

## LAW ON INDUSTRIAL DESIGNS

*In force as from 15.12.1999*

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### Chapter One - GENERAL PROVISIONS

#### Subject

**Art. 1.** (1) (*former text of Article 1 - State Gazette No. 17/2003*) This Law governs the conditions and procedures for the registration of industrial designs, the rights arising therefrom and the protection of those rights.

(2) (*new - State Gazette No. 17/2003*) This Law does not govern relations that arise during the creation and use of industrial designs connected with specific activities performed by the Ministry of the Interior.

#### Field of Application

**Art. 2.** (1) This Law shall apply to Bulgarian natural and legal persons and to foreign natural and legal persons from States party to international treaties to which the Republic of Bulgaria is also party.

(2) With regard to the foreign natural and legal persons from other countries, this Law shall apply on the basis of reciprocity at the discretion of the Patent Office.

#### Industrial Designs

**Art. 3.** (1) For the purposes of this Law, industrial design, hereinafter referred to as "design", means the appearance of the whole or a part of a product resulting from the specific features of the shape, lines, contours, ornamentation, colours, or combination thereof.

(2) For the purposes of this Law, product means any industrial or handicraft article, including parts intended to be assembled into a complex article, sets or compositions of articles, packaging, graphic symbols and typographic typefaces, computer programs excluded.

#### Right of Authorship

**Art. 4.** (1) The person who has created a design shall have the right of authorship under this Law. This right shall be unlimited in time and shall not be transferable and it shall enjoy the protection afforded by this Law irrespective of the protection afforded by other laws.

(2) If the design has been created by two or more persons, the right of authorship shall belong to all of them and they shall be joint creators. Persons that have merely assisted the creator technically, materially or otherwise, shall not be considered joint creators.

(3) The creator or the joint creators shall be named in the registration certificate and in the publication thereabout. The Patent Office shall execute the entry *ex officio*.

(4) The Patent Office shall enter in the State Register of Industrial Designs the true creator of the design where established by a court decision in a dispute on authorship and joint authorship.

#### Representation

**Art. 5.** (1) Any person having the right under this Law to act in proceedings before the Patent Office may do so either in person or through a local industrial property representative.

(2) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) Persons with no permanent address or headquarters in the Republic of Bulgaria shall act in proceedings before the Patent Office through a local industrial property representative.

## **Fees**

**Art. 6.** (*amended - State Gazette No. 73/2006, in force since 06.10.2006*) The Patent Office shall collect fees for: filing of applications; examination; priority; registration; issue of certificates; renewal of registrations; entries; correction of errors; appeals against rejections; invalidation of registrations; extension of time limits; publication of applications, registrations and entries; filing of applications for international registration; forwarding of Community design applications; information about industrial designs applied for registration or registered; enquiries or extracts from the State Register of Industrial Designs, under a tariff approved by the Council of Ministers.

## **Files**

**Art. 7.** (1) The Patent Office shall create and keep a file on every design, which shall consist of all the registration documents.

(2) On request, the Patent Office shall provide other parties with information on designs applied for registration in accordance with a procedure as specified by the President of the Office.

(3) The information referred to in paragraph (2) shall include only such data as is published on registration of the design.

## **State Register of Industrial Designs**

**Art. 8.** The State Register of Industrial Designs shall contain data on all design registrations and all subsequent changes relating thereto.

## **Access to the State Register of Industrial Designs**

**Art. 9.** The State Register of Industrial Designs shall be public. Any person may request information or an extract therefrom.

## **Chapter Two - LEGAL PROTECTION**

### **Part I - Registration**

#### **Acquisition of Rights in Designs**

**Art. 10.** (1) The right in a design shall be acquired through registration with the Patent Office as of the filing date of an application for registration.

(2) The right in a design shall be an exclusive right.

#### **Grounds for Registration**

**Art. 11.** (1) A design shall be registered if it is new and has an individual character.

(2) The following may not be registered:

(i) a design that is contrary to public policy or the principles of morality.

(ii) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) a design the specific features of which are solely determined by the technical function of the product.

(iii) a design the specific features of which are solely determined by the necessity for the product, in which the design is incorporated or to which it is applied, to be mechanically assembled or put in, around or opposite to another product, so that both products perform their functions, with the exception of a design intended to allow the multiple assembly or connection of interchangeable products within a modular system.

(3) (*new - State Gazette No. 17/2003; amended - State Gazette No. 73/2006, in force since 06.10.2006*) The industrial design of a product having relation to the defence and security of the State shall be registered subject to preliminary written coordination with the Ministry of Defence or the Ministry of the Interior.

## **Novelty**

**Art. 12.** (1) A design shall be considered new if, prior to the filing date or the priority date, as appropriate, of the application no identical design has been made available to the public by means of publication, use, registration or otherwise disclosed anywhere in the world.

(2) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) Designs shall be considered to be identical if their specific features differ in immaterial details only.

### **Individual Character**

**Art. 13.** (1) (*amended - State Gazette No. 43/2005, in force since 21.08.2005; former text of Article 13 – State Gazette No. 73/2006, in force since 06.10.2006*) A design shall be considered to have an individual character if the overall impression it produces on the informed consumer differs from the overall impression produced by a design that has been made available to the public before the filing date or the priority date, as appropriate, of the application for registration.

(2) (*new - State Gazette No. 73/2005, in force since 21.08.2005*) When evaluating the individual character of a design, the designer's freedom in creating the design shall be taken into account.

### **Disclosure Which is not Prejudicial to Novelty**

**Art. 14.** (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) The disclosure of a design that is the subject of an application for registration shall not be prejudicial to its novelty if such disclosure was made within twelve months preceding the filing date or the priority date, as appropriate, of the application, by:

- (i) the creator or his successor in title or by a third party as a result of information provided or action taken by the creator or his successor in title;
- (ii) a third party, in abuse of the creator.

### **Term of Validity of Registration**

**Art. 15** (1) Designs shall be registered for a period of 10 years following the filing date of the application.

(2) Registration may be renewed for three successive periods of 5 years each.

### **Right to File and Right to Registration**

**Art. 16.** (1) (*supplemented - State Gazette No. 43/2005, in force since 21.08.2005*) The right to file a design application shall belong to the creator or his successor in title. Where the right to file belongs to more than one person, those persons shall exercise the right jointly. Refusal by one or several of such persons to exercise the right shall not constitute an obstacle for the others to file an application. Refusal shall be explicit and in writing.

(2) If the design is a service design, as referred to in Article 17 (1), the right to file shall belong to the employer or to the commissioning person.

(3) The right to file, in the case referred to in paragraph (2), shall pass over to the creator if the employer or the commissioning person, as appropriate, does not file an application within three months of receiving a written communication from the creator, unless otherwise agreed.

(4) The right to file may belong jointly to the creator and the employer or the commissioning person, as appropriate, if agreed so.

(5) The applicant shall be considered to have the right to file unless otherwise determined by a court decision.

(6) The right to registration shall belong to the first applicant.

### **Service Designs**

**Art. 17.** (1) A design shall constitute a service design if it has been made in the performance of duties under an employment relationship or other legal relationship, unless otherwise provided by contract.

(2) A creator who has made a service design shall have the right to additional remuneration.

(3) The creator's remuneration may be determined as a part of the revenue derived from the use of the design, as a lump sum payment or in any other way.

(4) Where a lump sum remuneration proves to be obviously disproportionate to the profit obtained from use of the design, it may be increased at the request of the creator. If no agreement is reached, the dispute shall be settled by the court, acting in equity.

### **Scope of Legal Protection**

**Art. 18.** (amended - State Gazette No. 43/2005, in force since 21.08.2005; supplemented – State Gazette No. 73/2006, in force since 06.10.2006) The legal protection scope shall be defined by the graphic representation or representations of the registered design, including each identical design within the meaning of Article 12(2) and each design that is to a considerable extent a copy of the registered design.

### **Rights Conferred by Designs**

**Art. 19.** (1) The holder of a registered design shall be entitled to use it and dispose of it, and to prohibit other parties from unauthorized copying or use in the course of business of a design included in the scope of protection.

