

INDUSTRIAL DESIGN ACT

And

THE ACT AMENDING AND SUPPLEMENTING
THE INDUSTRIAL DESIGN ACT*

NN 173/2003, in force from January 1, 2004
*NN 76/2007, in force July 31, 2007

Zagreb September, 2007

I. GENERAL PROVISIONS

SUBJECT MATTER OF THE ACT

Article 1

This Act provides the requirements for the protection of a design, regulates the right to protection, the acquisition of the industrial design, the scope and term of industrial design protection, exclusive rights conferred by the industrial design, the industrial design registration procedure, the changes relating to industrial designs, the termination and invalidation of industrial designs, international deposit of industrial designs, civil protection and misdemeanour provisions.

DEFINITIONS

Article 2

For the purposes of this Act:

1. "Design" means the appearance of the whole or a part of a product resulting from its features, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation,

"Product" means any industrial or handicraft item, including, inter alia, parts intended to be assembled into a complex product, packaging, get-up of books, graphic symbols and typographic typefaces, but excluding computer programs,

"Complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

II. PROTECTION REQUIREMENTS

REQUIREMENTS FOR PROTECTION

Article 3

- (1) A design shall be protected by an industrial design to the extent that it is new and has individual character.
- (2) A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
 1. If the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter,

2. To the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

- (3) "Normal use" within the meaning of paragraph (2) item 1 of this Article shall mean use by the end user, excluding maintenance, servicing or repair work.

NOVELTY OF DESIGN

Article 4

- (1) A design shall be considered to be new if no identical design has been made available to the public prior to the date of filing of the application for registration of the industrial design (hereinafter referred to as: industrial design application) or, if a priority is claimed, the date of granted priority.
- (2) Designs shall be deemed to be identical if their features differ only in immaterial details.

INDIVIDUAL CHARACTER OF DESIGN

Article 5

- (1) A design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public prior to the date of filing the industrial design application or, if priority is claimed, the date of granted priority.
- (2) In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

DISCLOSURE OF DESIGN

Article 6

- (1) A design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited or used in trade or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Republic of Croatia, prior to the date of filing of the industrial design application or, if priority is claimed, prior to the date of granted priority. The design shall not be deemed to have

been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

- (2) A disclosure shall not be taken into consideration if a design for which protection is claimed has been made available to the public:
 1. By the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title,
 2. During the 12-month period preceding the date of filing of the industrial design application or, if priority is claimed, the date of granted priority.
- (3) The provision referred to in paragraph (2) of this Article shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

*DESIGNS DICTATED BY THEIR TECHNICAL
FUNCTION AND DESIGNS OF
INTERCONNECTIONS*

Article 7

- (1) An industrial design shall not subsist in features of appearance of a product:
 1. Which are solely dictated by its technical function; or
 2. Which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated, or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
- (2) Notwithstanding the provision referred to in paragraph (1) item 2 of this Article, an industrial design shall, under the conditions set out in Articles 4 and 5 of this Act, subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

*DESIGNS CONTRARY TO PUBLIC INTERESTS
OR ACCEPTED PRINCIPLES OF MORALITY*

Article 8

An industrial design shall not subsist in a design that is contrary to public interests or accepted principles of morality.

*GROUND FOR REFUSAL OF PROTECTION
OR FOR INVALIDITY*

Article 9

An application for registration of a design shall be refused, i.e. a registered industrial design shall be invalid if:

1. The design is not a design within the meaning of Article 2 item 1 of this Act,
2. The design does not fulfil the requirements of Articles 3 to 8 of this Act,
3. The applicant for or the holder of the industrial design is not entitled to the acquisition of the industrial design under this Act,
4. The design is in conflict with an earlier design which has been made available to the public after the date of filing of the industrial design application or, if priority is claimed, after the date of granted priority, and which is protected from a date which is earlier than the said date by an industrial design registered in the Republic of Croatia or an application for such a design,
5. A distinctive sign is used in the creation of a design, and the holder of the earlier right had the right to prohibit such use,
6. The design constitutes an unauthorised use of a work protected under the provisions of the act regulating copyright and related rights,
7. The design constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as: the Paris Convention), or of badges, emblems and escutcheons other than those covered by the said Article of the Paris Convention, which are of particular interest to the Republic of Croatia.

III: RIGHT TO PROTECTION

DESIGNER

Article 10

- (1) A designer is a natural person who created a design.
- (2) A person who has only provided technical assistance in the creation of an industrial design shall not be deemed a designer.

MORAL RIGHT OF THE DESIGNER

Article 11

- (1) Notwithstanding whether he is the applicant or the right holder, the designer shall have the right to be cited as the designer in all documents and during public exhibitions of his design.
- (2) The moral right of the designer cannot be transferred.
- (3) If several designers participated in the creation of the design jointly, all designers shall be entitled to the right referred to in paragraph (1) of this Article, notwithstanding their contribution in the creation of the design.

PERSONS ENTITLED TO THE ACQUISITION OF INDUSTRIAL DESIGNS

Article 12

- (1) The designer or his successor in title is entitled to initiate the procedure and to acquire industrial design rights in accordance with this Act.
- (2) If the designer is not the industrial design applicant, the applicant shall be deemed the person entitled pursuant to paragraph (1) of this Article, until proven to the contrary.
- (3) If the design was created on the basis of a commission contract, the right to initiate the procedure and to acquire industrial design rights shall vest in the commissioner of the design, unless otherwise specified by contract.
- (4) If the design was created by an employee in the execution of his duties or following the instructions given by his employer, the right to initiate the procedure and to acquire industrial design rights shall vest in the employer, unless otherwise specified by contract.
- (5) If the design was created by the joint efforts of several designers, the right to that design

shall vest in them, i.e. their successors in title, jointly, and they shall all be deemed entitled persons pursuant to paragraph (1) of this Article.

- (6) The share of the designer in a jointly created design shall be determined in proportion to each of the designers' actual contribution in creating the design, unless otherwise specified by contract.
- (7) If the shares of the designers are not specified or cannot be determined pursuant to paragraph (6) of this Article, they shall be deemed equal.

EQUAL STATUS OF PERSONS ENTITLED TO HOLD INDUSTRIAL DESIGNS

Article 13

Foreign legal and natural persons not having a principle place of business, i.e. a domicile or a habitual residence on the territory of the Republic of Croatia shall enjoy protection provided for by this Act, if it results from international treaties binding the Republic of Croatia or from the application of the principle of reciprocity.

IV. ACQUISITION, SCOPE AND TERM OF INDUSTRIAL DESIGN PROTECTION

ACQUISITION OF INDUSTRIAL DESIGN

Article 14

- (1) An industrial design shall be acquired by the decision on registration of an industrial design and by its entry in the register.
- (2) The date of entry in the register shall be the same as the date of the decision on granting the registration of an industrial design.

SCOPE OF PROTECTION

Article 15

- (1) The scope of the protection conferred by an industrial design shall include any design that does not produce a different overall impression on the informed user.
- (2) In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

TERM OF PROTECTION

Article 16

- (1) Industrial design protection shall last for a period of 5 years as from the date of filing of the industrial design application.
- (2) Industrial design protection may be renewed for periods of 5 years each, up to a total term of 25 years from the date of filing of the application.
- (3) The industrial design holder seeking renewal of protection shall submit to the Office a request for renewal of industrial design protection and shall pay the appropriate fee and procedural charges for the maintenance, and shall do so during the final year of the term of protection or not later than 6 months after the expiry of the said term.
- (4) The new protection term shall begin on the day of expiry of the previous protection term.
- (5) The entry of the renewal of industrial design protection shall be published in the official gazette of the Office.
- (6) The information contained in the request for renewal of industrial design protection shall be provided for in the Regulations for the implementation of this Act (hereinafter referred to as: the Regulations).

