of the Designs Law, the words “to the National Office of Inventions or to the court” shall be deleted.

Amendments to Law No. XXXVIII of 1991 on Utility Model Protection

Section 12

In Section 12 of Law No. XXXVIII of 1991 on Utility Model Protection the words “within the framework of economic activity” shall be substituted for the words “for commercial purposes” and, in Section 17(2), the words “the exploitation of a utility model in the interest of national defense” shall be deleted.

Chapter II. AMENDMENTS TO COPYRIGHT LEGISLATION ➔

Amendments to Law No. III of 1969 on Copyright

Section 13

The following provision shall be substituted for Section 1(2) of the Law No. III of 1969 on Copyright (hereinafter referred to as the Copyright Law):

“(2) This Law shall provide protection for the activities related to the creative work of authors and also for the activities of performers, producers of sound recording, radio and television organizations and of those who transmit their own program by wire to members of the public.”

Section 14

The following provision shall be substituted for Section 15 of the Copyright Law:

“(1) The economic rights shall be protected during the lifetime of the author and for seventy years counted from his death.

(2) The seventy-year term of protection shall be calculated from the first day of the year following the author’s death and, in case of co-authors /5(1)/, from the first day of the year following the death of the last of co-authors to die.

(3) If the identity of the author cannot be established, the term of protection shall be seventy years following the year in which the work is first made available to the public. If, however, during this term the author presents himself, paragraph (2) shall apply to the calculation of the term of protection.

(4) The term of protection of films shall be seventy years calculated from the first day of the year following their showing.”

Section 15

(1) The following provision shall be substituted for Section 18(2) of the Copyright Law:

“(2) The public lending of copies of the work, except for the lending of computer programs and with the restrictions referred to in paragraph (3), shall be free use.”

(2) The following paragraph (3) shall be added to Section 18 of the Copyright Law:

“(3) The public lending of copies of cinematographic and other audio-visual works and of works incorporated in sound recordings shall be deemed as free use only in case of public libraries operating as a budgetary organization².”

Section 16

The following provision shall be substituted for Section 34 of the Copyright Law:

“34 (1) Under a contract for broadcasting, the author shall make the work available to the radio or television organization. The radio or television organization shall, for the period of time stipulated in the contract, acquire the right to broadcast the work and the right to make sound and visual fixation thereof with his own devices and for its own purposes, and also the right to subtitle the fixation.

(2) The additional consent of the author shall be required to a fixation which enables repeated broadcast.

(3) A remuneration shall be due for each use of the fixation.

(4) If the use of a work created for broadcasting purposes does not take place within the period of time stipulated in the contract, or, in the absence of such stipulation, within a reasonable period of time, the author shall be entitled to terminate the contract forthwith and to demand payment of his remuneration.

(5) On behalf of writers, composers and lyricists — except for the use of literary works intended for stage presentation and musical works with dramatic composition or scenes and cross-sections thereof — the Bureau for the Protection of Authors’ Rights shall be entitled to enter into an agreement with the user concerning the broadcast of works already made available to the public and the authorization of their fixation as referred to in

paragraph (2) and also the amount of remunerations payable for the uses mentioned previously.

(6) The broadcast of the work by satellite shall also be deemed as a broadcast, provided that it is capable of being directly received by members of the public. A broadcast by satellite shall be regarded as capable of being directly received by members of the public if program carrying signals are transmitted, under the control and responsibility of the radio or television organization, to the satellite and from there down towards the Earth uninterruptedly, with the intention of being received by members of the public.

(7) The provisions in paragraphs (1) to (5) shall accordingly apply to the transmission of one's own program by wire to members of the public."

Section 17

The following provision shall be substituted for Section 35(2) of the Copyright Law:

"(2) The term of protection of such works shall be seventy calendar years following the year of first publication."

Section 18

The following Chapter XI shall be substituted for the present Chapter XI of the Copyright Law:

Chapter XI. Protection of Rights Neighbouring to Copyright The Protection of Performers

49 (1) Unless otherwise provided by this Law, the consent of the performer shall be required

a) to the fixation of his unfixed performance;

b) to the reproduction of a fixation of his performance, if the original fixation itself was made without his consent, if the reproduction is made for purposes different from those for which he gave his consent or if the original fixation was made in accordance with the provisions of Section 50/I.(2), and the reproduction is made for purposes different from those referred to in Section 50/I.(2);

c) to the broadcasting or other communication to the public of the performance, except where the performance broadcast or communicated is made from a fixation authorized for purposes of distribution or is itself already a broadcast performance.