(2) The use of a design within the meaning of paragraph (1) shall cover the making, offering for sale, placing on the market or using of a product in which a design within the scope of protection is incorporated or to which it is applied, as well as the importing, exporting or stocking of such product for those purposes.

(3) (amended – State Gazette No. 73/2006, in force since 06.10.2006) The right conferred shall have effect with regard to third parties acting in good faith as from the date of publication of the registration of the design.

### **Limitation of Rights in Designs**

**Art. 20.** (1) The right as referred to in Article 19 shall not extend to:

(i) use of the design for private or for experimental purposes;

(ii) use of the design for the purpose of making annotations or teaching, if such use is compatible with fair trade practice and does not unduly prejudice the normal exploitation of the design, and provided that the source is quoted;

(iii) use of the design on foreign land, air and naval transportation means when they temporarily or accidentally enter the territory of the country and in which the design is used exclusively for their own needs, as well as the importation of spare parts and accessories for the purpose of repairing such transportation means.

### **Exhaustion of Rights in Designs**

**Art. 21.** (1) (amended – State Gazette No. 73/2006, in force since the entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) The holder of the right in a design may not prohibit the use of the products mentioned in the registration, in which the registered design is incorporated or to which it is applied, where the products are put on the market in the territory of the member States of the European Union, respectively the European Economic Area, by him or with his consent.

(2) Paragraph (1) shall not apply where the design rightholder may oppose further sales on the grounds that the products have been changed or counterfeited.

### **Entitlement to Rights in Designs**

**Art. 22.** (1) The right in a design may be held by one or more persons.

(2) Where the right in a design is held by two or more persons, each holder may use the design without the consent of the other holders and without accounting to them for that use, unless otherwise agreed in writing.

## Prior Use

**Art. 23.** A person who has used a design in good faith on the territory of the Republic of Bulgaria prior to the filing date of an application for registration of that design or has made serious preparations therefor shall have the right to continue exploiting the design to the same extent after that date.

## Part II - Disposition

### Transfer

**Art. 24.** (1) All rights under this Law shall be transferable, unless otherwise provided herein.

(2) Where the right in a design is held by two or more persons, it shall be transferred only with the written consent of all of the holders.

(3) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) In the case of a multiple application, the transfer shall be allowed of the right in all designs or in some of them.

(4) (*former paragraph (3) - State Gazette No. 43/2005, in force since 21.08.2005*) Transfers shall be entered in the State Register of Industrial Designs at the written request of one of the parties; the request shall be accompanied by the transfer document, and the transfer shall have effect with respect to third parties as from the date of entry thereof.

### Transfer of Rights of Prior Use

**Art. 25.** Prior use rights may be transferred only together with the commercial undertaking in which it originated.

### License Agreement

**Art. 26.** (1) (*supplemented - State Gazette No. 43/2005, in force since 21.08.2005*) The holder of a design may permit the use of his design by means of a license agreement. The use of a design held by two or more persons shall be permitted with the written consent of all the holders, unless otherwise agreed. In the case of a multiple application, the right to use may be granted with respect to all or some of the designs.

(2) A license may be exclusive or non-exclusive. Where the agreement does not specify one form or the other, the license shall be considered non-exclusive.

(3) The licensor of an exclusive license shall not be entitled to grant licenses with the same subject matter to other persons. He shall be entitled to use the design only to the extent explicitly agreed upon.

(4) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) The license agreement shall be recorded in the State Register of Industrial Designs at the request of one of the parties. The request shall be accompanied by an extract from the license agreement. The Patent Office shall issue a certificate of recording.

(5) The extract from the license agreement shall contain data identifying the licensee and the licensor, the registration number of the design, the term of validity of the license agreement, with the signatures and/or seals of the parties affixed thereto.

(6) The license agreement shall have effect with respect to third parties as from the date on which it is entered in the State Register of Industrial Designs.

### Right in Industrial Design as a Security Object

**Art. 26a** (*new – State Gazette No. 43/2005, in force since 21.08.2005*) (1) (*supplemented – State Gazette No. 73/2006, in force since 06.10.2006*) The right in a registered industrial design may be a security object in instituted or future action proceedings. In the case of a multiple application, security may be afforded with respect to the right in all or some of the designs.

(2) Security shall be recorded in the State Register of Industrial Designs at the request of one of the parties in the action.

(3) The request referred to in paragraph (2) shall contain data identifying the industrial design owner and the person in whose favor the security was afforded, data identifying the industrial design, and the kind

of the security measure. The request shall be accompanied by a document establishing the security.

(4) The security shall have effect with respect to third parties as from the date on which a mention about its entry into the State Register of Industrial Designs is published in the Official Bulletin of the Patent Office.

### **Right in Industrial Design as a Registered Pledge Object**

**Art. 26b** (*new – State Gazette No. 43/2005, in force since 21.08.2005*) (1) (*supplemented – State Gazette No. 73/2006, in force since 06.10.2006*) The right in a registered industrial design may be a registered pledge object. In the case of a multiple application, registered pledge may be afforded with respect to the right in all or some of the designs.

(2) The provisions of Articles 26 to 31 of the Registered Pledges Law shall apply to the recording of registered pledges in the State Register of Industrial Designs. A certificate shall be issued to the pledger.

(3) The registered pledge shall have effect with respect to third parties as from the date of publication in the Official Bulletin of the Patent Office.

### **Industrial Designs in Bankruptcy Proceedings**

**Art. 26c** (*new – State Gazette No. 43/2005, in force since 21.08.2005*) (1) (*supplemented – State Gazette No. 73/2006, in force since 06.10.2006*) The right in a registered industrial design shall be included in the bankrupts estate in bankruptcy proceedings against its holder.

(2) Where the industrial design is a joint possession, the rights only according to the debtor's share shall be included in his estate.

(3) The fact of the industrial design being included in the bankrupts estate shall be recorded in the State Register of Industrial Designs at the request of one of the parties in the action, and shall be published in the Official Bulletin of the Patent Office.

### **Part III - Lapse and Invalidation of Registration**

#### **Lapse of Registration**

**Art. 27** (1) The validity of a registration shall lapse on:

- (i) expiry of the term referred to in Article 15;
- (ii) surrender by the holder;
- (iii) final liquidation of the legal entity holding the design where there is no transfer.

(2) Lapse under paragraph 1(iii) shall take place at the request of an interested party.

(3) The lapse of a registration shall cause the right in the design to lapse.

#### **Surrender of Rights in Designs**

**Art. 28.** (1) The holder of a design may surrender his right therein.

(2) Surrender by one or more of the joint holders shall not terminate the legal protection.

(3) Surrender may refer to all or some of the designs for which the registration has been effected.

(4) If there is a license agreement on record, surrender shall only be entered if the holder of the design furnishes proof that he has notified the licensee of his intention to surrender it. Entry of the surrender shall be effected on expiry of two months from the date of furnishing the proof.

(5) The surrender of design rights shall be effected by means of a written declaration addressed to the President of the Patent Office.

(6) The surrender shall have effect as from the date on which it is entered in the State Register of Industrial Designs.

## Invalidation of Registrations

**Art. 29.** (1) Any person may request invalidation of the registration of a design, if:

- (i) it has been registered in violation of the provisions of Article 3 or Article 11 (1);
- (ii) it is excluded from protection under Article 11 (2);
- (iii) it is identical, within the meaning of Article 12 (2), with a design that is the subject of a national or international application designating the Republic of Bulgaria and bearing an earlier date of filing or priority, as appropriate, provided that such application is subsequently registered.
- (iv) *(deleted - State Gazette No. 43/2005, in force since 21.08.2005)*
- (v) it has been registered in violation of the provisions of Article 2.

(2) *(new - State Gazette No. 43/2005, in force since 21.08.2005)* A registration shall be declared invalid at the request of any legally interested party, where the use of the design is liable to be prohibited by virtue of:

- (i) an earlier copyright of such person under the Copyright and Neighboring Rights Law;
- (ii) an earlier industrial property right of such person enjoying protection under another law.

(3) *(former paragraph (2) - State Gazette No. 43/2005, in force since 21.08.2005)* If the grounds for invalidation concern some only of the designs included in a multiple application, the registration shall be invalidated for that part only.