**V. EXCLUSIVE RIGHTS
CONFERRED BY THE
INDUSTRIAL DESIGN**

EXCLUSIVE RIGHTS

Article 17

- (1) The industrial design holder shall have the exclusive right to use the registered design and to prevent any third party not having his authorization from using it.
- (2) Use, within the meaning of paragraph (1) of this Article, shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for the above purposes.
- (3) If the publication of a registered industrial design is deferred within the meaning of Article 36 of this Act, for the duration of the deferment, the holder shall have the right to prevent third parties from taking the actions

referred to in paragraph (2) of this Article only if such use results from copying of the registered design.

*LIMITATION OF EXCLUSIVE RIGHTS
conferred by an industrial design*

Article 18

- (1) The exclusive rights referred to in Article 17 of this Act shall not be exercised in respect of:
 1. Acts done for private and non-commercial purposes,
 2. Acts done for experimental purposes or
 3. Acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal use of the design, and that mention is made of the source.
- (2) In addition to the acts set out in paragraph (1) of this Article, the exclusive rights conferred by an industrial design following its registration shall not be exercised in respect of:
 1. The equipment on ships and aircrafts registered in a third country when these temporarily enter the territory (maritime zone) of the Republic of Croatia,
 2. The import of spare parts and accessories into the Republic of Croatia for the purpose of repairing such ships and aircrafts,
 3. The execution of repairs on such ships and aircrafts.

PRIOR USE

Article 19

- (1) A right of prior use shall exist for any third person who can prove that, before the date of filing of the industrial design application, or, if a priority is claimed, before the date of granted priority, he has in good faith commenced use of a design included within the scope of protection of a registered design in the territory of the Republic of Croatia, or has made serious and effective preparations to that end, as well as if the said design has not been created by copying of the protected design.
- (2) The right of prior use shall entitle the third person to exploit the design for the purposes for which its use had been

effected, or for which serious and effective preparations had been made, before the filing date of an industrial design application or before the date of granted priority, if priority is claimed.

- (3) The right of prior use shall not extend to granting a license to another person to exploit the design.
- (4) The right of prior use cannot be transferred except, where the third person is an entrepreneur, along with that part of the undertaking in the course of which the act was done or the preparations were made, within the meaning of paragraph (1) of this Article.

EXHAUSTION OF RIGHTS

Article 20

- (1) The exhaustion of the right to prohibit the use of a product in which a design is incorporated shall occur when the product is put on the market in the Republic of Croatia by the holder of the industrial design or with his consent.
- (2) The exhaustion of the rights referred to in paragraph (1) of this Article may also be extended to the territory outside of the Republic of Croatia, if so stipulated in International treaties binding the Republic of Croatia.

VI. RELATIONSHIP TO OTHER FORMS OF PROTECTION

APPLICATION OF OTHER REGULATIONS

Article 21

The provisions of this Act shall be without prejudice to any other regulations relating to trade marks or other distinctive signs, patents and regulations governing civil liability and unfair competition.

RELATIONSHIP TO COPYRIGHT

Article 22

A design protected by an industrial design shall also be eligible for copyright protection from the date on which the design was created or fixed in any form, if it meets the requirements stipulated by the law regulating copyright and related rights.

VII. INDUSTRIAL DESIGN REGISTRATION PROCEDURE

THE OFFICE AUTHORITY

Article 23

- (1) Administrative tasks related to the registration of an industrial design shall be carried out by the State Intellectual Property Office (hereinafter referred to as: the Office)
- (2) An appeal cannot be launched against administrative decisions adopted by the Office, but an administrative dispute may be initiated.

INITIATION OF THE INDUSTRIAL DESIGN REGISTRATION PROCEDURE

Article 24

The procedure for the registration of an industrial design shall be initiated by filing an industrial design application to the Office.

CONTENTS OF AN INDUSTRIAL DESIGN APPLICATION

Article 25

- (1) An industrial design application shall contain:
 1. A request for industrial design registration,
 2. Information identifying the applicant,
 3. A representation of the design suitable for reproduction. If the object of the application is a two-dimensional design and the application contains a request for deferment of publication within the meaning of Article 36 of this Act, the representation of the design may be replaced by a specimen.
- (2) The industrial design application shall further contain:
 1. An indication of the product in which the design is intended to be incorporated or to which it is intended to be applied,
 2. Information identifying the duly authorised representative with power of attorney if the applicant has appointed one,
 3. Information identifying the common representative, if a joint application has been filed,
- (3) The industrial design application may contain:

1. A description explaining in more detail the representation or the specimen,
 2. A request for deferment of publication of the registered industrial design within the meaning of Article 36 of this Act,
 3. The classification of the product (indication of the class) in which the design is intended to be incorporated or to which it is intended to be applied, in accordance with the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter referred to as: the International Classification)
 4. Information identifying the designer or designers or a statement that the designer or designers do not want to be cited,
 5. Information and evidence of the priority referred to in Article 29 or Article 30 of this Act.
- (4) The elements that an industrial design application should, i.e. may contain are regulated in more detail by the Regulations.
- (5) The information contained in the elements referred to in paragraph (2) item 1 and in paragraph (3) items 1 and 3 of this Article shall not affect the scope of protection of the design as such.

MULTIPLE INDUSTRIAL DESIGN APPLICATION

Article 26

- (1) If the industrial design application contains a request for the registration of several designs (hereinafter referred to as: multiple application), all the products in which the design is intended to be incorporated or to which it is intended to be applied must belong to the same class of the International Classification for Industrial Designs.
- (2) The total number of designs for which protection is sought shall be indicated in the multiple application.
- (3) Each of the designs contained in a multiple application, as well as after their registration, may be dealt with separately from the others for the purpose of applying the provisions of this Act. A design may in particular, separately from the others, be enforced, licensed, be the subject of a right in rem, levy of execution or bankruptcy proceedings, be surrendered, renewed or

transferred, be the subject of deferred publication or be declared invalid.

DIVISION OF A MULTIPLE APPLICATION

Article 27

- (1) The applicant may divide a multiple application into two or more applications in such a manner that each refers to one or more product designs.
- (2) An application separated from a multiple application shall retain the priority right of the latter application.
- (3) Further requirements for the dividing of a multiple application shall be regulated by the Regulations.

PRIORITY

Article 28

The applicant whose industrial design application has the earlier filing date has the right of priority over any other applicant filing later an industrial design application for the identical design.

UNION PRIORITY RIGHT

Article 29

- (1) If the applicant has filed an industrial design application for the first time in any of the Member States of the International Union established by the Paris Convention for the Protection of Industrial Property (hereinafter referred to as: the Paris Union), or the World Trade Organisation, he may invoke, when filing the application for the same industrial design in the Republic of Croatia, the date of the first filing, on condition that the application in the Republic of Croatia be filed within 6 months from that date.
- (2) In the application he is filing to the Office, the applicant invoking the union right of priority shall indicate relevant information pertaining to the application invoked (state, application date and number) and not later than within 3 months from the date of filing the application to the Office, shall submit a true copy of the first application certified by the competent body of a Member State of the Paris Union or the World Trade Organisation and a translation of the true copy in the Croatian language.
- (3) If the applicant does not meet the requirements set out in paragraph (2) of this Article, priority shall be deemed not to have been claimed.

