

LAW
ON LEGAL PROTECTION OF INDUSTRIAL DESIGN¹

I. GENERAL PROVISIONS

Article 1

This Law regulates the method of acquisition of the right to the appearance of an industrial or handicrafts product (hereinafter referred to as: the product), and the protection thereof, respectively.

The appearance of a product shall be understood to mean the overall visual impression produced by the product on an informed consumer or user.

An informed consumer or user, for the purpose of this Law, shall be a natural person who is regularly in contact with the product concerned.

The procedure for the acquisition and the protection of an industrial design which is the subject of an international registration for the territory of the Republic of Serbia on the basis of the Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as: the Hague Agreement) shall be governed by the provisions of this Law with regard to all the issues which are not regulated by the Hague Agreement.

II. SUBJECT - MATTER AND CONDITIONS FOR PROTECTION

The Concept of Industrial Design

Article 2

Industrial design shall mean three-dimensional or two-dimensional appearance of the entire product or a part thereof, defined by its features, in particular the lines, contours, colors, shape, texture and materials of the product itself or its ornamentation, as well as their combination.

A product shall mean any industrial or handicraft item, including, *inter alia*, parts intended to be assembled into a complex product, packaging, graphic symbols and typographic typefaces, but excluding computer programs.

A complex product shall mean a product which is composed of multiple components which can be replaced, and which permit disassembly and reassembly of the product.

Requirements for Industrial Design Protection

Article 3

Industrial design shall be protected by the exclusive right (industrial design right) if it is new and has an individual character.

Novelty

Article 4

Industrial design shall be considered new if no identical industrial design has been made available to the public before the date of filing of the application for registration, or if there is no application previously filed requesting the registration of an identical industrial design.

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Where the priority right has been claimed under Article 25 or Article 26 of this Law, the industrial design shall be considered new if it has not been made available to the public prior to the date of registered priority right.

Industrial designs shall be deemed to be identical if their features differ only in immaterial details. Difference in immaterial details is present if an informed user cannot distinguish between the designs at first sight.

Individual Character

Article 5

Industrial design shall be considered to have individual character if the overall impression it produces on an informed user differs from the overall impression produced on such a user by any other design which has been made available to the public before the date of filing of the application for registration or the date of the registered priority right of the contested industrial design.

In assessing individual character of the industrial design, the degree of freedom and objective limitations of the designer in developing the design of the particular product, resulting from technological and functional characteristics thereof, shall be taken into consideration.

Industrial Design of Component Part of Complex Product

Article 6

Industrial design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and to have individual character, only if:

- 1) the component part incorporated in the complex product remains visible during regular use of such complex product; and
- 2) visible features of the component part themselves meet the requirements concerning novelty and individual character.

Regular use under paragraph 1 item 1) of this Article shall mean the use by the end user, excluding maintenance, servicing or repair work.

Disclosure

Article 7

For the purposes of Articles 4 and 5 of this Law, a industrial design shall be deemed to have been made available to the public, if it has been published, exhibited, used in trade in goods and services, or otherwise disclosed, prior to the date of filing the application for design registration, or if priority right was claimed, the date of priority, except where these events could not reasonably have become known, in the usual course of business, to the groups specialized in the sector concerned.

The industrial design shall not be deemed to have been made available to the public within the meaning of paragraph 1 of this Article for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality related to the industrial design.

The industrial design shall not be deemed to have been made available to the public, for the purposes of Articles 4 and 5 of this Law, if a industrial design has been disclosed by the designer, his legal successor, or a third person as a result of an information provided or action taken by the designer, or his legal successor, provided that the time period from the time of the disclosing of the industrial design to the date of filing of the application or, if priority right was claimed, to the date of priority, is shorter than 12 months, or if the industrial design has become available to the public as a result of an abuse in respect of the author or his legal successor.

Protection Excluded Due to Technical Function

Article 8

Industrial design right shall not subsist with respect to features of appearance of a product that are solely dictated by its technical function.

Industrial design right shall not subsist with respect to features of appearance of a product that must necessarily be reproduced in its exact form and dimensions in order to permit the product to be mechanically connected to or placed in, around or against another product, so that either product may perform its function.

Notwithstanding paragraph 2, a industrial design right may, under the conditions set out in Articles 4 and 5 of this Law, subsist with respect to a design enabling multiple assembly or connection of mutually interchangeable products within a modular system.

Non-registrability of Industrial Design

Article 9

The following may not be registered:

- 1) industrial design whose publicizing or use is contrary to public order or morality;
- 2) industrial design infringing copyright or industrial property right of another person;
- 3) industrial design containing state or any other public coat of arms, flag or emblem, name or abbreviated name of a country or an international organization, religious and national symbols, as well as imitations thereof, except under the consent by the competent authority;

Industrial design depicting an image of a person, except with express consent of that person.

The image of a deceased person may be registered only following the agreement by his parents, spouse and children.

The image of a historical or other deceased well-known person may be registered following the permission issued by the competent authority and the consent by his relatives up to the third degree of kinship.

Right to Industrial Design Protection

Article 10

The right to the industrial design protection shall be vested in the designer, or his legal successor, or the employer in cases defined by this Law.

Foreign natural and legal persons shall have rights with respect to industrial design protection equal to of national natural and legal persons, if it results from international agreements or from reciprocity principle.

Proof of the existence of reciprocity shall be provided by the person invoking reciprocity.

Duration of Protection

Article 11

The industrial design right shall be acquired by entering into the Industrial Design Register and shall last for 25 years from the filing date of the application, provided the prescribed fees for maintaining the right are paid.

The right under paragraph 1 of this Article subsists from the date of the industrial design application to the authority of the state union competent for intellectual property matters (hereinafter referred to as: the competent authority).

III. PROTECTION PROCEEDURE

Common provisions

Article 12

Legal protection of the industrial design shall be realized in the administrative proceedings administered by the competent authority.