(4) *(former paragraph (3) - State Gazette No. 43/2005, in force since 21.08.2005)* A registration shall also be declared invalid when a court decision states that the registered holder is not one of the persons referred to in Article 16 and no request for entering of the true holder is made within one month of the date of entry into force of the court decision.

(5) *(former paragraph (4), amended - State Gazette No. 43/2005, in force since 21.08.2005)* A registration may also be invalidated *ex officio* by the President of the Patent Office under the conditions provided in paragraph (1)(i), (ii) and (iii), paragraph (2)(ii), and paragraph (3).

## Legal Effects of Invalidation

**Art. 30.** (1) Invalidation of a registration shall be effective as of the filing date of the application.

(2) Invalidation shall not affect:

- (i) enforced court decisions concerning infringement in so far as they have been executed prior to the invalidation.
- (ii) license agreements executed prior to the invalidation, unless otherwise agreed.

## Chapter Three - Procedure Before the Patent Office

### Filing of Application

**Art. 31.** (1) Applications for the registration of designs shall be filed with the Patent Office.

(2) The filing date of an application shall be the date on which the Patent Office receives:

- (i) a request for registration;
- (ii) name and address of the applicant;
- (iii) one or more graphic or photographic representations that clearly and fully disclose the design for which protection is sought.

### Contents of Application

**Art. 32.** (1) In addition to the data referred to in Article 31 (2), the application shall contain:

- (i) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) the name of the State of which the applicant is a national, in which he has a permanent address or in which he has a real and effective commercial or industrial establishment;
- (ii) the name and address of the industrial property representative, if any, and a power of attorney;
- (iii) a priority claim, if appropriate;
- (iv) reproductions of the design representation;
- (v) the number of designs for which protection is sought;
- (vi) designation of the products in which the design is incorporated or to which it is applied;
- (vii) the classification index of the products according to the International Classification of Industrial Designs under the Locarno Agreement;
- (viii) a list of the accompanying representations;
- (ix) the name and address of the creator;
- (x) a document certifying payment of the fees for application, examination and priority;
- (xi) (*new – State Gazette No. 73/2006, in force since 06.10.2006*) a letter of consent from the Ministry of Defence or the Ministry of the Interior in the cases referred to in Article 11(3).

(2) The application may be accompanied by a brief description of the specific features of the design, at the initiative of the applicant.

(3) All documents and data shall be filed in the Bulgarian language. Where the documents are filed in a language other than Bulgarian, the filing date shall not change in so far as a Bulgarian translation thereof is filed within a period of three months following that date.

### **Multiple Application**

**Art. 33.** (1) Several designs may be filed in one multiple application on condition that the products in which the designs are incorporated or to which they are applied belong to the same class of the International Classification of Industrial Designs under the Locarno Agreement or to the same set or composition of articles.

(2) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) Where the multiple application relates to ornaments, the provisions of paragraph (1) shall not apply to the products in which the designs are incorporated or to which they are applied.

(3) (*former paragraph (2) - State Gazette No. 43/2005, in force since 21.08.2005*) Additional fees shall be paid for each design following the first one in a multiple application.

### **Division of Application**

**Art. 34.** (1) The applicant shall be entitled to divide the application until such time as a decision is taken on it. The individual applications shall enjoy the priority of the original application in so far as they are filed within three months following division.

(2) The Patent Office shall give the applicant three months to divide an application filed through the national route, where such application does not comply with the provisions of Article 33. The individual applications deriving from the divided application shall enjoy the priority of the original application if filed within that period.

### **Right of Priority**

**Art. 35.** (1) An application shall enjoy a right of priority over subsequent applications for registration of identical designs as of the date of filing of the application under Article 31 (2).

(2) The applicant shall enjoy a right of priority as of the date of a preceding application, provided that:



- (i) the preceding application is properly filed in the Republic of Bulgaria, in a State party to the Paris Convention or a member of the World Trade Organization;
  - (ii) the preceding application is a first application within the meaning of Article 4 of the Paris Convention and relates to the same design;
  - (iii) the application is filed with the Patent Office within six months following the filing date of the preceding application;
  - (iv) priority is claimed within two months from the filing date of the application referred to in Article 31 (2) with a mention of the date and country of the preceding application;
  - (v) within three months from the filing date of the application, the applicant pays the prescribed priority fee and submits a priority certificate issued by the competent authority of the country of filing of the preceding application.
- (3) A properly filed application in terms of paragraph (2)(i) is any application bearing a filing date, regardless of its eventual fate.
- (4) In the case of multiple applications, priority may be claimed on the basis of more than one preceding application, provided that the conditions referred to in paragraph (2) are complied with.

### Formal Examination

**Art. 36.** (1) (*amended – State Gazette No. 73/2006, in force since 06.10.2006*) Every application shall be examined for compliance with the provisions of Article 31 (2) concerning the assignment of a filing date. In the event of non-compliance with the said provisions, the documents received shall be kept at the Patent Office.

(2) (*new - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006*) An application bearing a filing date shall be examined as to whether it is accompanied by a document certifying payment of the prescribed fees for filing, examination and publication of the application. In case there is no such document attached, the applicant shall be allowed three months within which to remedy the deficiency. If no fees are paid within that period, the application shall be deemed to be withdrawn.

(3) (*former paragraph (2), amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006*) Within two months following the filing date of the document certifying payment of the fees, formal examination shall be conducted for compliance with the provisions of Article 32(1)(i) to (ix) and (3), Articles 33 and 34. If deficiencies are ascertained, the applicant shall be given three months to rectify them.

(4) (*former paragraph (3), amended - State Gazette No. 43/2005, in force since 21.08.2005*) If the applicant fails to remedy the deficiencies within the period provided for in paragraph (3), the proceedings shall be discontinued.

(5) (*New – State Gazette No. 73/2006, in force since 06.10.2006*) An application claiming priority shall be examined for compliance with the requirements of Article 35(2). If it is found that the priority claim does not satisfy such requirements, it shall not be granted and the applicant shall be informed respectively.

### Publication of Application

**Art. 36a** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) An application, which meets the formal regularity requirements, shall be published in the Official Bulletin of the Patent Office. The publication shall be effected within one month following the examination referred to in Article 36, and it shall contain an incoming number, filing or priority date, as appropriate, data identifying the applicant and the creator, a design representation, a color/colors claim, the classes according to the International Classification of Industrial Designs under the Locarno Agreement, and the products in which the design is incorporated or to which it is applied.

### Objections Against the Registration of a Design

**Art. 36b** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) (1) Within two months following the publication date of the application, any person may file an objection against the registration of the design on the grounds of Article 12.

(2) The objection shall be filed in writing and shall be substantiated.

(3) The objecting person may not be a participant in the application proceeding. However, he shall be entitled to receive information on the outcome of the objection.

### **Substantive Examination**

**Art. 37.** (1) (*amended – State Gazette No. 73/2006, in force since 06.10.2006*) Within a period of one year following expiration of the term referred to in Article 36b(1), examination shall be carried out to ascertain that the design applied for registration:

(i) is a design within the meaning of Article 3;

(ii) is not excluded from protection according to Article 11 (2);

(iii) is new according to Article 12 with respect to the designs that have been registered in the Republic of Bulgaria through the national or international route;

(iv) is not identical, within the meaning of Article 12 (2), with a design that is comprised in a national application bearing an earlier date of filing or priority, as appropriate, provided that subsequent registration is effected for that application;

(v) is not identical, within the meaning of Article 12 (2), with a design that is comprised in an international application bearing an earlier date of filing or priority, as appropriate, for which the Republic of Bulgaria is a designated country and for which no decision to refuse registration has been taken.

(2) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) When judging novelty, materials may likewise be taken into account proving that the design has been made public or used in any other way.

(3) (*former paragraph (2), amended - State Gazette No. 43/2005, in force since 21.08.2005*) Where a design is ineligible for registration, the applicant shall be notified accordingly; he shall be informed of the grounds for the refusal and allowed three months within which to lodge an objection.

(4) (*former paragraph (3), amended - State Gazette No. 43/2005, in force since 21.08.2005*) Where, within the period provided for in paragraph (3), the applicant fails to present a reasoned objection, the decision shall be taken to refuse the registration.