EXHIBITION PRIORITY RIGHT

Article 30

- (1) If an applicant has displayed products in which the design is incorporated, or to which the design is applied, at an official or officially recognised international exhibition in the Republic of Croatia or in some other Member State of the Paris Union or the World Trade Organisation, he may request that the date of the first day of the exhibition of such products be accorded as the date of the first application, if he files the application in the Republic of Croatia within a period of 6 months from such date.
- (2) An applicant invoking the exhibition priority right, shall, alongside the application filed to the Office, file a certificate issued by the competent authority of the Member State of the Paris Union or the World Trade Organisation, containing information concerning the type of the exhibition, venue, dates of opening and closing of the exhibition and the first day of exhibiting the products cited in the application, and evidence that the product design which was exhibited is identical to the one cited in the application.
- (3) If the applicant does not meet the requirements set out in paragraph (2) of this Article, priority shall be deemed not to have been claimed.

ACCORDANCE OF THE FILING DATE OF AN INDUSTRIAL DESIGN APPLICATION

Article 31

- (1) Upon receiving the industrial design application, the Office shall examine whether the application meets the requirements for according a filing date referred to in Article 25 paragraph (1) of this Act.
- (2) If the application does not meet the requirements for according a filing date, the Office shall invite the applicant to remedy the found deficiencies, within 60 days from the date of receipt of the notification.
- (3) If the deficiencies are remedied within the set time limit, in accordance with the invitation referred to in paragraph (2) of this Article, the Office shall accord, as the date of filing, the date on which the deficiencies were remedied.
- (4) If the industrial design applicant does not act according to the invitation and does not

remedy all the found deficiencies within the prescribed time limit, the application shall be rejected in a decision.

- (5) After according the filing date of the application, the Office shall invite the applicant who has not submitted evidence of having paid the administrative fee and procedural charges, to do so within 15 days from the day of receipt of the invitation.
- (6) If the industrial design applicant does not act according to the invitation of the Office referred to in paragraph (5) of this Article, the application shall be rejected by decision.

FORMAL EXAMINATION OF THE INDUSTRIAL DESIGN APPLICATION WITH AN ACCORDED DATE OF FILING

Article 32

- (1) By a formal examination of the industrial design application, the Office shall establish whether the application complies with the requirements set out in Article 25 paragraph (2) of this Act, i.e. the requirements set out in Article 26 and Article 27 of this Act, if a multiple application has been filed.
- (2) If the industrial design application does not comply with the requirements set out in paragraph (1) of this Article, the Office shall invite the applicant to remedy the application within 60 days.
- (3) Upon request of the industrial design applicant, the time limit referred to in paragraph (2) of this Article may be extended for a maximum of 60 days.
- (4) If the industrial design applicant does not act according to the invitation of the Office and fails to remedy the application within the time limit set, the application shall be rejected by decision.

DECISION ON REFUSAL OF THE REGISTRATION OF AN INDUSTRIAL DESIGN

Article 33

- (1) The Office shall issue a decision on refusal of the registration of an industrial design:
 1. If the design does not meet the requirements set out in Article 2 item 1 of this Act, by application of Article 9 item 1 of this Act,
 2. If the design does not meet the requirements set out in Article 8 of this

Act, by application of Article 9 item 2 of this Act,

3. On the grounds indicated in Article 9 item 7 of this Act.
- (2) The Office may issue a decision on a partial refusal of the industrial design registration on the grounds indicated in paragraph (1) item 2 and 3 of this Article, if the design meets the requirements for registration in that form and if the identity of the design is retained.
- (3) The decision on refusal of the industrial design registration may not be issued if the applicant has not been previously informed, in writing, of the grounds for refusal and invited to withdraw the application or to give his observations on the grounds for the refusal of registration.
- (4) The industrial design applicant shall have the right to give his observations on the grounds for the refusal of registration, within 60 days from the day of receiving written notification referred to in paragraph (3) of this Article, and submit evidence of possible new facts that could affect the final decision of the Office.
- (5) Upon request of the applicant, the time limit referred to in paragraph (4) of this Article may be extended for a maximum of 60 days.

DECISION ON THE REGISTRATION OF AN INDUSTRIAL DESIGN

Article 34

If the product design is not excluded from protection pursuant to Article 33 paragraph (1) of this Act and if the procedural charges of the maintenance for the first 5-year period of industrial design protection has been paid, the Office shall issue a decision on the registration of the industrial design and enter the industrial design in the register.

INDUSTRIAL DESIGN PUBLICATION

Article 35

- (1) Information on an industrial design shall be published in the official gazette of the Office not later than within 3 months from the date of entry of the industrial design in the register.
- (2) The information published in the official gazette of the Office shall be regulated by the Regulations.

DEFERMENT OF PUBLICATION OF AN INDUSTRIAL DESIGN

Article 36

- (1) When filing the application the applicant for an industrial design may request that the publication of the registered design be deferred for a period of 12 months from the date of filing the application and request to the Office or, if priority is claimed, from the date of granted priority.
- (2) If a deferment of publication of the industrial design is requested, the Office shall, in the manner prescribed by the Regulations, publish in its official gazette only a mention that the industrial design has been registered.
- (3) In the case referred to in paragraph (1) of this Article, the Office shall, at the expiry of the period of deferment or at any other prior date at the request of the right holder, invite the industrial design holder to provide, within 30 days from the day of receiving invitation, a graphic or photographic reproduction of the design from the application, as provided for in Article 25 paragraph (1) item 3 of this Act.
- (4) If the industrial design holder fails to comply with the invitation referred to in paragraph (3) of this Article or if the procedural charges for maintenance for the first 5 year period of industrial design protection have not been paid, the industrial design shall be deemed from the outset not to have had legal effects.
- (5) In respect of a multiple application, paragraph (1) and paragraph (3) of this Article may also apply only to certain designs included in that application.

INDUSTRIAL DESIGN CERTIFICATE

Article 37

- (1) At the request of an industrial design holder and under the condition that the prescribed procedural charges for issuing an industrial design certificate has previously been paid, the Office shall issue a certificate to the industrial design holder, not later than within 3 months from the industrial design date of publication in the official gazette of the Office.
- (2) The information contained in the industrial design certificate shall be regulated by the Regulations.

VIII. CHANGES MADE TO AN INDUSTRIAL DESIGN

ENTRY OF CHANGES

Article 38

- (1) At the request of an industrial design applicant or an industrial design holder, the Office shall enter in the register all changes pertaining to a change of name or the place of residence in the case of a natural person, i.e. a change of the company name or in case of a legal person, as well as other changes that occurred after the filing of the industrial design application or after the registration of an industrial design, under the condition that they reflect the true state of things and do not affect the industrial design itself.
- (2) The changes entered in the industrial design register shall be published in the official gazette of the Office.
- (3) The information contained in the request for the entry of changes referred to paragraph (1) of this Article shall be regulated by the Regulations.

LICENSE

Article 39

- (1) An industrial design may be subject to a license in entirety or in part, and the license may be granted for the whole or part of the territory of the Republic of Croatia.
- (2) The licensing contract shall be drawn up in written form.
- (3) A license may be exclusive or non-exclusive.
- (4) The industrial design holder may invoke the rights conferred by the industrial design against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form covered by the registration in which the design may be used, the range of products for which the license is granted, the territory in which the industrial design may be used and the quality of products manufactured.
- (5) The holder of a non-exclusive license may initiate proceedings for infringement of an industrial design only with the consent of the industrial design right holder, unless otherwise provided for in his licensing contract.

