

Law on Inventions, Industrial Designs and Rationalisation Proposals

No. 527 of November 27, 1990

Purpose of the Law

1. The purpose of this Law is to regulate the rights and obligations deriving from the creation and using of inventions, industrial designs and rationalisation proposals.

PART 1 INVENTIONS

Chapter 1

Patents

2. The Federal Office for Inventions (hereinafter referred to as "the Office") shall grant patents for inventions which meet the requirements set out in this Law.

Patentability of Inventions

3. (1) Patents shall be granted for any inventions which are new, which involve an inventive step and which are susceptible of industrial application.

(2) The following shall not be regarded as inventions:

- (a) discoveries, scientific theories and mathematical methods;
- (b) the mere appearance of products;
- (c) schemes, rules and methods for performing mental acts;
- (d) programs for computers;
- (e) mere presentations of information.

Exclusions from Patentability

4. Patents shall not be granted in respect of:

- (a) inventions contrary to public interest, particularly the principles of humanity and morality;
- (b) methods for prevention, diagnosis and treatment of diseases of the human or animal body;
- (c) plant or animal varieties and biological processes for the production and improvement of plants or animals, with the exception of industrial micro-organisms serving for production and biotechnological processes and the products thereof, which are patentable.

Novelty

5.(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public in the Czech and Slovak Federal Republic or abroad prior to the date on which the priority right of the person filing the application for the invention began.

(3) The state of the art shall also comprise the content of applications for inventions filed in the Czech and Slovak Federal Republic which enjoy earlier priority and have been published only on the date on which the applicant's priority right began or at a subsequent date (Section 31). This provision shall also apply to international applications relating to inventions and in which the grant of a patent is requested in the Czech and Slovak Federal Republic (hereinafter referred to as "international applications") under an international treaty. Applications kept secret under special provisions shall be considered to have been published on expiry of an 18 - month period as from the date on which the priority right began.

(4) An invention shall not be considered to form part of the state of the art if its disclosure occurred no earlier than six months preceding the filing of the application and if it was due to or in consequence of:

- (a) an evident abuse in relation to the applicant or his legal predecessor,
- (b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition within the terms of the relevant treaty.¹ In such case, it shall be for the applicant to declare, when filing the application, that the invention has been shown and to produce in support of his declaration, within a period of four months as from filing, a certificate attesting that the invention has been shown in compliance with the provisions of the said international treaty.

Inventive Step

6. (1) An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art.

(2) However, the content of applications that have only been published as of the date on which the applicant's priority right began shall not be taken into consideration in assessing inventive step (Section 31).

Industrial Application

7. An invention shall be considered as susceptible of industrial application if it can be repeatedly used as a part of economic activities.

¹ Convention on International Exhibitions done at Paris on November 22, 1928 (No. 46/1932 of the Collection

Right to Patent

8.(1) The right to a patent shall belong to the inventor or his successor in title.

(2) The inventor is the person who has made the invention by means of his own creative work.

(3) Joint inventors shall be entitled to a patent in the proportion in which they have participated in the creation of the invention.

Inventions Belonging to an Enterprise

9. (1) Where an inventor has made an invention as part of his tasks deriving from an employment relationship, by reason of the fact that he is a member of an organisation or of any other similar employment relationship (hereinafter referred to as "the employment relationship"), the right to the patent shall pass to the employer, unless otherwise laid down by contract. The right of inventorship as such shall remain unaffected.

(2) An inventor who has made an invention within the framework of an employment relationship shall be required to report the fact without delay, in writing, to his employer and to communicate to him the documents required for assessing the invention.

(3) Where the employer does not claim the right to the patent within a period of three months as from receipt of the communication referred to in subsection (2), the right shall revert to the inventor. Both the employer and the employee shall be required to maintain the secrecy of the invention with respect to third parties.

(4) Any inventor who has made an invention under an employment relationship shall be entitled, where the employer claims the right to the patent, to appropriate remuneration from the employer. In order to assess the amount of remuneration, the technical and economic importance of the invention and the benefit obtained from possible using or other use, together with the material contribution by the employer to the making of the invention and the extent of the inventor's service obligations shall be taken into consideration. Where remuneration that has already been paid is obviously no longer proportionate to the benefit obtained from using or other subsequent application of the invention, the inventor shall be entitled to additional remuneration.