(5) (*former paragraph (4), amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006*) Where the design is found to be eligible for registration, the applicant shall be notified accordingly and allowed one month within which to pay the fees for registration, issue of a registration certificate and publication.

(6) (*new - State Gazette No. 73/2006, in force since 06.10.2006*) Where the fees referred to in paragraph (5) are paid, the decision shall be taken to register the design and, within one month, a registration certificate shall be issued. In case of failure to pay the fees, the application shall be deemed to be withdrawn.

(7) (*new - State Gazette No. 43/2005, in force since 21.08.2005; former paragraph (6) – State Gazette No. 73/2006, in force since 06.10.2006*) Where some of the designs comprised in a multiple application are ineligible for registration, the applicant shall be notified accordingly; he shall be informed of the grounds for the refusal and allowed three months within which to respond. If, within that period, the applicant fails to respond or present a reasoned objection or restrict the designs, the decision shall be taken to refuse the registration of all designs.

### **Withdrawal, Restriction and Amendment of Application**

**Art. 38.** (1) Until a decision is taken on the application, the applicant may withdraw it in respect of all or some of the designs.

(2) No changes are allowed in the application, except where the name or address of the applicant has changed or there are mistakes in the name or address of the applicant or obvious errors that have to be corrected, on condition that the corrections do not affect the design itself.

(3) Corrections under paragraph (2) shall be made at the request of the applicant.

## Renewal of Registrations

**Art. 39.** (1) A registration shall be renewed at the request of the holder of the design. The request shall contain the registration number and shall be accompanied by a document certifying payment of the prescribed fee.

(2) The renewal request may be submitted during the last year of the term provided for in Article 15 (1), or within six months following the expiry of that term against payment of a surcharge.

(3) In the event of failure to meet the requirements of paragraph (2), the registration renewal shall be refused by order of the President of the Patent Office.

(4) Where the holder requests renewal of the registration for only some of the designs, he shall specify them in the request.

(5) Renewal shall take effect as of the day following the expiry date of the preceding registration.

## Changes in the Name and Address of Holders

**Art. 40.** (1) A holder of the right in a design shall notify the Patent Office, within a period of three months, of any change in his name and address.

(2) The change shall be recorded in the State Register of Industrial Designs at the request of the holder.

(3) All documents of which the holder is to be informed shall be sent to the most recent address recorded in the State Register of Industrial Designs.

## Consideration of Disputes

**Art. 41.** (1) The Disputes Department of the Patent Office shall consider:

(i) (*amended - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006*) appeals against decisions under Article 37 (4) and (7) to refuse registration;

(ii) (*amended- State Gazette No. 43/2005, in force since 21.08.2005*) appeals against decisions under Article 36 (4) to terminate the proceedings;

(iii) request for the invalidation of the registration.

(2) (*supplemented - State Gazette No. 43/2005, in force since 21.08.2005; amended – State Gazette No. 73/2006, in force since 06.10.2006*) The boards for the consideration of appeals in the Disputes Department of the Patent Office shall be composed of two State examiners and one legal expert, while the boards for the consideration of requests shall be composed of three State examiners and two legal experts. The boards shall be appointed by the President of the Patent Office.

(3) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) The boards referred to in paragraph (2) shall deliver opinions for taking of the decisions under Articles 44 and 45.

## Terms

**Art. 42.** (1) Appeals shall be lodged within three months following the date of notification of the decision.

(2) Requests may be filed throughout the term of validity of the registration and, after that, by the defendant only in an infringement action.

(3) (*deleted - State Gazette No. 43/2005, in force since 21.08.2005*).

## Contents of Appeals and Requests

**Art. 43.** (1) An appeal shall contain data identifying the appellant, data identifying the application, and a statement of objections against the refusal decision.

(2) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) A request shall be filed in two copies, and it shall contain data identifying the petitioner, data concerning the legal interest of the petitioner, if required, invalidation grounds, as well as evidence, if necessary.

(3) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) Appeals and requests shall be accompanied by a document certifying payment of the prescribed fee.

#### **Examination of Admissibility and Formal Regularity of Appeals and Requests**

**Art. 43a** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) (1) Appeals shall be examined as to whether the term under Article 42(1) is observed and whether the document certifying payment of fees under Article 43(3) is furnished.

(2) Requests shall be examined as to whether the document certifying payment of fees under Article 43(3) is furnished and whether there is a legal interest, if required.

(3) Where no document certifying payment of the prescribed fees is attached to the appeal or request, or the request lacks grounding of the legal interest, the applicant, respectively the petitioner, shall be allowed one month to correct the deficiencies.

(4) Appeals that fail to be filed within the term provided for in Article 42(1) and/or for which no fee is paid, as well as requests for which no fee is paid and/or no legal interest is proven, shall be considered inadmissible and no proceedings shall be initiated in connection with them.

(5) Every admissible appeal or request shall be examined for compliance with the rest of the requirements under Article 43. In the case of deficiencies, the applicant or the petitioner, as appropriate, shall be notified thereof and shall be allowed one month to correct them. If the deficiencies fail to be remedied within that term, the proceedings in such appeals and requests shall be terminated.

#### **Ruling on Appeals**

**Art. 44.** (1) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) Where an appeal is found to be groundless, the President of the Patent Office shall render a decision confirming the decision to refuse the registration or the decision to terminate the proceedings.

(2) (*amended- State Gazette No. 43/2005, in force since 21.08.2005*) Where an appeal is well-founded, the President of the Patent Office shall cancel the decision and shall take a decision to register the design, to refer the application back for re-examination or to renew the proceedings.

(3) Where a decision to refuse registration is cancelled on reconsideration of the application, a substantive decision shall be taken by the President of the Patent Office.

(4) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) The decision on an appeal shall be rendered within three months following its filing date or the remedy of the deficiencies, if any.

#### **Request Proceedings**

**Art. 45.** (1) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) A copy of the request shall be sent to the holder of the design, who shall be allowed three months within which to lodge an objection.

(2) Where the request is groundless, the President of the Patent Office shall take the decision to reject it.

(3) Where the request is well-founded, the President of the Patent Office shall take the decision to invalidate the registration either wholly or in part.

(4) In cases of partial invalidation, the registration certificate issued shall be replaced by a new one.

(5) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) The board referred to in Article 41(2) may require from the parties to produce further evidence and materials, if needed. Such further evidence and materials shall be sent to the other party, allowing them one month to respond in writing.

(6) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) The decisions on the invalidation requests shall be taken within three months after the process of collecting the evidence referred to in paragraph (5) is over.

#### **Extension of Time Limits**

**Art. 46.** (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) The time limits referred to in Article 36 (3), Article 37 (3) and (4) and Article 45 (1) may be extended by three months, at the request of the applicant or the holder filed prior to the expiry thereof, but not more than once. An extension request shall not be granted if not accompanied by a document certifying payment of the prescribed fee.

#### **Renewal of Time Limits**

**Art. 47.** The applicant or the holder of a design may request renewal of time limits exceeded owing to exceptional, unforeseen circumstances. The request shall be filed within three months on elimination of the circumstances that caused the time limit to be exceeded, but no later than one year following the expiry of the time limit exceeded. Decisions to renew time limits shall be taken by the President of the Patent Office.

#### **Publications in the Official Bulletin**

**Art. 48.** The Patent Office shall effect publication in its Official Bulletin of all industrial design registrations and subsequent changes thereto.

#### **Review by Court**

**Art. 49.** (*amended – State Gazette No. 30/2006, in force since 01.03.2007*) The decisions of the President of the Patent Office under Article 44 (1) and (3) and Article 45 (2) and (3) may be appealed against before the Sofia Administrative Court within three months following the date of receipt of the notification thereof.

### **Chapter Four - REGISTRATION OF INDUSTRIAL DESIGNS UNDER THE HAGUE AGREEMENT**

#### **International Registration of Industrial Designs**

**Art. 50.** (1) (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) International registration of designs is a registration carried out by the International Bureau of the World Intellectual Property Organization, hereinafter referred to as "the International Bureau", under the provisions of the Hague Agreement, hereinafter referred to as "the Agreement".