An appeal against the decisions rendered by the competent authority under paragraph 1 of this Article may be filed with the Government within a term of 15 days from the date of receipt of the decision.

Administrative dispute proceedings may be initiated against the decision rendered by the Government on the appeal, within a term of 30 days from the date of receipt of the Government decision.

Registers

Article 13

The competent authority shall maintain the Register of National Applications for Industrial Design Registration (hereinafter referred to as: the Register of Applications), and the Industrial Design Register.

The registers referred to in paragraph 1 of this Article shall be deemed as public books and interested parties may view them in the presence of an official.

The documents related to registered designs, except for parts that are confidential, may be viewed by an interested party only in the presence of an official.

At the written request of an interested party and following the payment of the prescribed fee, the competent authority shall issue copies of the documents and relevant certificates on the facts contained in the official records kept by the authority.

The Register of Applications shall contain, in particular: data about the applicant; the filing date of the application; the number of the application; the real and short name of the subject matter of protection; data about any changes referring to the application (status-related changes of the applicant, assignment, licence, pledge, franchise etc.).

The Industrial Design Register shall contain in particular: data about the industrial design holder; the industrial design registration number and registration date; name of the subject matter of protection; designation of the class of the International Classification prescribed by the Locarno Agreement on Establishing an International Classification of Industrial Designs (hereinafter referred to as: the International Classification of Industrial Designs); data about any changes relating to the registered industrial design (status-related changes of the holder of industrial design rights, assignment, licence, pledge, franchise and the like).

The Government shall prescribe the particulars of the Register under paragraph 1 of this Article.

Availability of Documents

Article 14

The competent authority shall make its documents and information on designs available to interested parties.

International Registration of Industrial Design

Article 15

The right holder to the industrial design, or the applicant for design right registration, may file the application for international industrial design registration, in accordance with the Hague Agreement.

The application for international registration referred to in paragraph 1 of this Article, with the payment for the prescribed fee, may be filed through the competent authority.

The application for the international registration of an industrial design shall be subject to a prescribed fee.

The following shall also be filed with the application for the international registration of an industrial design:

- 1) a representation of the industrial design;
- 2) power of attorney, if the application is filed via a representative;
- 3) proof of payment of the application fee.

The application for the international registration of an industrial design shall contain in particular: data about the applicant; the application number and/or the industrial design registration number; the number of subject matters for which protection is sought if the application has been filed for several subject matters; the designation of the countries where protection is sought; the amount of the application fees paid and signature and seal of the applicant.

The Government shall prescribe the particulars of the application under paragraph 1 of this Article, and shall determine the annexes to be filed with the application, and their contents.

Representation Article 16

In any proceedings before the competent authority, a foreign natural or legal person must be represented by a representative whose full time profession or activity is representation, and who is a local national or locally registered legal person.

Register of Representatives Article 17

Natural or legal persons meeting the requirements specified by the law governing patents shall be entered into the Register of Representatives, maintained by the competent authority.

Application for Industrial Design Right Registration Article 18

The proceedings for registration of the industrial design right shall be initiated by filing the application for the industrial design right registration (hereinafter: the application).

The application under paragraph 1 of this Article shall be filed with the competent authority in writing, in person or by mail.

Essential elements of the application shall be the following:

- 1) request for the registration of the industrial design;
- 2) description of the industrial design;
- 3) two-dimensional depiction of the industrial design (hereinafter: the depiction).

Request for Industrial Design Registration Article 19

The request for the registration of the industrial design shall contain:

- 1) information on the applicant;
- 2) information on the designer or the statement by the designer that he/she has waived the right to be cited in the application;

- 3) indication whether the application is made for one or multiple industrial designs;
- 4) actual name and abbreviated name of the industrial design;
- 5) justification for filing of the application, if the designer is not the applicant;
- 6) the signature of the applicant.

Optionally, request for that the publication of the registered industrial design to be deferred for twelve months after the date of the issuing the decision on design registration (deferred publication).

One application may contain the request for registration for one or multiple designs (up to 100) applicable to products classified in the same class of the international classification set forth by the Locarno Agreement on Establishing an International Classification for Industrial Designs.

During the course of the procedure for the grant of protection as well as during the whole period of validity of industrial design rights, the author of the industrial design may withdraw his statement of request for non-disclosure of his name in the application, registers and other documents specified by this Law.

The Government shall prescribe the particulars of the application under paragraph 1 of this Article and shall determine the annexes to be filed with the application, and their contents.

Industrial Design Description

Article 20

The industrial design description should be a precise and concise description of the entire appearance of the object of protection, based on the submitted depiction, as seen at all times or at time of its regular use, and should meet other prescribed requirements.

The description of the industrial design shall refer only to the external form of the subject matter of protection, meaning the surfaces of the body and the parts thereof, respectively, which are visible at all times or in the process of their regular use, and/or only to the pictorial representation or the drawing depicting the subject matter of protection, which can be transferred to a certain product or its part.

The industrial design description shall not include data relating to the structure, function or functional advantages and similar data regarding the body or its parts.

The industrial design description shall contain, in particular: data about the applicant; the short and real name of the subject matter of protection; the novelty of the subject matter of protection and/or its individual parts; the intended purpose of the subject matter of protection.

The Government shall prescribe the particulars of the description of an industrial design, as well as the number of copies of the description of an industrial design to be filed with the application for industrial design registration.

The Representation

Article 21

A representation shall contain only the subject matter of protection.

The depiction should provide clearly visible details of the design and should meet the prescribed requirements with respect to quality and other technical conditions.

The representation may be submitted in the form of a photograph or drawing.

When filing the application for two-dimensional industrial design, the two-dimensional sample (specimen) of the design the application refers to may be submitted, provided the depiction referred to in paragraph 1 of this Article is submitted to the competent authority not later than six months from the date of the filing of the application.

The Government shall prescribe the technical characteristics of the representation, as well as the number of copies of the representation to be filed with the application for the industrial design right registration.