(2) Participants of performers' groups shall exercise the rights referred to in paragraph (1) by way of their representative.

(3) Once the performer has consented to the fixation of his performance in a cinematographic or other audio-visual work, paragraph (1) shall have no further application. This provision shall have no effect on the performer's right to obtain remuneration under Sections 50/G and 50/J.

51 (1) Unless otherwise provided by this Law, a remuneration shall be due to the performer for the uses mentioned in Section 49(1).

(2) Concerning the remuneration for the fixation of a performance for purposes of broadcasting or transmission to members of the public, the provisions under Section 34 shall also apply accordingly to performers and their representative organizations.

50/A (1) In the case of uses mentioned in Section 49(1) the moral right to have his name indicated — depending on and corresponding to the nature of the use — shall be vested in the performer. In the case of performers' group this right shall cover the indication of the group's name, that of its leader and the principal participants.

(2) The distortion of a performer's performance is an infringement of his moral right.

Protection of Producers of Sound Recordings

50/B (1) Unless otherwise provided by this Law, the consent of the producer of sound recording shall be required

a) to make a copy, directly or indirectly, of his sound recording;

b) to the distribution of the copy of the sound recording to the public, including the importation of the sound recording into the country for such purposes.

(2) Unless otherwise provided by this Law, a remuneration shall be due to the producer of sound recording for the uses mentioned in paragraph (1).

50/C (1) If a sound recording published for commercial purposes, or a copy made of such sound recording is used directly for broadcasting or for any other communication to the public, the user shall pay an additional remuneration, supplementary to the remuneration paid for the use of copyright protected works, to which, unless otherwise agreed between the rightowners, the performer and the producer of sound recording is entitled half-and-half.

(2) The representative organizations of performers and producers of sound recordings shall be entitled to agree amongst each other and with the users on the amount, collection and distribution of the remuneration.

(3) The rightowners shall exercise their right to obtain remuneration by way of their representative organizations, and may renounce their remuneration only to the extent of their personal share and effective from a date following its distribution.

50/D (1) In addition to the consent of the author of the work incorporated in a sound recording, the consent of the producer of sound recording and, in the case of a sound recording of a performance, that of the performer shall also be required to the public lending and rental of copies of a sound recording distributed to the public.

(2) A remuneration shall be paid in return for the use defined under paragraph (1) of which, unless otherwise agreed amongst them, rightowners shall have equally proportioned shares. Authors and performers shall enforce their right to obtain remuneration by way of their representative organizations, and may renounce their remuneration only to the extent of their personal share and effective from a date following its distribution.

50/E The right to have his name indicated on the copies of the sound recording shall be vested in the producer of the sound recording.

Protection of Radio and Television organizations

50/F (1) Unless otherwise provided by this Law, the consent of the radio or television organization shall be required

a) to the broadcasting and communication to the public of its program by other radio or television organizations or by those who carry out transmission by wire to members of the public;

b) to the fixation of its program;

c) to the reproduction of its program following its fixation, if the fixation was made without its consent, or if the fixation was made in accordance with Section 50/I (2), and the reproduction is made for purposes different from those referred to in Section 50/I (2).

(2) Unless otherwise provided by this Law, the consent of the television organization shall also be required to the communication to the public of its program in such places that are accessible to members of the public against payment of an entrance fee.

(3) Unless otherwise provided by this Law, a remuneration shall be due for the uses mentioned in paragraphs (1) and (2).

(4) The provisions of paragraphs (1) to (3) shall accordingly apply to the transmission of one's own program by wire to members of the public.

50/G (1) The consent of the author, the radio or television organization and that of the one who transmits its own program by wire to members of the public shall be considered as given to the simultaneous transmission by wire of works broadcast or transmitted by wire in a program to the members of the public via an organization other than the original one, provided that the organization carrying out the simultaneous transmission has paid to the Bureau for the Protection of Author's Rights the fee established with the approval of the minister of culture and education. Prior to the establishment of the fee the opinion of the rightowners' representative organizations shall be requested.

(2) From the amount of fees paid in under paragraph (1) and remaining after deduction of costs, fifty per cent shall be due to the authors and copyright owners, thirty per cent to the performers, twenty per cent to the radio or television organizations and to those who transmit their own program by wire to members of the public.

(3) The share of fees due to authors and copyright owners shall be distributed by the Bureau for the Protection of Authors' Rights, based on a distribution scheme approved by the minister of culture and education.

(4) The share of fees due to performers shall be transferred by the Bureau for the Protection of Authors' Rights to their representative organization.