- (6) If the industrial design holder, after receiving written notification from the holder of the exclusive license, informing him of infringement of the industrial design and of the time limit for initiating proceedings, does not himself initiate infringement proceedings within the set time limit, the holder of the exclusive license may himself initiate proceedings for the infringement of an industrial design, unless otherwise provided for in his licensing contract.
- (7) The licence shall be entered in the register at the request of the industrial design right holder or at the request of the licensee, under the condition that a certified copy of the licensing contract or a certified extract from the contract or the original certificate of the license grant signed by the licensor and the licensee, has been delivered to the Office.
(8) The license shall have effects vis-à-vis third parties after entry in the register.
- (8) The entry of the license in the register shall be published in the official gazette of the Office.
- (9) The information contained in the request for the entry of a license in the register shall be regulated by the Regulations.

RIGHT IN REM AND LEVY OF EXECUTION

Article 40

- (1) An industrial design may be the subject of a right in rem and levy of execution.
- (2) At the request of one of the parties, the rights referred to in paragraph (1) of this Article shall be entered in the register.
- (3) The entry of the right in rem and levy of execution in the register shall be published in the official gazette of the Office.
- (4) A right in rem and levy of execution shall have effects vis-à-vis third parties after entry thereof in the register.
- (5) The information contained in the request for the entry of a right in rem and levy of execution shall be regulated by the Regulations.

BANKRUPTCY PROCEEDINGS

Article 41

When an industrial design is involved in bankruptcy proceedings, at the request of the competent authority, an entry shall be made in the

register and published in the official gazette of the Office.

TRANSFER OF RIGHTS

Article 42

- (1) The industrial design applicant or industrial design holder may transfer their rights conferred by the application or their industrial design to another person, in entirety or in part.
- (2) At the request of one of the parties, the transfer of rights shall be entered in the register, under the condition that a certified copy of the transfer of rights contract or a certified extract from the contract or the original certificate of the transfer of rights signed by both parties has been delivered to the Office.
- (3) Transfer of rights has effects vis-à-vis third parties after entry in the register.
- (4) The entry of the industrial design transfer shall be published in the official gazette of the Office.
- (5) The information contained in the request for the entry of transfer of rights in the register shall be regulated by the Regulations.

IX. CEASING OF EFFECT AND INVALIDATION OF AN INDUSTRIAL DESIGN

CEASING OF EFFECT OF AN INDUSTRIAL DESIGN

Article 43

- (1) An industrial design shall cease to have effect:
 1. On expiry of the protection period referred to in Article 16 of this Act,
 2. On the basis of a written declaration of the surrender of the industrial design by the holder, in which case the industrial design shall cease to have effect from the day on which a written declaration of the surrender has been submitted to the Office. If the license has already been entered in the register, the surrender of the industrial design shall be entered in the register only if the industrial design holder provides evidence of having notified the licensee of his intention to surrender the industrial design.

- (2) The ceasing of effect of an industrial design shall be entered in the industrial design register and published in the official gazette of the Office, in the manner prescribed by the Regulations.

DECISION ON THE DECLARATION OF THE INDUSTRIAL DESIGN INVALID

Article 44

- (1) The procedure for declaring an industrial design invalid shall be carried out by the Office.
- (2) The Office shall issue a decision on the declaration of an industrial design invalid if it is established that the requirements for the registration of the industrial design, set out in this Act, had not been met.
- (3) An industrial design may be declared invalid on the grounds referred to in Article 9 of this Act, during the protection period, as well as after ceasing of effect of the industrial design.
- (4) An industrial design may be declared partially invalid on the grounds referred to in Article 9 items 2, 5, 6 and 7 of this Act, if in that form the design complies with the requirements for registration and if the identity of the design is retained.
- (5) The ground provided for in Article 9 item 3 of this Act may be invoked solely by the person who is entitled to the acquisition of an industrial design under the provisions of this Act.
- (6) The ground provided for in Article 9 item 4 of this Act may be invoked by: the person whose right has been infringed, the applicant, the Office ex officio and the state attorney.
- (7) The grounds provided for in Article 9 items 5 and 6 of this Act may be invoked solely by the person whose right has been infringed.
- (8) The ground provided for in Article 9 item 7 of this Act may be invoked by the person or competent body concerned by the use, the Office ex officio and the state attorney.
- (9) Without prejudice to the provisions set out in paragraphs (5), (6), (7) and (8) of this Article, the request for a declaration of an industrial design invalid may be filed by an interested party, the state attorney; while the industrial design may be declared invalid by the Office ex officio.

- (10) The request for a declaration of an industrial design invalid shall be submitted as stipulated by the Regulations.
- (11) If an industrial design is declared invalid, all the legal effects conferred by the industrial design shall be invalid.
- (12) The declaration of an industrial design invalid shall be entered in the industrial design register and published in the official gazette of the Office.

X. COMMON PROVISIONS ON THE PROCEDURE BEFORE THE OFFICE

OTHER REGULATIONS TO BE APPLIED IN PROCEDURE BEFORE THE OFFICE

Article 45

The General Administrative Procedure Act shall apply to specific procedural issues not regulated by this Act.

FEES AND PROCEDURAL CHARGES

Article 46

- (1) For the procedures regulated by this Act fees and procedural charges shall be paid in accordance with special regulations.
- (2) If the fees or procedural charges referred to in paragraph (1) of this Article have not been paid, the application or request shall be rejected, and in case the appropriate fees or charges for the renewal of protection of the industrial design have not been paid, the industrial design shall lapse.

CERTIFICATE OF PRIORITY RIGHT

Article 47

The Office shall issue a certificate of priority right at the request of the industrial design applicant or the industrial design holder, and after payment of required fees and charges.

REGISTERS

Article 48

- (1) The Office shall maintain an industrial design application register and an industrial design register.
- (2) The industrial design register shall be public, while the information from the application register shall not be available to the public.
- (3) At the request of an interested party, and after the payment of the required fees and charges, the Office shall issue an extract

and a printout from the industrial design register.

- (4) The information entered in the registers referred to in paragraph (1) of this Article shall be regulated by this Act and by the Regulations.

OFFICIAL GAZETTE OF THE OFFICE

Article 49

The Office shall issue an official gazette in which it shall publish all the information for which publication is prescribed by this Act and by the Regulations.

SEARCH

Article 50

At the request of an interested party, the Office shall provide the services comprising novelty searching of the registered industrial designs, having effect in the Republic of Croatia.

REPRESENTATION

Article 51

Foreign legal and natural persons not having a principle place of business, i.e. a domicile or a habitual residence in the Republic of Croatia may exercise the rights under this Act in the procedures before the Office solely by way of representatives, which are, in accordance with special provisions, entered in the register of representatives, maintained by the Office.

XI. INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS

Article 52

- (1) The international deposit of industrial designs shall be carried out in accordance with the provisions of the Hague Agreement concerning the International Deposit of Industrial Designs of 6 November 1925, as revised in the Hague on 28 November 1960, as supplemented in Stockholm on 14 July 1967, with the amendments of 28 September 1979, hereinafter referred to as "the Hague Agreement".
- (2) The international deposit may be carried out directly at the International Bureau of the World Intellectual Property Organization.
- (3) In accordance with Article 8 of the Hague Agreement, the provisions of this Act shall

be applied *mutatis mutandis* to requests filed in accordance with the provisions of the Hague Agreement, by which industrial design protection is sought in the Republic of Croatia, by way of derogation from Article 34 and Article 35 paragraph (1) of this Act.