Procedural Fees and Costs

Article 22

In the proceedings before the competent authority, the prescribed fees and payment of special procedural costs and costs for providing information services shall be charged.

Filing Date of an Application

Article 23

The date when an application is filed with the competent authority shall be accorded as the date of filing the application if the application contains the following on that date:

- 1) an indication specifying that industrial design right registration is sought;
- 2) name and surname, and/or name and address of the applicant;
- 3) a representation.

Upon receipt of the application, the competent authority shall review it for conformity with the requirements under paragraph 1 of this Article.

On the application filed directly to the competent authority (national application) containing the elements referred to in paragraph 1 of this Article, competent authority shall make note of the number of the application and the date and an time of its receipt, and the applicant shall be issued the certificate.

If the application does not contain the parts specified in paragraph 1 of this Article, the competent authority shall invite the applicant to remedy the deficiencies that make the application ineligible for registration in the relevant register, within a time limit of 30 days.

If the applicant remedies the deficiencies under paragraph 4 of this Article within the set time limit, the competent authority shall render a decision according as the filing date of the application the date when the applicant remedied the deficiencies noted.

An application accorded a date of filing shall be registered in the Register of Applications.

If the applicant fails to remedy the deficiencies within the time limit under paragraph 4 of this Article, the competent authority shall render a decision rejecting the application.

An appeal may be filed against the decision under paragraph 7 of this Article.

Priority Right

Article 24

As of the filing date the applicant shall enjoy a priority right over all other persons who have subsequently filed an application for the same industrial design.

International Right of Priority

Article 25

A legal or natural person having filed orderly design right application effective in any member state of the Paris Union or the World Trade Organization shall enjoy the right of priority from the date of filing of such application in Republic of Serbia if the application for the same industrial design right has been filed in Republic of Serbia within six months of the date of filing the application effective in the concerned country, and if the application for industrial design right contains information on the date of filing, the filing number of application and the state for which such application has been filed.

An orderly application referred to in paragraph 1 of this Article shall be understood to mean any application that meets the standard requirements in accordance with the national legislation of any member state of the Paris union or the World trade Organization, or in

accordance with an international agreement between these states, regardless of the subsequent legal status of such application.

The legal or natural person referred to in paragraph 1 of this Article shall submit to the competent authority the copy of such application certified by the competent authority of the member state of the Paris Union, the World Trade Organization, or the international organization where the application was filed, not later than three months as of the date of filing the application in Republic of Serbia.

The request for issuing a priority certificate shall contain, in particular: a representation identical to the one in the application; a description identical to the one in the application; proof of payment of the fee for the certificate.

The priority certificate shall contain, in particular: data about the applicant; data about the author of the industrial design; the application number and the date of filing the application; a representation identical to the one in the application; a description identical to the one in the application.

The Government shall prescribe the particulars of the request under paragraph 4 of this Article and the content of the priority certificate under paragraph 5 of this Article.

Exhibition Priority Right Article 26

The applicant who has exhibited the design at the national fair or international exhibition or in any other member state of the Paris Union or the World Trade Organization within three months preceding the date of the filing of the application, may request in the application the registration of the design right from the date of the first exhibiting the industrial design.

The applicant referred to in paragraph 1 of this Article shall attach to the application the certificate by the competent authority of a member state of the Paris Union or the World Trade Organization that the fair or exhibition was international in its character, indicating data on the type of fair or exhibition, venue, date of opening and closing of the fair or exhibition and the date of the first exhibiting the design.

The certificate that an exhibition or a fair held in Republic of Serbia had a recognized international character shall be issued by the Chamber of Commerce of Republic of Serbia.

The registration of the priority right referred to in paragraph 1 of this Article shall not induce extension of the time limits referred to in the Article 25 of this Law.

Modification of the Representation Article 27

The representation of the industrial design may not be subsequently modified, in such a way that it significantly differs in its extent and contents from the one defined by the description submitted at the time of the filing of the application.

Order of Application Examination Article 28

The applications shall be examined in the order determined by the date and hour of their filing.

Notwithstanding the provision of paragraph 1 of this Article, the application shall be examined in an expedited procedure:

- 1) in case of the procedure initiated before a court or an inspection authority, at the request by the court or the competent inspectorate;
- 2) if the application for international registration of the industrial design has been filed.

Where cases under paragraph 2 Item 1 of this Article are concerned, a request shall be filed for examining the application in a fast-track procedure.

Examination of the Application Orderliness

Article 29

The application shall be considered orderly if it contains all the elements referred to in Articles 19, 20 and 21 of this Law, the proof of payment of the application fee, and other elements laid down by this Law or the implementing regulations thereof.

Where the application has been found not to be orderly, the competent authority shall notify the applicant in writing (by way of the examination report), stating the grounds, and request the applicant to correct it within the period specified by the competent authority.

Upon the justified request of the applicant, and the payment of the prescribed fee, the competent authority may extend the time limit referred to in paragraph 2 of this Article for the time period considered appropriate, not exceeding three months.

Where the applicant fails to correct the application within the said time limit, or to pay the prescribed fees, the competent authority shall decide to reject the application.

An appeal may be filed against the decision under paragraph 4 of this Article.

In the case referred to in paragraph 4 of this Article, the applicant may, with the payment of the prescribed fee, file a motion and request the return into the status preceding the rejection, but not later than six months after the date of the receipt of the decision to reject the application.

Examination of the Conditions for the Grant of an Industrial Design Right Registration

Article 30

Where the application was found orderly within the meaning of the Article 29, paragraph 1 of this Law, the competent authority shall examine whether the requirements for the grant of the industrial design registration have been met.

Decision Refusing the Grant of Industrial Design Right Registration

Article 31

If the competent authority establishes that the application does not conform to the requirements for the grant of industrial design right registration, the competent authority shall notify the applicant in writing of the reasons due to which the industrial design cannot be granted and shall invite the applicant to submit his observations regarding such reasons within the time limit set by the competent authority.