10. Termination of the employment relationship between the inventor and the employer shall not prejudice the rights and obligations deriving from the provisions of Section 9.

Effect of Patent

11.(1) The owner of a patent (Section 34) shall have the exclusive right to use the invention, to authorise others to use the invention or to assign the patent to others.

(2) The patent shall have effect as from the date of publication of the notification of its grant in the Official Bulletin of the Federal Office for Inventions (hereinafter referred to as "the Official Bulletin").

(3) The applicant shall be entitled to appropriate remuneration from any person who uses the subject matter of the application for an invention after the application has been published (Section 31). The right to appropriate remuneration may be asserted as from the date on which the patent has effect.

(4) An applicant filing an international application requesting grant of a patent in the Czech and Slovak Federal Republic and which has been published in compliance with the international treaty shall be entitled to appropriate remuneration in accordance with subsection (3) only after the translation of the application into the Czech or Slovak language has been published (Section 31).

12. The extent of the protection conferred by a patent shall be determined by the terms of the claims. In case of doubt, the description of the invention, and possibly the drawings, shall serve to interpret the terms used in the claims.

13.(1) The person using an invention shall mean the person who manufactures, places on the market or uses the product that is the subject matter of the invention or makes use of the process that is the subject matter of the invention, in the framework of his economic activity.

(2) Where a patent has been granted for a production process, the effects of the patent shall extend also to the products directly obtained by such process; identical products shall be held to have been obtained by means of the protected process, unless proved otherwise.

14.(1) The authorisation to use an invention protected by a patent (license) shall be given by written contract (hereinafter referred to as "the license contract").

(2) The license contract shall have effect in respect of third parties as from its entry in the Patent Register (Section 69l).

15. Assignment of a patent shall be effected by written contract that shall take effect in respect of third parties as from its entry in the Patent Register.

Joint Ownership of Patent

16.(1) Where the rights deriving from one patent belong to more than one person (hereinafter referred to as "the joint owners"), the relationship between such persons shall be governed by the general rules of law on shares in joint ownership².

(2) Unless otherwise agreed by the joint owners, each of them shall have the right to use the invention.

(3) Unless otherwise agreed, the conclusion of a license contract shall require, in order to be valid, the consent of all joint owners; each of the joint owners may independently take action against infringement of the rights deriving from the patent.

(4) Assignment of the patent shall require the consent of all joint owners. Failing the consent of the other joint owners, each joint owner may only assign his share to another joint owner; assignment to a third party may only be effected if none of the joint owners has accepted a written offer of assignment within a period of one month.

Limitation of Effects of Patent

² Code of Civil Law (Law No. 40/1964 of the Coll.) in its current wording.
Code of Economy (Law No. 109/1964 of the Coll.) in its current wording

17.(1) A patent shall not be invocable against a person (hereinafter referred to as "the prior user") who has already used the invention independently of the inventor or owner of the patent or who has made preparation therefor, that he can prove, before the priority right began (Section 27).

(2) In case of failure to reach agreement, the prior user shall be entitled to request a court or economic arbitration board, as appropriate, that his right be recognised by the owner of the patent.

18.(1) The rights of the owner of the patent shall not be infringed by use of the protected invention:

- (a) on board vessels of other States party to the international treaties³ to which the Czech and Slovak Federal Republic is party (hereinafter referred to as "the Union countries"), in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the Czech and Slovak Federal Republic, provided that such use is exclusively for the needs of the vessel;
- (b) in the construction or operation of aircraft or land vehicles of other Union States when those aircraft or land vehicles temporarily or accidentally enter the Czech and Slovak Federal Republic.

(2) The rights of the owner of a patent shall not be infringed by the preparation in individual cases in a pharmacy of medicines in accordance with a medical prescription.