XII. CIVIL PROTECTION

ACTIONS FOR INFRINGEMENT

Article 53

- (1) The industrial design holder may, if his rights under Article 17 of this Act have been infringed or threatened to be infringed, institute legal actions before the competent court and request:
 1. Establishment of the existence of the infringement of an industrial design,
 2. Prohibition of the committed or intended infringement of an industrial design,
 3. Elimination of the condition caused by the committed infringement of an industrial design, including the seizure and destruction of the infringing objects,
 4. Compensation for damage,
 5. Publication of the court decision at the expense of the defendant,
 6. Utilization of the seized products.
- (2) The proceedings following the action as defined in paragraph (1) of this Article shall be urgent.
- (3) In proceedings relating to the infringement of industrial design rights, the defendant may argue that the registered industrial design is not legally valid on the grounds referred to in Article 9 of this Act.

STATUTE OF LIMITATIONS

Article 54

Actions for infringement of industrial design rights may be instituted within 3 years from acquiring knowledge of the act of infringement and the infringer, and not later than 5 years from a committed infringement.

PROVISIONAL MEASURES

Article 55

- (1) If the industrial design right holder makes it likely that his right has been infringed or that there is a likelihood of infringement, he may request from the court:

1. The order of provisional measure prohibiting the acts which infringe the right of the industrial design holder,
2. Provisional seizure of objects unlawfully containing, constituting or substantially imitating an industrial design or their exclusion from circulation.
3. Measures aimed at providing evidence on the objects referred to in item 2 of this paragraph and measures aimed at safeguarding the existing state.

- (2) The industrial design holder may request the ordering of provisional measures even before instituting actions, under the condition that actions be instituted within 20 work days or 31 calendar days, depending on which term is longer.
- (3) If the industrial design holder does not institute actions within the term referred to paragraph (2) of this Article, the court may, at the request of the defendant, suspend proceedings or revoke the requested measures.
- (4) The court may, if necessary, order provisional measures without hearing the person against which the measures are to be ordered, especially in cases where any delay is likely to cause irreparable damage to the right holder or in cases where obvious danger of the evidence being destroyed exists.
- (5) To issues related to ordering of provisional measures not regulated by this Act, the relevant provisions of the Act on Execution shall apply.

COMPENSATION FOR DAMAGE

Article 56

- (1) The court may order the industrial design holder to pay compensation for damage, if it is proven that the requested measures referred to in Article 55 paragraph (1) of this Act were without grounds.
- (2) The court may order the industrial design holder to deposit an appropriate sum of money as a security for the person against which the provisional measure is ordered.

JUDICIAL GRANT AND TRANSFER OF RIGHTS

Article 57

- (1) If the industrial design application was filed by an unauthorised person or the industrial

- design has been entered in the register under the name of an unauthorised person, contrary to the provisions referred to Article 12 of this Act, the authorised person may submit to the court a request for the grant of authorities based on the law and/or the transfer of pertaining rights, in entirety or in part, irrespectively of other rights and requests resulting from an industrial design.
- (2) The authorised person referred to in paragraph (1) of this Article may initiate court proceedings within 3 years from the day of publication of the design registration, or, in case the court establishes that the unauthorised person has not acted in good faith, during the entire term of protection of the industrial design.
 - (3) If the court should make a final decision on the grant and transfer of rights referred to in this Article, licensing rights and other rights entered in favour of third persons shall cease on the day of entry of the changes in the register. If, prior to the grant of the rights referred to in this Article, the unauthorised holder of rights or the license user have used the rights or made serious and effective preparations to use the rights in good faith, they may be granted a nonexclusive license right within the term and under the conditions usually required for the use of the right, if requested within 3 months from the day of receiving notification from the Office after the entry of the new right holder.
 - (4) The Office shall enter in the register the facts established from the final court decision as communicated and the other changes referred to in this Article and publish them in the official gazette of the Office.

XIII. MISDEMEANOUR PROVISIONS

MISDEMEANOURS

Article 58

- (1) A legal person manufacturing, offering, putting on the market, importing, exporting or using a product containing somebody else's industrial design or to which somebody else's industrial design has been applied or stores such a product for the stated purposes shall be fined for misdemeanours in the amount of HRK 20,000.00 to 100,000.00.
- (2) A legal person using a license contrary to the provisions of the licensing contract or unlawfully usurping the title of the designer of an industrial design shall be fined for misdemeanours in the amount of HRK 20,000.00 to 100,000.00.
- (3) For misdemeanours referred to in paragraphs (1) and (2) of this Article a natural person shall be fined in the amount of HRK 2,000.00 to 8,000.00.
- (4) For misdemeanours referred to in paragraphs (1) and (2) of this Article the responsible person within the legal person shall be fined in the amount of HRK 5,000.00 to 10,000.00.
- (5) The products manufactured or obtained by the commitment of misdemeanours referred to in paragraphs (1), (2), (3) and (4) of this Article, as well as the objects (tools and implements) predominantly used in order to manufacture the goods infringing an industrial design, shall be seized and destroyed, whether or not they are the property of the perpetrator, and the final decision to that effect shall be issued by the judicial body.

XIV. TRANSITIONAL AND FINAL PROVISIONS

PENDING PROCEDURES

Article 59

- (1) The procedures for the grant of an industrial design, pending on the day the application of this Act starts, shall be carried out in compliance with the provisions which were in force up to the day the application of this Act starts.
- (2) The holder of a model, a design or an industrial design the validity of which has not ceased up to the day this Act enters into force, may request a renewal of protection under the same conditions and with the same rights as the holders of industrial designs pursuant to this Act.
- (3) In the case referred to in paragraph (2) of this Article, the Office shall give the name of an "industrial design" to the model, design or industrial design for which protection is being renewed, enter it into the industrial design register and publish the renewal of protection in the official gazette of the Office.

- (4) The procedures relating to the infringement of the rights conferred by an industrial design or those relating to the infringement of the rights conferred by an industrial design application, as well as the procedures relating to the declaration of the decision on the grant of an industrial design invalid, pending on the day the application of this Act starts, shall be completed under the regulations which were in force until the day the application of this Act starts.

*CEASING OF THE VALIDITY OF
OTHER PROVISIONS*

Article 60

On the day the application of this Act starts the provisions of the Industrial Design Act (Official Gazette 78/99 and 127/99) shall cease to be valid, with the exception of the provisions concerning the representation referred to in Article 57 of the said Act, which shall apply up to the adoption of a special act.

REGULATIONS

Article 61

The Regulations regulating in more detail the issues referred to in Article 16 paragraph (6), Article 25 paragraph (4), Article 27 paragraph (3), Article 35 paragraph (2), Article 36 paragraph (2), Article 37 paragraph (2), Article 38 paragraph (3), Article 39 paragraph (10), Article 40 paragraph (5), Article 42 paragraph (5), Article 43 paragraph (2), Article 44 paragraph (10), Article 48 paragraph (4) and Article 49 of this Act, shall be adopted by the minister responsible for the work of the Office, at the proposal of the Director General of the Office, not later than on the day the application of this Act starts.

APPLICATION OF THE HAGUE AGREEMENT

Article 62

The provision set out in Article 52 of this Act shall apply from the day of entry into force of the Hague Agreement for the Republic of Croatia.

Entry into force and application of this act

Article 63

This Act shall enter into force on the eighth day following the day of its publication in the Official Gazette, and shall apply from 1 January 2004.

THE ACT AMENDING AND SUPPLEMENTING THE INDUSTRIAL DESIGN ACT

Article 1

In the Industrial Design Act (Official Gazette No. 173/03), in Article 1, the word "invalidation" is replaced by words "declaring null and void", and the word "deposit", is replaced by the word "registration".