Following the justified request of the applicant, along with the payment of the prescribed fee, the competent authority may extend the time period referred to in paragraph 1 of this Article for the time period considered to be appropriate, not exceeding three months.

Where the applicant fails to respond, or where he responds but the competent authority nevertheless considers that the industrial design right may not be registered, the competent authority shall issue a decision on refusal of industrial design registration.

Withdrawal of the Application

Article 32

An applicant may, at any time during the procedure, withdraw his application as a whole or in respect of some of the industrial designs.

If a certain right in favour of a third party has been registered in the Register of Applications, the applicant may not withdraw the application without the written consent of the person in whose name that right has been registered.

Where an applicant withdraws his application as a whole, the competent authority shall render a decision staying the procedure.

An appeal may be filed against the decision under paragraph 3.

In the case referred to in paragraph 3 of this Article, the validity of the application shall cease as of the date immediately following the date of filing the statement of withdrawal with the competent authority.

Division of Application

Article 33

The applicant filing an application containing the request for registration of multiple designs (hereinafter referred to as: multiple application) pursuant to Article 19, paragraph 3 of this Law, may, following the payment of the prescribed fee, file the request for division of the multiple application to several individual or multiple separated applications.

Each of the separated applications referred to in paragraph 1 of this Article shall be issued a new application number and registered in the relevant register, but shall retain the date of the filing of the original multiple application and the right of priority thereof.

A separated decision shall be issued with respect to the separation of the application, which shall indicate the number(s) of new applications, industrial designs from the original multiple application, as well as industrial designs remaining in the original application and the industrial designs to remain in the separate application(s).

The application under paragraph 1 of this Article shall contain, in particular: the number and the filing date of the original application the division of which is sought; a description and a representation of the industrial design; a designation of the class numbers in the International Classification of Industrial Designs remaining in the basic application, and the classes numbers in the International Classification of Industrial Designs which have been divided.

The Government shall prescribe the particulars of the application under paragraph 1 of this Article, and shall determine the annexes to be filed with the application, as well as their contents.

Partial Refusal of Multiple Application

Article 34

If the competent authority establishes that a multiple application, in addition to containing industrial designs eligible for the grant of protection, also contains one or several industrial designs not eligible for protection by virtue of this Law, the competent authority shall notify the applicant thereof and shall invite him to submit his observations about the reasons stated, within a time limit set by the competent authority.

Following the justified request by the applicant, the competent authority shall extend the time period referred to in paragraph 1 of this Article for the time period considered to be appropriate, not exceeding three months.

The competent authority shall adopt a decision partly granting a multiple application if the applicant submits no observations, or if the applicant submits his observations but the competent authority still deems the industrial designs in the multiple application are not eligible for protection.

Application for Industrial Design Registration to be Accepted as Application for
Patent Registration or Petty Patent Registration

Article 35

Any time prior to the termination of the proceedings, the application for industrial design registration may be altered to become the application for patent or petty patent registration.

Decision on Fee Payment for Industrial Design Right Registration

Article 36

Where the application was found to meet the registration requirements, the competent authority shall issue a decision requesting the applicant to pay the fee for the first five years of registration, and the costs of industrial design publication, and to submit the proof of payments made.

Where the applicant fails to submit proof of the payments made, referred to in paragraph 1 of this Article in the time period specified, the competent authority shall issue a decision on refusing the application.

In the case referred to in paragraph 2 of this Article, the competent authority shall render a decision staying the proceedings, which may be appealed.

In the case referred to in paragraph 2 of this Article, the applicant may file the motion and request the return into the status preceding the decision on refusing the application, but not later than 3 months as of the date of the receipt of the decision on refusal of the application.

Registration of Industrial Design Rights in the Industrial Design Register

Article 37

Where the applicant has submitted proof of payments made referred to in the Article 36, paragraph 1 of this Law, the competent authority shall issue the decision on the registration of the industrial design right, and the registered design right, along with the prescribed bibliographical data, shall be entered into the Industrial Design Register while the holder of the industrial design right shall be issued an industrial design certificate.

An industrial design certificate shall be in the form of a decision rendered in administrative proceedings.

An industrial design certificate shall contain, in particular: the registration number of the registered industrial design and the application number; data about the author of the design; a representation and a description of the industrial design; the date of entry in the Industrial Designs Register; the date of lapse of the registered industrial design.

The Government shall prescribe the particulars of the industrial design certificate under paragraph 1 of this Article.

Issuing the Industrial Design Certificate and Publication of the Registration Information

Article 38

The grant of an industrial design shall be published in the Official Gazette of the competent authority.

The official gazette of the competent authority shall publish the following data in particular: data about the holder of the industrial design right; the registration number of the registered industrial design; the date of entry of the industrial design right in the Industrial Designs Register; the date of lapse of the registered industrial design; the name of the subject matter of

protection; a representation; the class number under the International Classification of Industrial Designs.

The Government shall prescribe the data under paragraph 2 of this Article to be published in the official gazette of the competent authority.

IV CONTENT, SCOPE AND LIMITATIONS OF THE INDUSTRIAL DESIGN RIGHT

Content of the Design Right

Article 39

The holder of the industrial design right shall have the exclusive right to utilize the protected industrial design for commercial purposes and to deny such right to any third party.

The commercial exploitation under paragraph 1 of this Article shall imply industrial and handicrafts manufacture of products for the market, by applying the protected industrial design, as well as:

- 1) the use of such product in commercial activities;
- 2) storage of such product with for the purpose of placing it in circulation;
- 3) offering such product for the purpose of placing it in circulation;
- 4) import, export or transit of such product.

Industrial Design Author Rights

Article 40

Author of the industrial design shall have moral and economic rights.

The moral right shall be understood to mean the right of the industrial design author to have his name indicated in the registration application, documents and certificate of the industrial design.

The economic right shall be understood to mean the right of the industrial design author to enjoy economic benefits from utilization of the protected industrial design.