Offer of License

19.(1) If the applicant for a patent or the owner of a patent declares to the Office that he is prepared to offer the right to use the invention to any person (offer of license), any person who accepts the offer of a license and notifies the fact in writing to the applicant or owner shall be entitled to use the invention. The Office shall enter the offer of license in the Patent Register.

(2) The declaration of offer of license shall be irrevocable.

(3) The fact that a person is entitled to use the invention shall not prejudice the right of the owner of the patent to obtain compensation with respect to the value of the license.

(4) The administrative fees for maintaining a patent in respect of which the owner has made an offer of license under subsection (1) shall be half the amount laid down in the relevant statutory provisions⁴.

Compulsory License

³ Decree of the Minister for Foreign Affairs of the Czechoslovak Socialist Republic regarding the Paris Convention for the Protection of Industrial Property of March 20, 1883, revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967 (No. 64/ 1975 of the Coll.).

⁴ Law on Administrative Fees (No. 105/1951 of the Coll.) in the wording of the Decree of the Presidium of the National Assembly (No. 138/1960 of the Coll.).

Decree of the Federal Ministry of Finance, the Ministry of Finance, Prices and Wages of the Czech Republic and of the Ministry of Finance, Prices and Wages of the Slovak Republic (No.570/1990 Coll.).

20.(1) Where no agreement is reached on the conclusion of a license contract, the Office may grant a compulsory license:

- (a) if the owner of the patent does not use his patent at all or uses it insufficiently and cannot give legitimate reasons for his failure to act; a compulsory license may not be granted prior to the expiration of four years as from the filing date of the patent application or three years as from the date of grant of the patent, whichever period expires last;
- (b) where an important public interest is endangered.

(2) The grant of a compulsory license shall not affect the right of the owner to obtain compensation in respect of the value of the license.

Term of Patent

21. The term of a patent shall be 20 years as from the filing date of the application for the invention.

Lapse of Patent

22. A patent shall lapse:

- (a) on expire of its term of validity;
- (b) if the corresponding administrative fees⁵ have not been paid in good time by the owner of the patent;
- (c) on relinquishment by the owner of the patent; in such case, the patent shall terminate as from the date on which the Office receives a written declaration by the owner of the patent.

Annulment of Patent

23. (1) The Office shall annul a patent if it ascertains, after grant of the patent, that the conditions for granting a patent laid down by this Law were not met.

(2) If the grounds for annulment concern only a part of the patent. the patent shall be annulled in part.

(3) Annulment of a patent shall have retroactive effect to the date on which the patent became valid.

(4) A request for annulment of a patent may be filed even after lapse of the patent if the person filing the request can prove a legal interest.

Chapter 2 Patent Granting Procedure

⁵ See footnote 4, supra

Application for an Invention

24. (1) The patent granting procedure shall begin with the filing with the Office of an application for an invention.

(2) The Office is the body with which Czechoslovak natural and legal persons and other natural and legal persons having their domicile or an establishment on the territory of the Czech and Slovak Federal Republic may file international applications

(3) The person filing an application under subsection (1) or (2) shall be required to pay an administrative fee in accordance with the relevant statutory provisions⁶ and the person filing an international application under subsection (2) shall further be required to pay for the international procedure regarding the application for the invention those fees that are laid down in accordance with the relevant international treaty; the Office shall publish the schedule of the above-mentioned fees in the Official Bulletin.

25. (1) The name of the inventor shall be mentioned in the application.

(2) At the request of the inventor, the Office shall not mention the name of the inventor in the published application and in the announcement of the grant of the patent.

26. (1) An application shall relate to one invention only or to a group of inventions so linked as to form a single inventive concept.

(2) The invention must be disclosed in the application for an invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. Where the invention concerns an industrial micro-organism for the purposes of production, the micro-organism must be kept in a public collection as from the date on which the applicant's priority right begins.

(3) Where there is a doubt, the Office may invite the applicant to provide evidence of the applicability of the invention by producing the subject matter of the application or in some other appropriate manner. If the applicant is unable to furnish such evidence, the subject matter of the application shall be deemed not to have applicability.

27. (1) The priority right of the applicant shall begin with the filing of the application.