Article 2

In Article 6, paragraph 1, subparagraph 2, the words "The Republic of Croatia" are replaced by the words "the European Union".

Article 3

In Article 7, paragraph 1, subparagraph 2 the word "with" is added following the word "connected".

Article 4

In Article 9, subparagraph 7 the word "improper" is replaced by the word "unauthorised".

Article 5

Article 20 is amended to read:

"The placing on the market in the territory of the Republic of Croatia, or following the accession of the Republic of Croatia to the European Union in the territory of a European Union Member State or a Contracting State of the Agreement creating the European Economic Area, of a product embodying an industrial design by the holder of the exclusive right conferred by the protected topography or with his/her express authorization, shall exhaust for the territory of the Republic of Croatia, the exclusive rights conferred by the industrial design in respect to that product."

Article 6

Article 23, paragraph 2 shall be amended to read:

"(2) The administrative decisions issued by the Office in the first instance may be appealed and the appeals shall be decided on by the Board of Appeal in accordance with the provisions of this Act. The filing of an appeal shall be subject to payment of the administrative fee and procedural charges in accordance with special regulations. If the fee and procedural charges have not been paid before the expiry of the appeal period, the appeal shall not be considered as filed."

Following paragraph 2, paragraphs 3 and 4 shall be added to read:

(3) The provisions of the General Administrative Proceedings Act shall apply to particular matters concerning the procedure referred to in paragraphs 1 and 2 of this Article, not regulated by this Act.

(4) The second-instance administrative decisions rendered by the Board of Appeal may be challenged in an administrative dispute in accordance with the Administrative Disputes Act."

Article 7

In Article 32, paragraph 1 shall be amended to read:

"(1) On the basis of a formal examination of the industrial design application, the Office shall establish whether the application complies with the requirements set out in Article 25, paragraphs 2 and 4 of this Act, and the requirements set out in Articles 26 and 27 of this Act, if a multiple application has been filed."

Article 8

Article 37, paragraph 1 of the Industrial Design Act is amended to read:

"(1) At the request of an industrial design holder and under the condition that the prescribed procedural charges for issuing an industrial design certificate have already been paid, the Office shall issue a certificate to the industrial design holder, after the publication of the industrial design in the official gazette of the Office."

Article 9

In Article 39, paragraphs 5 and 6 shall be deleted.

Article 10

In Article 40, paragraph 2 shall be amended to read:

"(2) Upon the request of a lien creditor or a lien debtor a lien shall be entered in the register. The court levying the execution on its own motion shall promptly inform the Office of the execution levied upon a design for the purpose of its entry in the register."

Article 11

Following Article 44, a new "Part Ten: THE COMMUNITY DESIGN" shall be added, as well as new articles 44a to 44g to read:

"MEANING OF TERMS

Article 44a

For the purpose of this Act these terms have the following meaning:

- (a) "Regulation on Community designs" is the Council Regulation (EC) No 6/2002 on Community designs and its amendments;
- (b) a "Community design" is a registered and an unregistered design as defined in Article 1, paragraph 1 of the Regulation on Community designs;
- (c) an "application for a Community design" is an application for registration of a Community design filed pursuant to the provisions of the Regulation on Community designs;
- (d) a "national design" is an industrial design acquired in the procedure before the Office in accordance with the provisions of this Act;
- (e) a "national application for a design" is an application for an industrial design filed with the Office in accordance with the provisions of this Act.

EXTENSION OF EFFECTS OF A COMMUNITY DESIGN

Article 44b

The effects of applications for a Community design filed and Community designs acquired before the date of accession of the Republic of Croatia to the European Union shall extend to the Republic of Croatia.

A COMMUNITY DESIGN AS AN EARLIER DESIGN

Article 44c

Within the meaning of Articles 4, 5, 6 and 9 of this Act, a Community design shall be an earlier design in relation to the national design applications filed, and national designs registered upon such applications after the accession of the Republic of Croatia to the European Union, unless otherwise provided by the law.

FORWARDING AN APPLICATION FOR A COMMUNITY DESIGN

Article 44d

If an application for a Community design has been filed to the Office pursuant to Article 35, paragraph 2 of the Regulation on Community designs, a fee and charges for forwarding shall be paid in accordance with special regulations.

PROHIBITION OF USE OF A COMMUNITY DESIGN

Article 44e

(1) If the use of a Community design referred to in Article 44b of this Act conflicts with the use of a national design acquired before the accession of the Republic of Croatia to the European Union, or acquired on a national design application filed before the accession of the Republic of Croatia to the European Union, the holder of such national design may institute a legal action, claiming prohibition of the use in the Republic of Croatia of the Community design, the effect of which is, in accordance with Article 44b of this Act, extended to the territory of the Republic of Croatia. The plaintiff has to prove that the Community design conflicts with his/her national design.

(2) If a Community design referred to in Article 44b of this Act could have been refused registration on any of the absolute grounds referred to in Article 9 of this Act, or could have been invalidated on the grounds referred to in Article 9 of this Act before the accession of the Republic of Croatia to the European Union, the person having legal interest may institute a legal action claiming prohibition of the use of such Community design in the Republic of Croatia. The plaintiff has to prove existence of any of these grounds in relation to the Community design.

PROTECTION OF A COMMUNITY DESIGN IN CASE OF INFRINGEMENT

Article 44f

The provisions on the protection of a national design in case of infringement shall apply to the protection against infringement of a Community design.

THE COURT COMPETENT FOR A COMMUNITY DESIGN

Article 44g

(1) The Commercial Court in Zagreb shall be the Community Industrial Design Court of First Instance in the Republic of Croatia, within the meaning of the Regulation on Community designs.

(2) The High Commercial Court shall be the Community Industrial Design Court of Second Instance in the Republic of Croatia, within the meaning of the Regulation on Community designs."

Article 12

The present "Part Ten" shall become "Part Eleven".

Article 13

The heading above Article 45 and Article 45 shall be deleted.

Article 14

In Article 46, paragraph 1 the words "and for filing an appeal" shall be added following the word "Act".

In paragraph 2, the word "appeal" followed by a comma shall be added following the word "application".

Article 15

The present heading "Part Eleven" which reads "INTERNATIONAL DEPOSIT OF INDUSTRIAL DESIGNS" shall be amended to read "INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGNS".

Article 16

The headings above Article 52 shall be amended to read: "INTERNATIONAL REGISTRATION OF INDUSTRIAL DESIGN".

Article 52 shall be amended to read:

"(1) The international registration of industrial designs shall be carried out in accordance with the provisions of the Hague Agreement Concerning the International Deposit of Industrial Designs of 6 November 1925, as revised in the Hague on 28 November 1960 (1960 Act), as complemented in Stockholm on 14 July 1967, with the amendments of 28 September 1979 (Complementary Act of 1967), and the Geneva Act of the Hague Agreement on the International Registration of Industrial Designs, adopted in Geneva on 2 July 1999 (the Geneva Act of 1999) (hereinafter: "the Hague Agreement") and the provisions of implementing regulations to the Hague Agreement.

(2) The applications for international registration of industrial designs shall be filed directly to the International Bureau of the World Intellectual Property Organization (hereinafter: the International Bureau).

(3) All the fees payable for the international registration of industrial designs shall be paid directly to the International Bureau.