Where the author of the design is not the holder of the industrial design right, the form of the economic benefit deriving from the utilization of the industrial design, enjoyed by the author of the protected industrial design shall be regulated by the contract between the holder of the industrial design right and the industrial design author.

Scope of the Industrial Design Right

Article 41

Scope of the industrial design right that is obtained based on the recognized industrial design shall be determined by the content of the industrial design description that is based on the submitted depiction.

The applicant may, on his own initiative or on the written request of the competent authority, or within the time limit set by such authority, state that he does not claim any exclusive rights on any element of the industrial design indicated in the description.

When determining the scope of the industrial design right, in any dispute that might arise, the court shall take into account freedom of the author in creating the industrial design, within the meaning of the Article 5 paragraph 2 of this Law.

Right of Prior Use

Article 42

The industrial design right shall not have an effect on a person acting in good faith who, prior to the date the application was recognized the priority right in the domestic territory, has already commenced to use the protected industrial design in the production, or has made all necessary preparations to commence such use.

The person referred to in paragraph 1 of this Article shall be entitled to use the industrial design for the purpose of production only, in his own company or workshop, or in a third party's company or workshop for his own needs.

The person referred to in paragraph 1 of this Article may not transfer to a third person his right to use the industrial design, unless transferring such right together with the company or workshop, or a part of the company in which use of such industrial design has been prepared, or has commenced.

Limitation of Right

Article 43

The holder of industrial design right may not prohibit a third party from performing the following activities:

- 1) those performed for non-commercial and experimental purposes;
- 2) reproduction for the purpose of teaching or making citations, provided such activities are in line with the practices of fair competition and provided they do not unreasonably jeopardize the normal exploitation of the industrial design, as well as provided that the source from which the industrial design has been obtained is specified.

Limitation of Rights to Ensure Normal International Traffic

Article 44

Industrial design rights do not produce any effect on a person who uses the objects produced by virtue of the protected industrial design, comprising a part of the structure or equipment of a vessel, aircraft or land vehicle, and/or serving exclusively for the functioning of a vessel, aircraft or land vehicle registered in a country party to the Paris Union or the World Trade Organization, where such vessel, aircraft or land vehicle happens to be in the territory of the Republic of Serbia either on a temporary basis or accidentally.

Exhaustion of Rights

Article 45

If the holder of industrial design rights in the Republic of Serbia puts on the market a product comprising a protected industrial design and/or a product designed in accordance with a protected industrial design, or if the holder of the industrial design right authorizes another person in the Republic of Serbia to put such product on the market, the right holder shall not be entitled to prohibit third parties from further disposing of that product which has been purchased in the course of legal trade (hereinafter referred to as: the exhaustion of rights).

The exhaustion of rights under paragraph 1 of this Article shall not apply in the event there exists a legitimate interest on the part of the holder of the industrial design right to oppose further trading in the product comprising the protected industrial design, or the product which has been designed in accordance with the protected industrial design, especially if a defect has meanwhile occurred on the product or other changes in the features of the product.

Relationship with other Forms of Protection

Article 46

Provisions of this law shall not affect any existing rights with respect to trademarks, patents, or petty patents. The industrial design protected pursuant to the provisions of this Law

shall also enjoy protection based on the legislation governing the copyright as of the date of its creation, or as of the date it was expressed in a certain form.

V. PROTECTION OF THE INDUSTRIAL DESIGN CREATED IN THE CONTEXT OF EMPLOYMENT

Industrial Design Created in the Course of Employment Article 47

The provisions of the law governing the patents apply *mutatis mutandis* to the protection of the industrial design created in context of employment.

VI. CHANGES IN THE INDUSTRIAL DESIGN APPLICATION AND/OR REGISTRATION

Change of name and address of the right holder

Article 48

Upon the request of a holder of industrial design rights and/or an industrial design applicant, the competent authority shall render a decision on entering in the appropriate register of the competent authority, changes in the name and address of the holder of the industrial design right and/or the applicant.

Entry of the change of name and address of the right holder may be requested on the basis of a single application referred to in paragraph 1 of this Article referring to several registered industrial designs and/or several applications, provided their registration numbers and/or application numbers are specified in the application.

If the request for registering the change of name and address of the right holder does not contain the prescribed data, the competent authority shall invite the applicant in writing to remedy the deficiencies within the time limit set by the competent authority.

On the basis of a reasoned request by the applicant for entering the change of name and address, and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 3 of this Article by the period of time the competent authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall render a decision rejecting the application.

An appeal may be filed against the decision under paragraph 5 of this Article.

The application for the registration of changes under paragraph 1 of this Article shall contain in particular: the registration number of the registered industrial design, and/or the application number; data about the holder of the industrial design right and/or applicant; a designation of the type of changes.

The Government shall prescribe the particulars of the request for entering the changes under paragraph 1 of this Article, as well as the content of the annexes and the annexes to be filed with the request.

Assignment

Article 49

Assignment of industrial design rights and/or rights arising from the application may be the consequence of an assignment agreement, change of status of the holder of the industrial

design right and/or the applicant, or a court or administrative decision.

Assignment under paragraph 1 of this Article shall be recorded in the appropriate register of the competent authority upon the request of the holder of the industrial design right and/or applicant or assignee.

Registration of the assignment under paragraph 1 of this Article in the appropriate register of the competent authority shall produce legal effect in relation to third parties.

Registration of the assignment under paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

Assignment Agreement

Article 50

On the basis of the assignment agreement under Article 49 paragraph 1 of this Law, the holder of the industrial design right, and/or the applicant may assign the right to the registered industrial design and/or the right arising from the application.

The assignment agreement under paragraph 1 of this Article shall be made in writing and it shall contain a designation of the contracting parties, the number of the registered industrial design, and/or the application number and the amount of remuneration, if stipulated.

License

Article 51

The holder of the industrial design right and/or the applicant may licence out the right to using the registered industrial design and/or the rights arising from the application, on the basis of a license contract.

The license contract referred to in paragraph 1 of this Article shall be made in writing and shall contain indication of the contracting parties, design registration number, application registration number, and the amount of remuneration, if any remuneration has been stipulated.