(2) The priority right under the international treaty⁷ must already be claimed by the applicant in his application; if invited to do so by the Office, the applicant must furnish evidence of his right within the stipulated time limit, failing which the priority right shall not be taken into consideration.

28. (1) Where legal proceedings in respect of the right to a patent have been instituted before, a competent organ, the Office shall suspend the procedure with respect to the application concerned.

(2) The time limits laid down by this Law shall be suspended, with the exception of the time limit laid down in Section 31 (1), for as long as the procedure is suspended.

(3) If the legitimate applicant files a request to continue the procedure within three months from the date on which the decision on the right to a patent becomes final, the priority right shall be maintained. Acts carried out for the granting of a patent prior to suspension of a procedure shall likewise be deemed valid for the continued procedure.

⁶ Ibid

⁷ See footnote 3, supra

29. (1) The Office shall transfer the application for an invention or the patent to the person who is the inventor in accordance with the decision taken by the court.

(2) If the organ competent to hear legal proceedings with regard to the right to a patent decides that the right belongs to another person, the Office shall replace the name of the person filing the application or of the owner of the patent with the name of such other person.

Preliminary Examination of Application for an Invention

30. (1) All applications for an invention shall be subject to a preliminary examination carried out by the Office in order to ascertain that:

- (a) the application contains no element that is obviously contrary to the provisions of Sections 3(1) or 26(2);
- (b) the application contains no element referred to in the provisions of Sections 3(2) or 4;
- (c) the application contains no defect constituting a bar to publication;
- (d) the applicant has paid the corresponding administrative fees⁸.

(2) The Office shall reject an application for an invention if it contains an element contrary to the provisions of Sections 3 (1) or 26 (2) or an element referred to in the provisions of Sections 3 (2) or 4. The applicant shall be given an opportunity to make observations on the documents on the basis of which the decision has been taken, prior to rejection.

(3) If an application for an invention contains an element that constitutes a bar to its publication or if the applicant has not paid the corresponding administrative fee⁹ the Office shall invite the applicant to submit his observations and to remedy any defects within the time limit it shall stipulate.

(4) If the applicant does not remedy the defects in an application for an invention constituting a bar to its publication or does not pay the corresponding administrative fee¹⁰ within the stipulated time limit, the Office shall terminate the procedure. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.

31. (1) The Office shall publish an application for an invention on expire of a period of 18 months as from the date on which the priority right begins and shall give notice of publication in the Official Bulletin.

(2) An application for an invention may be published before expire of the time limit laid down in subsection (1) on a request submitted by the applicant within 12 months from the date on which the priority right begins and on payment of the administrative fee laid down in the relevant statutory provisions¹¹.

The Office shall publish an application for an invention before expire of the period referred to in subsection (1) if a patent has already been granted for the invention.

⁸ See footnote 4, supra

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

However, if the owner of the patent does not give his consent, the Office shall not publish the application before expire of 12 months as from the date on which the priority right begins.

(3) Together with the application for an invention, the Office may publish a report on the state of the art (search report) relating to an invention claimed in the application.

32. (1) Following publication of an application for an invention, any person may submit observations on the patentability of the subject matter; the Office shall take such observations into consideration when carrying out the full examination of the application.

(2) Persons who have submitted observations under subsection (1) shall not become party to the procedure with respect to the application. However, the applicant shall be informed of any observations submitted.

Full Examination of Application for an Invention

33. (1) The Office shall carry out a full examination of the application for an invention to ensure that it meets the conditions for granting a patent laid down by this Law.

(2) The full examination of an application for an invention shall be carried out by the Office at the request of the applicant or of another person or may be carried out ex officio.

(3) The request for full examination shall be filed within 36 months as from the filing date of the application for an invention and may not be withdrawn. The person filing the request shall be required, on submitting the request, to pay an administrative fee in accordance with the relevant statutory provisions¹².

(4) The Office shall carry out the full examination immediately after the request has been filed.

(5) Where no request for full examination of an application for an invention has been duly filled or where the Office has not carried out an ex officio examination within the period laid down in subsection (3), the Office shall terminate the procedure concerning the application.