(4) In accordance with the provisions of Article 8 of the Hague Act of 1960 and Article 12 of the Geneva Act of 1999, the provisions of this Act shall apply mutatis mutandis to the requests for

extension of the effects of the international registration to the Republic of Croatia with the exclusion of Article 34 and Article 35, paragraph 1 of this Act.

Article 17

Following Article 52 a new heading "Part Thirteen": "APPEAL" is added as well as Article 52a to 52d to read:

"RIGHT TO APPEAL"

Article 52a

(1) A party whose request has been fully or partially refused has the right to appeal the decision within 30 days from the day the decision was received.

(2) Other parties to the proceedings ended by the decision which is appealed have the right to be parties to the appeal proceedings.

CONTENTS OF AN APPEAL

Article 52b

In addition to the data which every written submission has to contain, the appeal has to contain:

1. identification of the decree which is appealed,
2. specified statement on whether the decree is appealed in full or in certain part,
3. grounds for appeal,
4. reasons for appeal, and all the evidence which the appellant proposes as a proof for the appeal,
5. appellant's signature,
6. power of attorney if the appeal is submitted through an attorney.

DECIDING ON AN APPEAL

Article 52c

(1) The Boards of Appeal shall decide at the meetings, by majority vote.

(2) The Boards of Appeal shall make the decision on the basis of the parties' WRITTEN submissions, and, if they considers necessary or when a party to the proceedings requests so, they may hold a hearing. The parties shall be informed of the hearing not less than 10 days prior to its holding.

THE BOARDS OF APPEAL

Article 52d

(1) The appeals referred to in article 52a of this Act shall be decided on by the Boards of Appeal in the field of industrial property.

(2) The composition and constitution of the Board of Appeal referred to in paragraph 1 of this Article shall be subject to the provisions of the Patent Act."

The present "Part Twelve" shall become "Part Fourteen".

Article 18

The headings above Article 53 shall be amended to read: "PERSONS ENTITLED TO CLAIM ENFORCEMENT OF THE RIGHTS".

Article 53 shall be amended to read:

"(1) In addition to the right holder, or the person authorized by the rightholder in accordance with the general rules on attorney representation, the enforcement of the rights conferred under this Act may be claimed also by the exclusive licensee to the extent to which it acquired the right to exploitation of the industrial design on the basis of a legal transaction or law."

Article 19

The headings above Article 54 shall be amended to read: "CLAIM FOR DECLARATION OF AND CLAIM FOR TERMINATION OF THE INFRINGEMENT".

Article 54 shall be amended to read:

"(1) The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Act, claiming declaration of infringement.

(2) The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Act, claiming termination of the infringement and prohibition of such and similar future infringements.

(3) The holder of an industrial design may institute a legal action against a person who has by performing any of the acts without authorization, caused a serious threat that his industrial design might be infringed, claiming termination of the acts concerned and prohibition of the infringement of the industrial design.

(4) The legal action referred to in paragraphs 1, 2 and 3 of this Article may also be instituted against a person who in the course of his/her business activity renders services used in the acts infringing an industrial design or from which infringement of an industrial design may follow."

Article 20

The headings above Article 55 shall be amended to read: "CLAIM FOR SEIZURE AND DESTRUCTION OF ARTICLES".

Article 55 shall be amended to read:

"(1) The holder of an industrial design may institute a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Act, claiming that the articles infringing the industrial design be removed from the market, seized or destroyed at the expense of that person.

(2) The court shall order the measures referred to in paragraph 1 of this Article at the expense of the defendant, unless there are special reasons for not deciding so.

(3) When ordering the measure referred to in paragraph 1 of this Article, the court shall make sure that they are proportionate to the nature and seriousness of the infringement."

Article 21

The headings above Article 56 shall be amended to read: "CLAIM FOR DAMAGES, USUAL COMPENSATION AND UNJUST ENRICHMENT".

Article 56 shall be amended to read:

"(1) The holder of an industrial design may take a legal action against a person who has caused him damages by performing without authorization any of the acts referred to in Article 17 of this Act, claiming compensation of damages pursuant to the general rules on the legal redress laid down in the Obligations Act.

(2) The holder of an industrial design may institute a legal action against a person who has performed without authorization any of the acts referred to in Article 17 of this Act, claiming payment of remuneration in the amount that he/she would have claimed in the license agreement, if concluded.

(3) The holder of an industrial design may take a legal action against a person who has infringed an industrial design by performing without authorization any of the acts referred to in Article 17 of this Act, without having basis for it in any legal transaction, court decision or the law, and has benefited from it, claiming the return or

compensation of such benefits pursuant to the general rules on unjust enrichment laid down in the Obligations Act.

(4) The claims referred to in paragraphs 1, 2 and 3 shall not be mutually excluding. When deciding on the claims filed cumulatively and referred to in paragraphs 1, 2 and 3, the court shall observe the general principles laid down in the Obligations Act.

Article 22

Following Article 56, Articles 56a to 56g are added to read:

"CLAIM FOR PUBLICATION OF THE JUDGEMENT

Article 56a

The holder of an industrial design may claim that the unappealable judgment, even if only partially upholding the claim for enforcement of the industrial design in the case of infringement, is published in the means of public communication at the expense of the defendant. The court shall decide, within the limits of the claim, on the means of the public communication where the judgment shall be published, and whether it shall be published entirely or partially. If the court decides that only a part of the judgment shall be published, it shall order, within the limits of the claim, that at least the dispositive part of it and, if necessary, the part of the judgment specifying the infringement concerned and the person having committed it is published.

A COURT DECISION ON THE VALIDITY OF AN INDUSTRIAL DESIGN

Article 56b

In the proceedings instituted for the purpose of the protection of an industrial design against infringement, the defendant may prove that the registered industrial design is not legally valid on the grounds referred to in Article 9 of this Act.

CLAIM FOR PROVISION OF INFORMATION

Article 56c

(1) The holder of an industrial design, who has instituted civil proceedings for the enforcement of an industrial design in case of infringement, may claim the provision of information on the origin and distribution channels of the goods infringing his/her industrial design.

(2) The claim referred to in Article 1 may be submitted in the form of a legal action or a provisional measure against:

- a person who has been sued in the civil proceedings referred to in paragraph 1 of this Article;

- a person who is within her/his business activities in possession of the goods suspected of infringing an industrial design;

- a person who provides within her/his business activities services suspected of infringing an industrial design;

- persons who provide within their business activities services used in the activities suspected of infringing an industrial design;

- a person who is indicated by any of the mentioned persons as being involved in the manufacture or distribution of the goods or the provision of the services suspected of infringing an industrial design;

(3) The claim referred to in Article 1 may also be included in a gradual legal action as the first claim, provided that a person against whom the claim is directed is also a defendant in the main legal action.

(4) The claim for information on the origin and distribution channels of the goods and services referred to in paragraph 1 of this Article may include in particular:

- information on the names and addresses of the producers, distributors, suppliers and other previous holders of the goods and providers of the services, respectively, as well as the intended wholesalers and retailers;

- information on the quantities produced, delivered, received or ordered, as well as the price obtained for the goods or services concerned.

(5) The person required to provide the information referred to in this Article may refuse to provide such information on the same grounds as those allowing the refusal of presenting evidence as a witness pursuant to the provisions of the Act on Civil Proceedings. If the person concerned refuses to provide information without justified reasons, he/she shall be responsible for the damage incurred, pursuant to the provisions of the Obligations Act.

(6) The provisions of this Article shall be without prejudice to the provisions on the use of confidential information in civil and criminal proceedings, the provisions regulating the responsibility for misuse of the right to acquire information, and the provisions regulating the processing and protection of personal data.