(2) With respect to third parties, an international registration shall have effect on the territory of the Republic of Bulgaria as of the date of expiration of the 6-month period under Article 8 (1) of the Agreement.

#### **Term of Validity of International Registration**

**Art. 51.** The term of validity of an international registration on the territory of the Republic of Bulgaria shall be as specified in this Law.

#### **Procedure before the Patent Office**

**Art. 52.** (1) International applications designating the Republic of Bulgaria shall be processed at the Patent Office as provided in Article 37.

(2) (*deleted- State Gazette No. 43/2005, in force since 21.08.2005*).

(3) (*deleted - State Gazette No. 43/2005, in force since 21.08.2005*).

#### **Filing of International Application**

**Art. 53.** (*amended - State Gazette No. 43/2005, in force since 21.08.2005*) Natural and legal persons having a permanent address or an actual and effective commercial or industrial establishment in the Republic of Bulgaria may file international applications under the Agreement with the International Bureau through the Patent Office of the Republic of Bulgaria.

#### **International Applications for Which the Republic of Bulgaria is Country of Origin**

**Art. 54.** An international application for which the Republic of Bulgaria is a country of origin shall have no effect on the territory of the Republic of Bulgaria.

**Chapter Four “a” – COMMUNITY DESIGN (new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union)**

**Art. 54a** (new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) (1) A design which is registered with the Office for Harmonization in the Internal Market (Trade Marks and Designs) in accordance with the procedure and conditions laid down in Council Regulation (EC) No. 6/2002 on Community designs, hereinafter referred to as “the Regulation”, or an unregistered design within the meaning of Article 1 of the Regulation, is referred to as a Community design.

(2) A Community design application bearing a filing date or priority date, as appropriate, shall be regarded as an application regularly filed in the territory of the Republic of Bulgaria.

(3) The Patent Office of the Republic of Bulgaria shall act as a central industrial property office within the meaning of the Regulation.

(4) The President of the Patent Office shall issue certificates for the entry of industrial property representatives before the Office for Harmonization in the Internal Market, and shall take all necessary steps for that in accordance with the requirements of the Regulation.

**Community Design Application**

**Art. 54b** (new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) (1) Community design applications must satisfy the requirements of Article 36 of the Regulation.

(2) An application for a registered Community design shall be filed directly with the Office for Harmonization in the Internal Market or through the Patent Office.

(3) Where an application is filed with the Patent Office, it shall be accompanied by a document certifying payment of the fee for forwarding it.

(4) The Patent Office shall forward the application to the Office for Harmonization in the Internal Market within two weeks of receipt thereof.

**Community Design Protection**

**Art. 54c** (new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) (1) Civil law protection in cases of infringement of rights in Community designs shall be effected in accordance with the procedure laid down in the Regulation.

(2) Where, according to the Regulation, claims are lodged and measures are requested in the Republic of Bulgaria in connection with the protection of a Community design, the Bulgarian legislation shall apply, unless otherwise provided for in the Regulation.

(3) Claims referred to in paragraph (2) shall be cognizable by the Sofia City Court as a court of first instance and the Sofia Court of Appeals as a court of second instance, both courts being Community design courts within the meaning of the Regulation.

**Subsidiary Implementation of Decisions**

**Art. 54d** (new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) The provisions of the Regulation shall apply to issues that are not governed by this Chapter.

**Chapter Five - PROTECTION UNDER CIVIL LAW**

**Infringement of Rights in Designs**

**Art. 55.** Any use as referred to in Article 19(2) of a registered design in commercial activities without the consent of the holder thereof shall constitute an infringement of the right in the

design.

### **Right to Bring Action**

**Art. 56.** (1) (*amended – State Gazette No. 73/2006, in force since 06.10.2006*) The holder of the right in a design and the licensee of an exclusive license shall be entitled to independently bring an infringement action.

(2) (*deleted – State Gazette No. 73/2006, in force since 06.10.2006*).

(3) The licensee of a non-exclusive license may bring an action with the consent of the holder only, unless otherwise agreed by contract.

### **Infringement Actions**

**Art. 57.** (1) Infringement actions under this Law may relate to:

(i) establishment of the fact of infringement;

(ii) suspension of the act of infringement;

(iii) compensation for damages suffered;

(iv) (*new – State Gazette No. 73/2006, in force since 06.10.2006*) seizure and destruction of the infringing products, as well as of the means with which the infringement was carried out.

(2) (*amended – State Gazette No. 73/2006, in force since 06.10.2006*) Along with the action under paragraph (1), the claimant may likewise request through the court that:

(i) (*amended – State Gazette No. 73/2006, in force since 06.10.2006*) the infringing articles be given to him;

(ii) (*new – State Gazette No. 73/2006, in force since 06.10.2006*) the expenses be refunded to him for keeping and destroying the infringing articles;

(iii) (*former item (ii), amended – State Gazette No. 73/2006, in force since 06.10.2006*) the operative part of the court decision be announced, at the expense of the infringer, in two daily publications and during an emission time of a national range TV organization as determined by the court.

### **Determination of Compensation**

**Art. 57a** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) (1) Compensation is due for all material and non-material damages suffered and profits lost, which are a direct and proximate consequence of the infringement.

(2) When determining the compensation amount, the court shall take into account also all circumstances of the infringement, as well as all profits the infringement has brought.

(3) The court shall rule a just compensation that is to have a deterrent and warning effect on the infringer and the rest of the community.

### **Special Cases of Compensation**

**Art. 57b** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) (1) Where an action is well founded, but there is no sufficient information as to its amount, the claimant may request the following compensation:

(i) 500 to 100 000 levs, the concrete amount being fixed at the discretion of the court, subject to the provisions of Article 57a(2) and (3), or

(ii) the equivalent in money of the infringing products at retail prices of legally produced articles in which the design is incorporated or to which it is applied.

(2) When determining the compensation referred to in paragraph (1), the profits shall also be taken into account that the infringement has brought.

### **Seizure of Infringing Products**

**Art. 57c** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) Seizure of infringing products under Article 57(1)(iv) may be requested both with regard to articles at concrete premises and articles in the commercial network.

### **Responsibility**

**Art. 57d** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) Legal persons and one-man businesses shall bear civil responsibility for any infringement of rights under this Law culpably committed by persons representing them or their employees or persons hired by them. In such case, guilt shall be assumed until the contrary is proved.

### **Procurement of Evidence in Claim and Security Proceedings**

**Art. 57e** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) Where the claimant has furnished evidence to sustain his claims, and has produced still other evidence, which is of importance for solving the case but is under the defendant's control, the claimant may request from the court to oblige the defendant to present such evidence.

(2) The court may oblige the defendant, at the request of the claimant and subject to the provisions of paragraph (1), to provide a possibility of getting acquainted with any bank, financial and commercial documents that are under his control.

(3) The claimant may not disclose the information contained in the documents under paragraph (2).

(4) The representation of evidence of an individual or single use of a design enjoying protection under this Law shall be regarded as sufficient ground to apply the provisions of paragraphs (1) and (2).

(5) The availability of the circumstances related to the alleged infringement may be established also by producing evidence of an individual or single illegal use of a design enjoying protection under this Law.

### **Request of Information as to the Origin and Distribution Networks in Cases of Infringement**

**Art. 57f** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) (1) The claimant may request that the court obliges the defendant or a third party to furnish information on circumstances that are of importance for solving the case.

(2) A "third party" within the meaning of paragraph (1) is any person, who:

(i) keeps infringing products, or

(ii) offers services that lead to infringement; or

(iii) uses infringing services; or

(iv) is mentioned by the person referred to in items (i) to (iii) as a participant in the making, production or distribution of such products or services.

(3) The information referred to in paragraph (1) may comprise:

(i) the names and addresses of the producers, distributors, suppliers and any other persons who have previously been in possession of the products or services, as well as the supposed wholesale or retail distributors;

(ii) information about the quantities that have been produced, delivered, received or ordered, as well as the proceeds from such products or services.

(4) The provision under paragraph (1) shall not apply to cases where it may lead to breaking a provision under another law.

(5) The provisions under paragraphs (1) and (3) shall apply only to acts performed with the purpose of gaining direct or indirect economic or commercial advantage.