34. (1) If the conditions for granting a patent have not been met, the Office shall reject the application for an invention. The applicant shall be given the possibility of submitting observations on the documents on the basis of which the decision on the application is to be taken, before rejection.

(2) If the applicant does not remedy a defect constituting a bar to the granting of a patent within the given time limit, the Office shall terminate the procedure concerning the application. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.

(3) If the subject matter of the application for an invention satisfies the stipulated conditions and if the applicant has paid the fee laid down in the relevant statutory provisions¹³ the Office shall grant a patent to the applicant who shall thereupon become the owner of the patent. The Office shall issue to the owner of the patent letters patent in which the name of the inventor shall be mentioned; the description of the invention and the claims shall form an integral part of the letters patent; a notice of the grant of the patent shall be published in the Official Bulletin.

¹² Ibid

¹³ Ibid

35. If more than one application for an invention relating to the same subject matter is filed, only one patent can be granted.

PART 2 INDUSTRIAL DESIGNS

Chapter 1

Concept of Industrial Design

36. (1) An industrial design within the meaning of this Law shall be the appearance of a product that is new and susceptible of industrial application.

(2) The following shall not constitute industrial designs within the meaning of subsection (1):

- (a) a technical solution or concept;
- (b) application of the known appearance of a product to a product of another kind or of the appearance obtained by enlarging or reducing the known appearance of a product;
- (c) substitution of the material used for the appearance of a product;
- (d) an architectural concept;
- (e) the appearance of a product that can only be ascertained if special attention is paid;
- (f) the colour, except where used in relation to the shape, contours or ornamentation.

37. The appearance of a product shall be constituted by any two- or three-dimensional get up consisting, in particular, in the shape, contours, ornamentation or in the arrangement of the colours of the product or in a combination of such features.

Novelty

38. An industrial design shall be deemed to be new if it is unknown, prior to the date on which the applicant's priority right begins (Sections 48 and 49), in the Czech and Slovak Federal Republic or abroad by any means generally available to the public, particularly if it has not been depicted or described in printed publications or publicly exploited, displayed, orally described or otherwise presented.

Industrial Application

39. An industrial design shall be deemed susceptible of industrial application if it can serve as a model for repeated manufacture.

Chapter 2

Registration of Industrial Designs

40. (1) The Office shall register industrial designs in the Industrial Designs Register (Section 69).

(2) The Office shall not register an industrial design if it is contrary to public interest, particularly the principles of humanity and morality.

41. The Office shall not register an industrial design whose subject matter is identical with that of another application for an industrial design filed in the Czech and Slovak Federal Republic that enjoys an earlier priority right.

Application for an Industrial Design

42. The procedure for registration of an industrial design shall begin with the filing of the application with the Office.

43. (1) The right to file an application for an industrial design shall belong to the creator of the design or his successor in title (hereinafter referred to as "the applicant"). When filing the application, the applicant shall be required to pay an administrative fee in accordance with the relevant statutory provisions¹⁴.

(2) The creator of an industrial design shall be the person who has created it by means of his own creative work.

(3) Joint creators shall have a right to the industrial design in proportion to their contribution to its creation.

Industrial Design Belonging to an Enterprise

44. (1) Where a creator has created an industrial design as part of his tasks deriving from an employment relationship, the right to the design shall pass to the employer, unless otherwise laid down by contract. The right of authorship as such shall remain unaffected.

(2) A creator who has created an industrial design within the framework of an employment relationship shall be required to report the fact without delay, in writing, to his employer and to communicate to him the documents required for assessing the industrial design.

(3) If the employer does not file an application for the industrial design within three months as from receipt of notification of creation of the industrial design, the creator may file an application. Both the employer and the creator shall be required to maintain the secrecy of the industrial design with respect to third parties.

(4) Any creator who has created an industrial design under an employment relationship shall be entitled to appropriate remuneration from his employer. In order to assess the amount of remuneration, the benefit obtained from possible using or other use of the industrial design, together with the material contribution by the employer to the creation

¹⁴ Ibid

of the design and the extent of the creator's service obligations shall be taken into consideration. Where remuneration that has already been paid is obviously no longer proportionate to the benefit obtained from using or other subsequent application of the industrial design, the creator shall be entitled to additional remuneration.