(5) The share of fees due to the radio or television organizations and to those who transmit their own program by wire to members of the public shall be transferred by the Bureau for the Protection of Authors' Rights to their representative organization or, in the absence of such organization, shall be distributed by the same, based on a distribution scheme approved by the minister of culture and education.

(6) The rightowners shall exercise their right to obtain remuneration by way of their representative organizations, and may renounce their remuneration only to the extent of their personal share and effective from a date following its distribution.

50/H In the case of uses mentioned in sections 50/F and 50/G the right to have its name indicated shall be vested in the radio or television organization and in those who transmit their own program by wire to members of the public.

Common Rules Regarding the Protection of Performers, Producers of Sound Recording and Radio and Television Organizations

50/I (1) The protection of rights provided for in this Chapter shall in no way effect the protection of copyright which subsists in literary, scientific and artistic creations.

(2) The consent of the performer, producer of sound recording, radio or television organization or that of the one who transmits its own program by wire shall not be required in cases where this Law does not require the consent of the author to the use of copyright protected works either.

50/J (1) With regard to the reproduction of their work, their performances and their sound recordings for private purposes a remuneration shall be due to the authors, performers and producers of works, performances and sound recordings respectively, broadcast in the program of radio and television organizations, incorporated in the program of those who transmit their own program by wire to members of the public or distributed to the public on sound or visual carriers.

(2) The fee mentioned in paragraph (1) shall be established, as approved by the minister of culture and education, by the Bureau for the Protection of Authors' Rights. Prior to settling the fee the opinion of performers' representative organizations and that of the producers of sound recording shall be requested. The fee shall be paid to the Bureau for the Protection of Authors' Rights by the manufacturer of blank sound and audio carrier within eight days following its distribution to the public, while in case of sound and video carriers manufactured abroad by the person being liable under the law to pay customs within eight days following completion of customs administration.

(3) The liability to pay the fee does not cover

a) distribution for exportation purposes, and

b) sound and video carriers operational exclusively on equipments (e. g. studio equipment, dictating machine) which, if used properly, are not suitable for reproducing copies of works for private purposes.

(4) From the amount of fees paid in and remaining after deduction of costs,

a) in case of sound carriers fifty per cent shall be due to the authors, thirty per cent to the performers, twenty per cent to the producers of sound recordings;

a) in case of video carriers seventy per cent shall be due to the authors and copyright owners, thirty per cent to the performers.

(5) The share of fees due to performers and producers of sound recordings shall be transferred by the Bureau for the Protection of Authors' Rights to their representative organization, respectively. The share of fees due to authors and copyright owners shall be distributed by the Bureau for the Protection of Authors' Rights, based on a distribution scheme approved by the minister of culture and education.

(6) The rightowners shall exercise their right to obtain remuneration by way of their representative organizations, and may renounce their remuneration only to the extent of their personal share and effective from a date following its distribution.

50/K The rights provided for in this Chapter shall be protected during the following periods of time:

a) sound recordings and performances incorporated therein shall be protected for fifty years calculated from the end of the year in which the sound recording was first distributed to the public or, if it was not distributed during this period of time, for fifty years calculated from the end of the year in which the sound recording was made;

b) unfixed performances shall be protected for fifty years calculated from the end of the year in which the performance was held;

c) a broadcast program or a program of one's own transmitted by wire to members of the public shall be protected for fifty years calculated from the end of the year in which the broadcasting or transmission was effected."

Section 19

a) Sections 17(3) and (22) to (24), as also the words "lastingly or substantially" in Section 52(2) of the Copyright Law;

b) Decree-Law No. 19 of 1975 on the Protection of the producers of sound recordings;

c) The second sentence in Section 8, Sections 14/A, 19, 24 and the second sentence in Section 39(1) of the Decree No. 9/1969. (XII.29.) MM on the implementation of Law No. III of 1969 on Copyright shall be deleted.

Chapter III. TRANSITIONAL PROVISIONS ➔

Claiming Product Protection in Pending Patent Matters

Section 20

(1) On the basis of a patent application filed before the entry into force of this Law concerning the production of a medicine, a product produced chemically or food used for human or animal consumption, the applicant may claim the protection, with an amended priority date (Section 43(1)(a) of the Patent Law) subsequent to the entry into force of this Law, also of the product itself until the decision on the grant of the patent becomes final, however, not later than one year from the date of entry into force of this Law.

(2) Rights deriving from patent protection granted for the product under paragraph (1) may only be enforced in respect of working subsequent to the amended priority date.

(3) Restoration of rights may not be considered in the event of failure to comply with the time limit laid down in paragraph (1) for claiming product protection.