**Provisional Remedies** (*title amended - State Gazette No. 59/2007, in force since 01.03.2008*)

**Art. 57g** (*new – State Gazette No. 73/2006, in force since 06.10.2006*) (1) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) Where the right in a design is infringed, or where there is good reason to believe that such an infringement will be made or some evidence will be lost, destroyed or suppressed, the holder of the right or the licensee of an exclusive license may request that the court allows some of the following provisional remedies as well, without notifying the other party:

(i) prohibition of the performance of activities that constitute or will constitute, as contended, illegal use of an industrial design;

(ii) seizure of the goods that are contended to have an illegally used design, as well as of any other evidence of importance for proving the infringement;

(iii) sealing of the premises where infringement is or will be made, as contended.

(2) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) Provisional remedies shall be allowed, imposed or reversed in accordance with the provisions of Articles 389 to 403 of the Code of Civil Procedure, except for the first sentence of Article 398(2), unless otherwise provided for in this Law.

(3) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) The “prohibition to perform activities” provisional remedy shall be imposed by a court notice thereof.

(4) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) The provisional remedies referred to in paragraph (1), items (ii) and (iii) shall be imposed by a public or private bailiff, who shall perform the action along with the delivery of the remedy allowance notice within three days following the date of receipt by the bailiff of the plaintiff’s request. The provisional remedy intended to prevent a future infringement shall be imposed within a term complied with the purpose thereof. The confiscated property shall be docketed and deposited for safe-keeping by the plaintiff, who may use it as an instrument of evidence only.

(5) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) The plaintiff or his representative shall be entitled to witness or render assistance in the process of imposing of the provisional remedies.

(6) (*amended - State Gazette No. 59/2007, in force since 01.03.2008*) The provisional remedy referred to in paragraph (1)(i) may be imposed also with respect to third parties for whom there is good reason to believe that they assist the performance of the activity, which constitutes or will constitute, as contended, illegal use.

(7) The holder of the right in a design or the licensee of an exclusive license may not disclose the information that has become known to him in the process of imposing the remedies referred to in paragraph (1) or in connection therewith.

**Service Design Actions**

**Art. 58.** (1) Any interested party may bring an action for establishing the service nature of a design.

(2) The action shall be brought within one year of learning about the registration.

(3) In the event of disputes under Article 17 (2), the party disagreeing with the remuneration as established may bring an action concerning the amount thereof.

**Prior Use Actions**

**Art. 59.** Any interested party may bring an action to ascertain the fact of prior use.

**Authorship and Joint Authorship Actions**

**Art. 60.** (1) A person claiming authorship or joint authorship of a design may bring an action throughout the term of validity of the registration.

(2) On the basis of an enforceable court order, the Patent Office shall enter the name of the creator in the State Register of Industrial Designs.

**Provisional Remedies** (*title amended - State Gazette No. 59/2007, in force since 01.03.2008*)

**Art. 60a** (new – State Gazette No. 43/2005, in force since 21.08.2005) (1) (amended - State Gazette No. 59/2007, in force since 01.03.2008) Where the right in a registered industrial design is infringed, or where there is good reason to believe that such an infringement will be made or some evidence will be lost, destroyed or suppressed, the holder of the right or the exclusive licensee may request that the court allows some of the following provisional remedies without notifying the other party:

(i) prohibition of the performance of activities that constitute or will constitute, as contended, illegal use of an industrial design;

(ii) seizure of the goods that are contended to have been manufactured through copying or use of a design falling within the scope of protection;

(iii) sealing of the premises where infringement is or will be carried out, as contended.

(2) (amended - State Gazette No. 59/2007, in force since 01.03.2008) Provisional remedies shall be allowed, imposed or reversed in accordance with the provisions of Articles 389 to 403 of the Code of Civil Procedure, except for the first sentence of Article 398(2), unless otherwise provided for in this Law.

(3) (amended - State Gazette No. 59/2007, in force since 01.03.2008) The provisional remedy “prohibition to perform activities” shall be imposed by a court notice thereof.

(4) (amended - State Gazette No. 59/2007, in force since 01.03.2008) The provisional remedies referred to in paragraph (1), items (ii) and (iii) shall be imposed by the bailiff performing the action along with the delivery to the defendant of the remedy allowance notice.

(5) (amended - State Gazette No. 59/2007, in force since 01.03.2008) The plaintiff or his representative shall be entitled to witness or render assistance in the process of imposing of the provisional remedies.

(6) (amended - State Gazette No. 59/2007, in force since 01.03.2008) The provisional remedy referred to in items (ii) and (iii) of paragraph (1) shall be imposed within three days following the date of receipt by the bailiff of the plaintiff's request. A provisional remedy intended to prevent a future infringement shall be imposed within a term complied with the purpose thereof.

(7) (amended - State Gazette No. 59/2007, in force since 01.03.2008) If the provisional remedy request is found to be groundless, the defendant may claim damages from the person who has filed it.

## **Jurisdiction**

**Art. 61.** (amended - State Gazette No. 30/2006, in force since 01.03.2007; amended - State Gazette No. 73/2006, in force since 13.07.2006) All actions under this Law shall fall within the cognizance of the Sofia City Court.

## **Chapter Six - BORDER CONTROLS**

### **Field of Application**

(title amended- State Gazette No. 43/2005, in force since 21.08.2005)

**Art. 62.** (amended - State Gazette No. 43/2005, in force since 21.08.2005) (1) (amended - State Gazette No. 73/2006, in force since 06.10.2006) The holder of the right in a design or the licensee of an exclusive license may request that the customs officials detain goods carried through the border of the Republic of Bulgaria, for which there is good reason to believe that they are infringing a right protected under this Law.

(2) (amended - State Gazette No. 73/2006, in force since 06.10.2006) The border controls shall not apply to:

(i) (deleted – State Gazette No. 73/2006, in force since 06.10.2006)

(ii) (deleted – State Gazette No. 73/2006, in force since 06.10.2006)

(iii) (amended – State Gazette No. 73/2006, in force since 06.10.2006) goods not intended for commercial purposes, which are carried as a part of the passenger's luggage, provided that they are in a quantity as determined for duty-free import or export;

(iv) perishable goods.

(3) (new - State Gazette No. 73/2006, in force since 06.10.2006) The provisions of this

Chapter shall apply also to any products declared before the customs authorities, regardless of whether a customs regime has been operated with respect to them.

### **Border Control Application Terms**

*(title amended - State Gazette No. 43/2005, in force since 21.08.2005)*

**Art. 63.** *(amended- State Gazette No. 43/2005, in force since 21.08.2005)* (1) Border controls shall be applied on the basis of a written request from the holder of the design, as well as on the initiative of the customs officials. Where the permanent address or headquarters of the holder of the right is abroad, he shall give an address for service on the territory of the Republic of Bulgaria.

(2) The request referred to in paragraph (1) shall contain a detailed description of the articles. It shall be accompanied by a copy of the design registration certificate, as well as a document certifying that the registration is valid, both documents having been issued by the Patent Office.

(3) The customs officials shall collect fees as specified by the Council of Ministers for the consideration of requests and the application of border controls.

(4) *(amended – State Gazette No. 73/2006, in force since 06.10.2006)* Where the circumstances under Article 62(1) are ascertained, the customs officials shall detain the goods. Detention shall be carried out by a customs document issued by the competent customs authorities. The latter shall promptly notify the petitioner, the consignee and the consignor about the detention. Those persons shall be entitled to inspect the detained articles and get information about them.

(5) *(new – State Gazette No. 73/2006, in force since 06.10.2006)* If, within 10 working days following the date on which the petitioner was notified of the detention referred to in paragraph (4), he fails to furnish evidence that proceeding has been instituted before the respective court for adjudication of the dispute on its merits, or that security has been allowed, the customs officials shall release the detained goods, provided that all clearance requirements are satisfied. The petitioner may file a reasoned request for the term to be extended by further 10 working days.

(6) *(new – State Gazette No. 73/2006, in force since 06.10.2006)* The competent authorities before which the proceeding has been instituted under paragraph (5) shall pass a judgment, in response to an appeal from the interested party, as to whether the detention measures are to be affirmed, modified or reversed.