The license contract under paragraph 1 of this Article shall be registered in the appropriate register of the competent authority upon the request of the holder of the industrial design right and/or applicant or licensee.

Registration of the license contract under paragraph 1 of this Article in the appropriate register of the competent authority shall produce a legal effect in relation to third parties.

Registration of the license contract under paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

Pledge

Article 52

A registered industrial design, and/or the right arising from the application may be the subject of a pledge contract.

The pledge contract under paragraph 1 of this Article shall be drawn up in writing and shall contain: the date of signing; name and surname or business name, domicile or residence, and/or the seat of the contractual parties, as well as the lienee, if they are not the same person; the registration number of the registered industrial design and/or the number of the industrial design application and data about the claim secured by possessory lien.

The pledge contract under paragraph 1 of this Article shall be registered in the appropriate register of the competent authority upon the request of the holder of the industrial design right and/or applicant or pledgee.

The pledgee shall acquire possessory lien upon registration in the appropriate register of the competent authority.

Registration of the pledge contract under paragraph 1 of this Article in the appropriate register of the competent authority shall be subject to a special decision.

Any issue relating to possessory lien in respect of industrial design which is not regulated by this Law shall be subject to regulations regulating non-possessory pledge, obligational relations and ownership and legal relations.

The following data shall be entered in the register of the competent authority, and in particular: data about the pledger and lienee, where they are not the same person, as well as data about the pledgee; the registration number of the registered industrial design, and/or the number of the industrial design application; data about the claim secured by possessory lien including a designation of the basic and the maximum amounts.

All data changes under paragraph 7 of this Article shall be recorded in the register of the competent authority.

The Government shall prescribe the data to be entered in the register of the competent authority.

Procedure for the Registration of Assignment, Licence and Pledge

Article 53

The procedure for the registration of assignment, licence and pledge shall be initiated on the basis of a written request which is to be filed with the competent authority.

The request under paragraph 1 of this Article shall be filed with the following:

- 1) proof of legal title for the registration requested;
- 2) power of attorney, if the procedure for the registration of the assignment, licence or pledge is initiated via an attorney;
- 3) proof of payment of the prescribed fee for the application for the registration of the assignment, licence or pledge.

Registration of an assignment referring to several registered industrial designs and/or several applications may be requested on the basis of a single request under paragraph 1 of this Article provided the earlier right holder and the new right holder are the same in respect of each registered industrial design and/or application and provided the registration numbers and/or application numbers are specified in the request.

Registration of a licence and/or a pledge may be requested on the basis of a single request under paragraph 1 of this Article referring to several registered industrial designs and/or several applications, provided the right holder and the licensee and/or the pledgee are the same in each registered industrial design and/or application, and provided the registration numbers and/or application numbers are specified in the request.

The request under paragraph 1 of this Article shall include, in particular: the registration number of the registered industrial design, and/or the application number; data about the holder of the industrial design right, and/or the applicant; a designation of the type of change, and/or the registration of the right sought.

The Government shall prescribe the particulars of the request under paragraph 1 of this Article and shall determine the type and the contents of the annexes to be filed with the request.

Article 54

The request for the registration of an assignment, licence and/or pledge shall be regular if it contains the data under Article 53 paragraph 2 of this Law and other prescribed data.

If the request for the registration of an assignment, licence and/or pledge is not regular,

the competent authority shall invite the applicant to remedy the deficiencies within a time limit of 30 days from the date of receipt of the invitation.

Upon a reasoned request by the applicant for the registration of the assignment, licence and/or pledge and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

If the applicant fails to proceed as requested within the set time limit, the competent authority shall render a decision rejecting the application.

An appeal may be lodged against the decision under paragraph 4 of this Article.

Article 55

If the request for the registration of an assignment, licence or pledge is regular within the meaning of Article 55 of this Law, the competent authority shall examine the legal title underlying the request, for conformity with the statutorily prescribed requirements for the registration of an assignment, licence or pledge.

If the legal title constituting grounds for the request for the registration of the assignment, licence or pledge does not conform to the requirements prescribed by this Law, the competent authority shall invite the applicant to submit his observations about the reasons due to which the registration cannot be granted, within a time limit of 30 days from the date of receipt of the invitation.

Upon a reasoned request by the applicant for the registration of an assignment, licence or pledge, and upon payment of the prescribed fee, the competent authority shall extend the time limit under paragraph 2 of this Article by the period of time the competent authority deems appropriate.

The competent authority shall render a decision refusing the request for the registration of an assignment, licence or pledge, if the applicant fails to submit his observations regarding the reasons due to which the registration cannot be made, within the set time limit, or if the applicant submits his observations but the competent authority still considers that registration cannot be granted.

VII CESSATION OF RIGHT

Article 56

The industrial design right shall cease:

- 1) if the industrial design right holder fails to pay the prescribed fee for maintenance of the right;
- 2) if the right holder abandons the right, on the day following the day of filing the statement of abandonment;
- 3) based on a court decision, or a decision of a competent authority, in the events specified by this Law, on the day designated in such decision;
- 4) if the legal person has been dissolved, or if the natural person who is the holder of right has died, on the day of dissolution of legal person, or death of natural person, unless the design right has been transferred to legal successors of such persons.

Right of a Third Party Entered in Registers

Article 57

If a right in favor of a third person has been entered in the Industrial Design Register or the Register of Applications (license, lien, etc.), the industrial design right holder or applicant may not renounce the right without written consent of the person whose name has been entered in the Register.

If the holder of the industrial design right has failed to pay the fee for maintenance of the validity of the registered industrial design within the prescribed term, and the license, lien, or any other right in favor of a third person has been entered in the Industrial Design Register, the competent authority shall notify such person that the fee has not been paid and that he may make due payment within six months following the receipt of the notification and thus maintain validity of the entered right.