Transitional Patent Protection

Section 21

Under the provisions of this Law, transitional patent protection shall be afforded to any pharmaceutical product — active substance or composition — that has been granted patent protection abroad before the expiration of one year from the date of entry into force of this Law, provided that the priority date of the foreign patent is

- a) at least twelve months earlier than the date of entry into force of this Law and
- b) it is not earlier than January 1, 1987.

Section 22

(1) Pharmaceutical products marketed in the country prior to the date of entry into force of this Law shall be excluded from transitional patent protection.

(2) The exclusive right deriving from transitional patent protection shall have no effect against a person who manufactured the pharmaceutical product in the country prior to the date of entry into force of this Law, provided that prior manufacture is proved by an appropriate official document issued by the competent authorities prior to the date of entry into force of this Law.

(3) The right to manufacture a pharmaceutical product belonging to an enterprise under paragraph (2) shall be transferred to the successor in title if the enterprise ceases to exist or any of its organizational units is separated; however, it may not be assigned or transferred to any other person.

Section 23

(1) Transitional patent protection shall subsist on the grant of such protection (Section 27); its effect shall be retroactive to the date of entry into force of this Law. The term of protection shall expire at the same time as the original term of the foreign patent.

(2) The annual fees for maintenance of transitional patent protection, prescribed by special decree, shall become due on the date of entry into force of this Law and in advance on the anniversaries of that date.

Section 24

Unless otherwise provided by this Law, the provisions of the Patent Law, of its implementing decree and of the decree concerning court procedure in patent matters shall apply *mutatis mutandis* with respect to the maintenance, scope, limitations and expiration of transitional patent protection, as well as the related succession in title, exploitation contracts and infringement

Section 25

In the case of transitional patent protection, the patent shall be cancelled if

- a) it did not meet the requirements of Section 21 or was excluded from transitional patent protection under Section 22(1),

b) the original foreign patent did not meet, at the date of priority, the requirements laid down in Sections 1 to 5 and Section 41(1) of the Patent Law or was excluded from patent protection under Section 6(3)(b) or (c) of the Patent Law.

Section 26

(1) The request for grant of transitional patent protection, stating the number of the original foreign patent and the name and address of the applicant, shall be submitted to the National Office of Inventions within one year from the date of entry into force of this Law. Transitional patent protection may not be claimed after the expiration of that time limit.

(2) The document certifying the grant of the original foreign patent, the description of that patent and the Hungarian translation of the description in two copies in a form that permits printing shall be enclosed with the request. The request shall be subject to the payment of a fee for administrative services prescribed by special decree.

(3) The documents specified in paragraph (2) shall be submitted not later than three months from the date of receipt of the request.

(4) Restoration of rights may not be considered in the event of failure to comply with the time limit for submitting the request for transitional patent protection and for the relevant documents, respectively.

Section 27

(1) The National Office of Inventions shall decide on the grant of transitional patent protection following examination of the requirements prescribed under Sections 21 and 26.

(2) The grant of the transitional patent protection shall be recorded in the Patent Register and published in the Official Gazette of the National Office of Inventions.

(3) The printed patent specification in Hungarian and the drawings shall be attached to the patent document issued on the grant of transitional patent protection; however, in the event of dispute, the text of the foreign patent description shall be considered authentic, except in cases where the scope of protection is narrower according to the text of the Hungarian description.

Section 28

Unless otherwise provided by this Law, the provisions of the Patent Law, of its implementing decree and of the decree concerning court procedure in patent matters shall apply *mutatis mutandis* to the application procedure for the grant of transitional patent protection and the procedures concerning the granted protection, including court procedures.

Transitional Provisions concerning Copyright Legislation

29(1) The provisions in Sections 14 and 17 shall not apply to works whose term of protection has already expired by the time this Law comes into force.

(2) Performers, producers of sound recordings, radio and television organization and those who transmit their own program by wire to members of the public shall not be entitled to the rights specified in this Law if twenty years already elapsed from the end of the year

mentioned in their respect in Section 50/K, as enacted by Section 18 of this Law.

Chapter IV. FINAL PROVISIONS ➔

Entry into Force

Section 30

This Law shall enter into force on July 1, 1994.

Authorization

Section 31

The Minister of Justice shall be authorized to establish by decree, in accord with the President of the National Office of Inventions, the detailed formalities to be complied with in patent applications.

1: Adopted by the Hungarian Parliament on its session of February 8, 1994 and published in the February 23, 1994 issue of the "Hungarian Gazette", the official Journal of the Republic of Hungary. ➔