(7) *(new – State Gazette No. 73/2006, in force since 06.10.2006)* A refusal on the part of the customs officials to satisfy a detention request shall be appealable before the Sofia City Court in accordance with the provisions of the Code of Administrative Procedure.

(8) *(new – State Gazette No. 73/2006, in force since 06.10.2006)* The customs officials shall bear no responsibility for being unable to identify, when exercising control, the articles for which detention is requested, as well as for their detention acts performed in good faith.

### **Actions on the Initiative of the Customs Authorities**

**Art. 63a** *(new – State Gazette No. 73/2006, in force since 06.10.2006)* (1) The customs officials may, on their own initiative or at the request of another state agency, detain goods for which there is good reason to believe that they are infringing a right protected under this Law.

(2) In the cases under paragraph (1), the customs officials shall promptly notify the persons referred to in Article 63(1), as well as the consignee and the consignor of the products, giving them the possibility to inspect the detained articles. The customs officials may require from the holders of the rights any information for the performance of examination.

(3) The decision referred to in paragraph (1) may be appealed before the Sofia City Court in accordance with the provisions of the Code of Administrative Procedure.

(4) If, within 10 working days following the detention date, no proceeding is instituted before the court for adjudication of the dispute on its merits or no security is allowed by the court, the customs officials shall release the detained goods, provided that all clearance requirements are satisfied.

(5) The customs officials shall bear no responsibility for their detention acts performed in good faith.

## Complementary Regulation

**Art. 64.** The procedures and manner of application of this Chapter shall be specified in an ordinance of the Council of Ministers.

## Application of Council Regulation 1383/2003/EC

**Art. 64a** (*new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union*) The provisions of this Chapter shall apply only to the extent that they do not contradict the provisions of Council Regulation 1383/2003/EC concerning the actions of the customs officials against goods that are found to infringe rights protected under this Law.

## Chapter Seven - ADMINISTRATIVE PENAL LIABILITY

### Administrative Violations and Penalties

*(title amended - State Gazette No. 43/2005, in force since 21.08.2005)*

**Art. 65.** (*amended - State Gazette No. 43/2005, in force since 21.08.2005; supplemented – State Gazette No. 73/2006, in force since 06.10.2006*) (1) A fine of 500 to 1,500 leva shall be imposed on any person who produces, offers for sale, places on the market, imports or exports, or stocks for those purposes goods manufactured by copying or use of a design falling within the scope of protection under Article 18 without the consent of its holder, and a property sanction of 1,000 to 3,000 leva shall be imposed on one-man businesses or legal entities.

(2) Where the infringement referred to in paragraph (1) is repeated, the fine imposed shall be 1,500 to 3,000 leva, and the property sanction imposed on one-man businesses or legal entities shall be 3,000 to 5,000 leva.

(3) An infringement is repeated if performed within one year following the entry into effect of the penal provision against the infringer for the same kind of infringement.

(4) The goods shall be seized, regardless of the ownership thereof, and they shall then be destroyed, the holder of the industrial design or an authorized person being allowed to witness the process of destruction.

(5) (*deleted – State Gazette No. 73/2006, in force since 06.10.2006*).

### Establishment of infringements

**Art. 66.** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) (1) Infringements shall be established by a statement of infringement drawn up by an official as appointed by the President of the Patent Office, following an inspection conducted with the assistance of the Ministry of the Interior.

(2) No inspection shall be conducted and no administrative penal proceedings shall be instituted in the case of proceedings under Article 29 that have already started.

### Powers of the Official

**Art. 67** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) (1) The official referred to in Article 66(1) shall be entitled to:

- (i) demand access to the sites subject to inspection;
- (ii) demand all necessary documents related to the inspection and take samples for expert opinion.

(2) The official shall be obliged to:

- (i) give in the statement of infringement a precise report on the inspection results;
- (ii) keep the official, production and trade secrets he learns of in connection with the inspection;
- (iii) keep all inspection information in secret;

(iv) use the inspection information for the purposes of the administrative proceedings only.

#### **Obligation to Assist**

**Art. 68.** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) The persons working at the premises where the inspection under Article 66(1) is conducted shall be obliged to:

- (i) provide unimpeded access to the premises under inspection;
- (ii) furnish all documents and evidence demanded by the official;
- (iii) keep the articles deposited for safe keeping;
- (iv) provide assistance to the officials in connection with the inspection.

#### **Infliction and Execution of Administrative Sanctions**

**Art. 69.** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) (1) Penal injunctions shall be issued by the President of the Patent Office or by an official authorized by him.

(2) The voluntary execution of fines or property sanctions shall be carried out within seven days following entry into effect of the penal injunction or court decision they were imposed by, and the respective amount of money shall be paid in the pay room of the Patent Office or shall be remitted to its account.

(3) (*amended – State Gazette No. 105/2005, in force since 01.01.2005*) On expiry of the term referred to in paragraph (2), a copy of the penal injunction shall be sent to the Government Collection Agency for forced execution of the fine or property sanction in accordance with the Tax Procedure Code.

(4) On entry into effect of the penal injunction or court order, the goods seized shall be passed over to the Ministry of the Interior for destruction.

#### **Application of the Law on Administrative Violations and Penalties**

**Art. 70** (*new - State Gazette No. 43/2005, in force since 21.08.2005*) Infringements shall be established and penal injunctions shall be issued, appealed and executed in accordance with the Law on Administrative Violations and Penalties, unless otherwise provided in this Chapter.

#### **ADDITIONAL PROVISIONS**

**§ 1.** For the purposes of this Law:

- (i) "Hague Agreement" means the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at The Hague on November 28, 1960.
- (ii) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, concluded on March 20, 1883, as revised and amended.
- (iii) "Locarno Agreement" means the Locarno Agreement Establishing the International Classification for Industrial Designs of October 8, 1968, as amended on October 2, 1979.
- (iv) "Local industrial property representative" means any person who is a representative within the meaning of Article 3 (2) of the Patent Law.
- (v) "State examiner" means any person who is an examiner within the meaning of Article 83 (3) of the Patent Law.
- (vi) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Article" means any separate production or commercial unit obtained by using industrial or craft methods and intended to satisfy human necessities.
- (vii) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Complex article" means any article composed of a number of parts that may be replaced in order to allow the disassembly or repeated assembly of the article.

(viii) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Part of a complex article" means any separate structural element intended to be assembled into that article and capable of independent commercial realization, such as: automobile steering wheels or headlights, bicycle pedals, bottle caps, etc.

(ix) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Set of articles" means structurally individual articles subjected to a common visual or stylistic principle of external shaping and intended for a common purpose, such as: dinner set, children's play, suite of furniture.

(x) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Composition of articles" means the stylistic combination of articles with the same principle of internal shaping, such as: interior decoration, kitchen or dining car furnishing, etc.

(xi) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Packing" means any article that serves to pack up and/or transport another article.

(xii) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Graphic symbol" means any arbitrary sign serving to mark or perceive an object, idea, image, etc.

(xiii) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Typographic typeface" means any set of letters, figures or characters drawn in a certain manner.

(xiv) (*new - State Gazette No. 43/2005, in force since 21.08.2005*) "Informed user" means any user possessing knowledge, experience and interests in the respective economic sector to which the product belongs that the design is incorporated in or applied to.

(xv) (*new - State Gazette No. 73/2006, in force since 06.10.2006*) "Import or export of goods" means the actual carrying across the border of the Republic of Bulgaria of goods in which a design, falling within the scope of protection under this Law, is incorporated or to which it is applied, regardless of whether the customs regime has been operated with respect to such goods.

§ 1a. (*new – State Gazette No. 73/2006, in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union*) The provisions of this Law that apply to the European Union member States shall apply also to the other States in the European Economic Area.

## **TRANSITIONAL AND FINAL PROVISIONS**

**§ 2.** The legal protection of a design under this Law shall not prejudice its concurrent protection under the Copyright and Related Rights Law.

**§ 3.** This Law shall apply also to applications for the registration of designs that are still pending on its entry into force.

**§ 4.** The term of validity of an industrial design registered under the Law on Trademarks and Industrial Designs that has not expired on entry into force of this Law shall be determined in accordance with Article 15.