VIII. DECLARATION OF INVALIDITY OF AN INDUSTRIAL DESIGN REGISTRATION

Article 58

A registered industrial design may be declared invalid if it is established that, at the time of its registration, the conditions for granting industrial design registration prescribed by this Law were not fulfilled.

A registered industrial design may be declared invalid at any time during the validity of the protection, at the request of the party concerned or at the request of the public prosecutor (hereinafter referred to as: the petitioner).

Request for Invalidation

Article 59

The procedure for a declaration of invalidity of a registered industrial design shall be initiated on the basis of a written request for a declaration of invalidity.

The request under paragraph 1 of this Article shall contain data about the petitioner and the holder of the industrial design right, an indication specifying that a declaration of invalidity of the registered industrial design is sought, the registration number of the registered industrial design, the reasons based on which the request for a declaration of invalidity is made, and the necessary evidence.

Proceedings On the Orderly Request for Invalidation

Article 60

If the request for a declaration of invalidity of a registered industrial design does not conform to the prescribed conditions referred to in Article 59 of this Law, the competent authority shall invite the petitioner in writing to remedy the deficiencies within a time limit of 30 days from the date of receipt of the invitation.

On the basis of a reasoned request by the petitioner, and upon payment of the prescribed fee, the competent authority shall extend the deadline under paragraph 1 of this Article by the period of time the competent authority deems appropriate.

If the petitioner fails to proceed as requested within the set time limit, the competent authority shall render a decision rejecting the request.

An appeal may be filed against the decision under paragraph 3 of this Article. The competent authority shall forward a regular request referred to in Article 59 of this Law to the respondent, inviting him to submit his reply within a time limit of 30 days from the date of receipt of the invitation.

In the proceedings based on the request for a declaration of invalidation, the competent authority may schedule a hearing.

After the completion of the proceedings based on the request for a declaration of invalidity, the competent authority may render a decision declaring the registered industrial design invalid as a whole or in part.

Within three months from the final decision declaring a registered industrial design invalid, the competent authority shall publish, in its official gazette, the data prescribed for the annulment of rights.

Article 61

A declaration of invalidity of a registered industrial design, shall have no retroactive effect on any final and enforceable court decisions with respect to determination of the infringement of right, or on the concluded contracts on transfer of right, or concession of license, to the extent in which such contracts have been realized, provided the plaintiff, or the holder of design right, was acting in good faith.

IX CIVIL LAW PROTECTION

Protection in Case of Industrial Design Right Infringement

Article 62

In case of infringement of the industrial design right, the plaintiff may request :

- 1) that infringement of the right be determined;
- 2) cessation of the infringement of right;
- 3) that the articles used in infringement of the right be destroyed or modified;
- 4) that the tools and equipment used for production of the articles used in infringement of the right be destroyed or modified, if that is necessary for protection of the right;
- 5) compensation for material injury and reasonable costs of procedure;
- 6) compensation for moral injury;
- 7) publication of the verdict at the expense of the defendant;
- 8) information on any third persons participating in infringement of the right to be revealed.

The person infringing the industrial design right shall be held liable for the injury pursuant to the general rules on compensation of damages.

If infringement of the industrial design right was intentional, the plaintiff may request of the defendant, instead of the damages for material injury, the compensation in the amount of up to triple usual license fee he would have received for utilization of the industrial design.

The proceedings on the complaint referred to in paragraph 1 of this Article shall be administered in an expedited manner.

Industrial Design Right Infringement

Article 63

Industrial design right infringement shall be considered to be any unauthorized exploitation of a registered industrial design within the meaning of Article 39 of this Law and unauthorized publication of the subject matter of the application.

Imitation of a protected industrial design shall also be considered to be infringement of the industrial design right.

When determining the existence of the design right infringement, the court shall particularly take into consideration the provisions of Articles 8, 9, and 41 of this Law.

Right to File the Complaint

Article 64

The complaint on the grounds of infringement of the design right referred to in Article 62 of this Law may be filed by the applicant, holder of the industrial design right and the acquirer of exclusive license.

Proceedings based on a complaint filed on grounds of infringement of the rights arising from the application shall be suspended until the competent authority has rendered a decision on the grant of the industrial design.

If the proceedings under Article 58 of this Law have been initiated with the competent authority, the court seized of the complaint under Article 62 of this Law shall suspend the proceedings until the adoption of a final decision by the competent authority.

Time Limit for Filing the Complaint Article 65

The complaint for infringement of the industrial design right may be filed within three years following the day the plaintiff has become aware of the infringement and the infringer, but not later than within five years following the day when infringement was committed for the first time.

Provisional measure Article 66

At the request of the person who makes it credible that his industrial design right or the right arising from the application has been infringed, or that such infringement is imminent, the court may order an interim measure of seizure or withdrawal from circulation of the articles used in infringement and means for production of such articles, or the measure of prohibiting continuation of any activities by way of which the infringement may be committed.

Secure of evidence Article 67

At the request of the person who makes it credible that his industrial design right or the right arising from the application has been infringed, or that such infringement is imminent, or that irreparable harm is likely to occur, or that there is a reasonable suspicion that evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order an interim measure to secure evidence without giving prior notice to, or hearing the person from which evidence is to be collected.

For the purposes of paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, vehicles, books, documents, as well as the seizure of documents and infringing goods, questioning of witnesses and expert-witnesses.

The court order for interim measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible.

Time Limit to Request Interim Measures Article 68

Provisional measures under Article 66 of this Law and the securing of evidence under Article 67 of this Law may be requested before filing a complaint against the infringement of a protected industrial design, and/or of the right arising from the application, provided the complaint is filed within a term of 30 days from the date of rendering the decision on the provisional measure and/or the decision determining the securing of evidence.

An appeal against the court decision determining the provisional measure under Article 66 of this Law shall not delay the enforcement of the decision.

Security Article 69

Upon the request of a person against whom the proceedings for infringement of the industrial design right or proceedings for establishing of temporary measure have been initiated,

the court may order the party initiating the proceedings to deposit an appropriate amount of money as a security, should the claim be found groundless.