(7) The provisions of this Article shall be without prejudice to the provisions of Articles 56f and 56e of this Act regulating the taking of evidence.

PROVISIONAL MEASURES IN CASE OF INFRINGEMENT OF AN INDUSTRIAL DESIGN

Article 56d

(1) Upon the request of the holder of an industrial design who makes it likely that his/her industrial design has been infringed or threatened to be infringed, the court may order any provisional measure aimed at termination or prevention of the infringement, and in particular:

- order the opposing party to cease or desist from the acts infringing the industrial design; the court may also issue such order against an intermediary whose services are being used by a third party to infringe an industrial design;
- order the seizure or removal from the market of the articles which are contrary to the law marked with the industrial design.

(2) Upon the request of the holder of an industrial design who makes it likely that his industrial design has been infringed on a commercial scale for the purpose of acquiring economic benefit, and that such infringement has threatened to cause him irreparable or difficultly repairable harm, the court may, in addition to the provisional measures referred to in paragraph 1 of this Article, order the seizure of the movable and immovable property of the opposing party, which is not directly related to the infringement, including the freezing of his/her bank accounts and other assets.

(3) For the purpose of ordering and executing the provisional measure referred to in paragraph 2 of this Article, the court may require from the opposing party or other relevant persons, the communication of the banking, financial and other economic information, or access to other relevant information and documents. The court shall ensure the protection of confidentiality of such information, and prohibit any misuse thereof.

(4) The provisional measure referred to in paragraph 1 of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be effective, or that there is a demonstrable risk of irreparable or difficultly repairable harm of incurring. The provisional measure referred to in paragraph 2 of this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that otherwise the provisional measure would not be

effective, or that, taking into consideration the circumstances of the case, this would be necessary.

(5) In the decision ordering a provisional measure the court shall specify the duration of such measure, and, if the measure has been ordered before the institution of a legal action, the period within which the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, whichever expires later.

(6) The general provisions of the Execution Act shall apply to matters, not regulated by this Article.

(7) The provisions of this Article shall be without prejudice to the possibility of ordering provisional measures pursuant to other provisions of this Act and the provisions of the Execution Act.

PROVISIONAL MEASURES PRESERVING THE EVIDENCE

Article 56e

(1) Upon the request of the holder of an industrial design who makes it likely that his industrial design has been infringed or threatened to be infringed, and that there is a likelihood that evidence on the infringement concerned or threatened could not be taken or that it could subsequently become more difficult to take it, the court may order a provisional measure for preserving the evidence.

(2) By the provisional measure referred to in paragraph (1) of this Article, the court may order in particular:

- preparation of a detailed description of the goods made likely of infringing an industrial design, with or without taking of samples;
- seizure of the goods made likely of infringing an industrial design;
- seizure of the materials and implements used in the production and distribution of the goods made likely of infringing an industrial design and the documents relating thereto.

(3) The provisional measure referred to in this Article may be ordered without informing the opposing party thereof, if the applicant for measures makes it likely that there is a risk of evidence being destroyed or irreparable or difficulty repairable harm of incurring.

(4) In the decision ordering a provisional measure the court shall specify the duration of the measure, and, if the measure has been ordered before the institution of a legal action, the period within which

the applicant for measures shall institute a legal action to justify the measure, which shall not be less than 20 working days and not more than 31 calendar days, whichever expires later.

(5) The provisions of the Execution Act shall apply to matters, not regulated by this Article.

(6) The provisions of this Article shall be without prejudice to the possibility of ordering provisional measures comprising the preservation of evidence pursuant to the provisions of the Civil Proceedings Act.

OBTAINING EVIDENCE IN THE COURSE OF THE CIVIL PROCEEDINGS

Article 56f

(1) Where a party to the civil proceedings invokes evidence claiming that it lies with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

(2) Where the holder of an industrial design as a plaintiff in a legal action claims that the infringement of an industrial design has been committed on a commercial scale for the purpose of acquiring economic or commercial benefit, and has made it likely during the proceedings, and where he specifies in the proceedings banking, financial or other commercial documents, papers or the like evidence, claiming that they lie with the opposing party or under its control, the court shall invite the opposing party to present such evidence within a specified time limit.

(3) Where the party, which is invited to present evidence, denies that the evidence lies with it or under its control, the court may take evidence to establish such a fact.

(4) The provisions of the Civil Proceedings Act relating to the right of refusal to present evidence as a witness shall apply *mutatis mutandis* to the right of the party to refuse to present evidence.

(5) The court shall, taking into consideration all the circumstances of the case, decide at its own discretion, on the importance of the fact that the party having the evidence refuse to comply with the court's invitation to present it, or denies, contrary to the court's opinion, that the evidence lies with it.

(6) Against the decision of the court referred to in paragraphs 1 and 2 a separate appeal shall not be allowed.

EXPEDITIOUS PROCEEDINGS AND APPLICATION OF THE PROVISIONS OF OTHER ACTS

Article 56g

(1) A legal action concerning the infringement of an industrial design shall be subject to expeditious proceedings.

(2) The provisions of the Civil Proceedings Act or the Execution Act shall apply to the proceedings concerning the infringement of an industrial design.

(3) Upon the request of the court or any of the parties to the proceedings concerning the infringement of an industrial design, the Office or the Board of Appeal shall subject a request for the declaration of the decision on the registration of an industrial design null and void, filed before or in the course of the civil action, to the expeditious proceedings. The court shall, taking into consideration the circumstances of the case, decide whether it shall stay the proceedings up to the final decision on the request for the declaration of the decision on the registration of an industrial design invalid."

Article 23

Present "Part Thirteen" shall become "Part Fifteen".

Article 24

In Article 58, paragraph 3 number "8,000.00" shall be replaced by number "10,000.00".

Following paragraph 4, paragraph 5 shall be added to read:

"(5) A natural person – a craftsman, or a self-employed person committing a misdemeanour referred to in paragraphs (1) and (2) of this Article, in the course of their business activity, shall be punished by a fine from HRK 5.000 to 50.000."

In the present paragraph 5, which shall become paragraph 6, numbers "1, 2, 3 and 4" shall be replaced by numbers "1, 2, 3, 4 and 5".

Article 25

Present "Part Fourteen" shall become "Part Sixteen".

TRANSITORY AND FINAL PROVISIONS

Article 26

(1) The administrative disputes initiated before the Administrative Court prior to 1 January 2008, shall

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be completed before the Administrative Court in accordance with the provisions which were applicable before that date.

(2) A party which instituted a legal action before the Administrative Court prior to 1 June 2008 in accordance with the provisions that were applicable until that date, may request the Administrative Court to stay the proceedings if within 30 days from that day it has submitted an appeal based on the same grounds and same reasons as in the legal action, if an appeal against such an administrative decision is allowed pursuant to the provisions of this Act. The second-instance administrative decision rendered on the basis of that appeal may be challenged in the administrative dispute according to the provisions of the Administrative Dispute Act.

Article 27

The proceedings for the enforcement of the industrial design pending on the day this Act enters into force, shall be completed pursuant to the rules in force before the entry into force of this Act.

Article 28

The Regulations referred to in Article 61 of the Industrial Design Act (Official Gazette, number 173/03) shall be harmonised with the provisions by the Minister competent for the work of the Office, at the proposal of the Director General of the Office, not later than three months following the entering into effect of this Act.

Article 29

This Act shall enter into force on the eight day following the day of its publication in the Official Gazette, except for Articles 2 and 11 on the day of accession of the Republic of Croatia in the European Union and Articles 6 and 17 which shall enter into force on 1 June 2008.