**§ 5.** This Law shall prevail over Section II of the Law on Trademarks and Industrial Designs (publ. in State Gazette No. 95/1967; amend. in Nos.55/1975, 56/1986 and 27/1993) and Articles 1, 46, 47, 48, 49, 50, 51, 52 of the same Law in the part concerning industrial designs.

**§ 6.** The Patent Law (publ. in State Gazette No. 27/1993; amend. in No.83/1996 and No.11/1998) shall be amended as follows:

1. In Article 80, item 2, "industrial designs" shall be replaced by "industrial designs".

2. In § 10 of the Transitional and Final Provisions, "utility models and industrial designs" shall be added after "service inventions".

**§ 7.** The Criminal Code (publ. in State Gazette No. 26/1968; rev. in No.29/1968; amend. in Nos. 92/1969, 26 and 27/1973, 89/1974, 95/1975, 3/1977, 54/1978, 89/1979, 28/1982; rev. in No. 31/1982; amend. in Nos. 44/1984, 41 and 79/1985; rev. in No. 80/1985; amend. in No. 89/1986; rev. in No. 90/1986; amend. in Nos. 37, 91 and 99/1989, Nos. 10, 31 and 81/1990, Nos. 1 and 86/1991; rev. in No. 90/1991; amend. in Nos. 105/1991, 54/1992, 10/1993,

50/1995, 97/1995 - Decision No. 19/1995 of the Constitutional Court; amend. in Nos. 102/1995, 107/1996, 62 and 85/1997; 120/1997 - Decision No. 19/1997 of the Constitutional Court; amend. in Nos. 83, 85, 132, 133 and 153/1998, 7 and 51/1999) shall be amended as follows:

1. In Article 173 (2), "industrial design" shall be replaced by "industrial design", and "rationalization" shall be replaced by "utility model".

2. In Article 174, "industrial design" shall be replaced by "industrial design" and "rationalization" shall be replaced by "utility model".

**§ 8.** The Commercial Law (publ. in State Gazette No. 48/1991; amend. in Nos.25/1992, 61 and 103/1993, 63/1994, 63/1995, 42, 59, 83, 86 and 104/1996, 58, 100 and 124/1997, 52 and 70/1998, 33, 42 and 64/1999) shall be amended as follows:

1. In Article 587, "industrial design" shall be replaced by "industrial design".

2. In Article 588, "industrial design" shall be replaced by "industrial design".

**§ 9.** In § 1, item 8 of the complementary provisions of the Law on the Corporate Income Taxation (publ. in State Gazette No.115/1997; rev. in No.19/1998; amend. in .Nos. 21 and 153/1998, 12, 50 and 51/1999), "industrial design" shall be replaced by "industrial design".

**§ 10.** In Article 31 (1) of the Cooperative Society Law (publ. in State Gazette, No.63/1991, amend. in Nos. 34 and 55/1992, No. 63/1994, Nos.59 and 103/1996, No. 52/1997, No. 52/1998) "industrial designs" shall be replaced by "industrial designs".

**§ 11.** In Article 19 (2), item 2, of the Bookkeeping Law (publ. In State Gazette No. 4/1991, amend. in Nos. 26/1992, 55/1993, 21, 33 and 59/1996, 52/1997, 21/1998, 57/1999) "industrial designs" shall be added after "marks".

**§ 12.** The Council of Ministers shall adopt Regulations for the drafting, filing and examination of applications for the registration of industrial designs, as well as a Tariff of Fees.

**§ 13.** The President of the Patent Office shall issue instructions and guidelines on the implementation of this Law.

**§ 14.** The implementation of this Law shall be assigned to the President of the Patent Office.

**§ 15.** This Law shall enter into force three months after its publication in the State Gazette.

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This Law was passed by the XXXVIII National Assembly

on 2 September 1999,

and the official seal of the National Assembly was affixed to it.

#### **Transitional and Final Provisions of the**

### **Law on the Amendment of the Law on Industrial Designs**

(Publ. In State Gazette No. 43/2005, in force since 21.08.2005)

**§ 32.** This Law shall apply also to applications for the registration of designs that are still pending on its entry into force.

**§ 33.** Requests for invalidation of registrations filed prior to the date of entry into force of this Law shall be handled in accordance with the latter.

**§ 34.** This Law shall enter into force three months after its publication in the State Gazette.

#### **Transitional and Final Provisions of the**

## **Tax Procedure Code**

(Publ. In State Gazette No. 105/2005, in force since 01.01.2006)

§ 88. The Code shall come into effect on 1 January 2006, except for Article 179(3), Article 183(9), § 10, item 1 "e" and item 4 "c", § 11, item 1 "b" and § 14, item 12 of the Transitional and Final Provisions, which shall come into force on the day of publication of the Code in the State Gazette.

### **Transitional and Final Provisions of the**

## **Code of Administrative Procedure**

(Publ. In State Gazette No. 30/2006, in force since 12.07.2006)

§ 142 The Code shall come into effect on 1 January 2006, except for:

1. Section Three, § 2, item 1 and § 2, item 2 – concerning the abrogation of Chapter Three, Section II "Appeal Through the Court", § 9, items 1 and 2, § 11, items 1 and 2, § 15, § 44, items 1 and 2, § 51, item 1, § 53, item 1, § 61, item 1, § 66, item 3, § 76, items 1 to 3, § 78, § 79, § 83, item 1, § 84, items 1 and 2, § 89, items 1 to 4, § 101, item 1, § 102, item 1, § 107, § 117, items 1 and 2, § 125, § 128, items 1 and 2, § 132, item 2 and § 136, item 1, as well as § 34, § 35, item 2, § 43, item 2, § 62, item 1, § 66, items 2 and 4, § 97, item 2, and § 125, item 1 – concerning the replacement of the word "regional" by "administrative", and the replacement of "Sofia City Court" by "Sofia Administrative Court", which shall become effective as from 1 March 2007;

2. Paragraph 120, which shall come into effect on 1 January 2007;

3. Paragraph 3, which shall come into effect on the day of publication of the Code in the State Gazette.

### **Transitional and Final Provisions of the**

## **Law on the Amendment of the Law on Industrial Designs**

(Publ. In State Gazette No. 73/2006, in force since 06.10.2006)

§ 28 (in force since the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union) Community designs that are valid on the date of accession of the Republic of Bulgaria to the European Union, as well as Community design applications filed prior to that date, will have effect in the territory of the Republic of Bulgaria as of that date.

§ 29. This Law shall enter into force one month after its publication in the State Gazette, except for § 6, § 15, § 23, § 27, and § 28, which shall come into force on the date of entry into effect of the Agreement for the Accession of the Republic of Bulgaria to the European Union, and § 19, which shall take effect on 13 July 2006.

## **TRANSITIONAL AND FINAL PROVISIONS**

### **of the Code of Civil Procedure**

*(published in State Gazette No. 59/2007, in force as from 01.03. 2008)*

§ 61. The Code shall take effect on 1 March 2008, except for:

1. Part Seven "Special rules concerning the civil proceedings under the operation of the European Union Law";
2. Paragraph 2(4);
3. Paragraph 3 concerning the replacement of Chapter Thirty Two "A" "Special Rules for Recognition and Admission of Fulfillment of Decisions of Foreign Courts and of Foreign Bodies" by Arts. 307a to 307e, and replacement of Part Seven "Proceedings for Returning a Child or Exercising the Rights of Personal Relations" by Arts. 502 to 507;
4. Paragraph 4(2);
5. Paragraph 24;



6. Paragraph 60,  
which will take effect three days after promulgation of the Code in the State Gazette.

#### **Relevant Acts of the European Law**

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 April 2004 on the Enforcement of Intellectual Property Rights

DIRECTIVE 98/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 October 1998 on the legal protection of designs

COUNCIL REGULATION (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods

REGULATION (EEC) No. 2380 /74 OF THE COUNCIL of 17 September 1974 adopting provisions for the dissemination of information relating to research programmes for the European Economic Community

COUNCIL REGULATION (EC) No 6/2002 of 12 December 2001 on Community designs

REGULATION (EC) No. 1383/2003 OF THE COUNCIL of 22 July 2003 concerning customs actions against action suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.