Duty to Provide Information

Article 70

The court may order the infringer of the protected industrial design or the right arising from the application to furnish information about third parties who have taken part in infringement of the right, and about their distribution channels.

The person that fails to perform its duty referred to in paragraph 1 of this Article shall be liable for the damage thus incurred.

Contesting the Industrial Design Right

Article 71

The design author or his legal successor may file a complaint to request that the court determines that he has the right to file an application rather than, or together with, the person who has filed the application.

The author of an industrial design or his legal successor may request the court on the basis of a complaint filed, to pronounce a ruling designating the author as the holder of the registered industrial design instead of the person, or together with the person, in whose name the industrial design has been registered with the competent authority.

The complaint referred to in paragraph 1 of this Article may be filed any time before conclusion of the proceedings for recognition of the design right, and the complaint referred to in paragraph 2 of this Article may be filed any time before expiry of the design right validity period.

Entering Court Decision in the Register

Article 72

Where the claim referred to in Article 71 was granted by a final and enforceable court decision, the competent authority shall, upon receipt of the final and enforceable decision or upon request of the plaintiff, enter the plaintiff in the appropriate Register as the applicant, or holder of the industrial design right.

Rights of a Third Person Acting in Good Faith

Article 73

The right which a third person acting in good faith has obtained from the former applicant, or holder of the industrial design right under Article 71 of this Law, shall cease on the day the new holder of right or the applicant is entered in an appropriate register.

Dispute over Authorship

Article 74

The design author or his legal successor may file a complaint to request that the court determines who is the author of the industrial design that is the subject of the application, or a recognized industrial design right, and to have such person indicated as the author in the application and all other documents, and in appropriate registers.

The plaintiff referred to in paragraph 1 of this Article may also request that the verdict be published at the expense of the defendant, and compensation for moral injury and material injury and all costs of the proceedings.

There shall be no time limit for filing the complaint referred to in paragraph 1 of this Article.

X. PENAL PROVISIONS

Article 75

A company or another legal person who has infringed an industrial design and/or the right arising from the application in the manner referred to in Article 63 of this Law shall be sanctioned on grounds of corporate offence by a fine of between RSD 100,000 and 3,000,000.

The responsible person in a company or another legal person shall be sanctioned for the acts under paragraph 1 of this Article on grounds of corporate offence by a fine of between RSD 50,000 and 200,000.

The infringing objects in the corporate offence and the objects used for the perpetration of the corporate offence under paragraph 1 of this Article shall be forfeited and the infringing objects in the corporate offence shall also be destroyed.

The judgment pronouncing punishment against the perpetrator on grounds of the corporate offence under paragraph 1 of this Article shall be published.

Article 76

An entrepreneur who has infringed an industrial design right or the right arising from the application in the manner referred to in Article 63 of this Law shall be sanctioned on grounds of misdemeanour by a fine of between RSD 50,000 and 500,000..

A natural person shall also be sanctioned for the acts under paragraph 1 of this Article by a fine of between RSD 10,000 and 50,000.

The infringing objects in the misdemeanour and the objects used for the perpetration of the misdemeanour under paragraph 1 of this Article shall be forfeited and the infringing objects in the misdemeanour shall also be destroyed.

Article 77

A legal person who acts as representative in the exercising of the rights under this Law (Art. 16) without a power of attorney shall be sanctioned on grounds of misdemeanour by a fine of between RSD 100,000 and 1,000,000.

The responsible person in a legal person shall be sanctioned for the acts under paragraph 1 of this Article on grounds of misdemeanour, by a fine of between RSD 10,000 and 50,000.

A natural person who acts as representative in the exercising of the rights under this Law (Art. 16) without a power of attorney, shall be sanctioned on grounds of misdemeanour, by a fine of between RSD 10,000 and 50,000.

XI. TRANSITIONAL AND FINAL PROVISIONS

Article 78

The Register of Industrial Design Applications shall be renamed to the Register of Applications for the Grant of Industrial Design Rights, and the Register of Designs shall be renamed to the Register of Industrial Designs, and they shall continue to be maintained starting from the relevant ordinal number.

The Register of Representatives established by the Law on Patents („Official Gazette of S&M”, No. 32/04 and 35/04 and „Official Gazette of the RS”, No. 115/06), shall continue to be maintained pursuant to the law based on which it has been established and pursuant to the present Law.

Registered industrial designs valid on the date of this Law taking effect shall remain in effect and they shall be subject to the provisions of this Law.

The provisions of this Law shall also apply to the applications for the grant of industrial design rights filed by the date of this Law taking effect in respect of which administrative proceedings have not been finalized, as well as to other proceedings instituted in respect of industrial designs still pending on the date of this Law taking effect.

Article 79

Pledges registered by the date of this Law taking effect in the Register of Possessory Lien on Movable Property and Rights at the Agency for Business Registers shall remain in effect and shall be registered in the relevant register with the competent authority.

The Agency for Business Registers shall, within 30 days from the date of this Law taking effect, forward to the competent authority the data and documentation based on which an industrial design pledge has been registered in the Register of Possessory Lien on Movable Property and Rights.

Article 80

Bylaws for the enforcement of this Law shall be adopted within four months from the date of this Law taking effect.

Until the adoption of the bylaws under paragraph 1 of this Article, the provisions of the regulations adopted on the basis of the Law on the Legal Protection of Designs („Official Gazette of S&M”, No. 61/04) shall apply, unless they are contrary to this Law.

Article 81

The following shall cease to be valid as of the date of this Law taking effect, namely:

- 1) The Law on the Legal Protection of Designs („Official Gazette of S&M” No. 61/04);
- 2) Provisions of Articles 37 and 38 and Article 44 paragraph 1 item 2) of the Law on Special Powers for Enhancing the Efficiency of Intellectual Property Rights Protection („Official Gazette of the RS”, No. 46/06).

Article 82

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Republic of Serbia”.