45. Termination of the employment relationship between the creator and the employer shall not prejudice the rights and obligations deriving from the provisions of Section 44.

46. The name of the creator shall be mentioned in the application for an industrial design.

47. An application for an industrial design may relate to a single feature of the appearance of the product or to a number of features of the appearance of products of the same kind that are similar or are intended for joint use (cumulative application for an industrial design).

Right of Priority

48. (1) The priority right of the applicant shall begin with the filing of the application for an industrial design.

(2) The priority right under the international treaty¹⁵ must already be claimed by the applicant in his application for an industrial design; the applicant must furnish evidence of his right within three months as from filing of the application, failing which his right shall not be taken into consideration.

49. The Office may recognise the priority right for articles displayed at an exhibition held on the territory of the Czech and Slovak Federal Republic as from the moment of introduction of such articles into the exhibition, on condition that an application for an industrial design in respect of the displayed article is filed with the Office within three months as from the close of the exhibition.

Procedure for an Application for an Industrial Design

50. Where legal proceedings in respect of the right to file an application for an industrial design have been instituted before a competent organ, the Office shall continue the procedure with respect to the application, but shall not give its decision until the competent organ has taken its decision.

51. (1) The Office shall examine the application for an industrial design and the industrial design that is the subject matter of the application.

(2) If the application for an industrial design does not satisfy the conditions stipulated, the Office shall invite the applicant to remedy any defects. If the applicant does not remedy the defects within the stipulated time limit, the Office shall terminate the procedure concerning the application. The attention of the applicant shall be drawn to such consequence of failure to comply when the time limit is stipulated.

¹⁵ See footnote 3, supra

(3) The Office may invite the applicant to prove that the industrial design is susceptible of industrial application by producing the subject matter of the application; failing such proof, the industrial design shall be deemed not to be susceptible of industrial application.

52. (1) If the subject matter of the application satisfies the conditions for registration in the Industrial Designs Register, the Office shall register the design in the Register and the applicant shall thereupon become the owner of the industrial design. The Office shall issue to the owner an industrial design certificate in which the name of the creator shall be mentioned.

(2) The Office shall publish a notice of the registration of an industrial design in the Official Bulletin. At the request of the owner of the industrial design, the Office shall postpone publication of the registration; the person making the request shall be required to pay an administrative fee in accordance with the relevant statutory provisions¹⁶.

(3) If the conditions for registering an industrial design have not been met, the Office shall reject the application. The applicant shall be given the possibility of submitting observations on the documents on the basis of which the decision on the application is to be taken, before rejection.

53. (1) The Office shall transfer the industrial design certificate to the person who is the creator of the industrial design in accordance with the decision taken by the court.

(2) If the organ competent to hear a dispute with regard to the right to file an application for an industrial design decides that the right belongs to another person, the Office shall replace the name of the owner of the industrial design with the name of such other person.

54. (1) The term of an industrial design registration shall be five years as from the filing date of the application.

(2) The term of an industrial design registration shall be extended by the Office for a maximum of two five-year periods.

(3) Extension of the term of an industrial design registration may only be requested by the owner during the final year of the current term.

Chapter 3

Effect of Industrial Design Registration

55. The owner of an industrial design shall have the exclusive right to use the design, to authorize others to use it or to assign it to others.

56. The person using an industrial design shall mean the person who manufactures a product using the industrial design as a model or who imports or places such product on the market in the framework of his economic activity.

57. (1) The authorisation to use an industrial design protected by a certificate (license) shall be given by license contract.

(2) The license contract shall have effect in respect of third parties as from its entry in the Industrial Designs Register.

¹⁶ See footnote 4, supra

58. Assignment of an industrial design shall be effected by written contract that shall take effect in respect of third parties as from its entry in the Industrial Designs Register.

Joint Ownership of Industrial Design

59. (1) Where the rights deriving from one industrial design belong to more than one person (hereinafter referred to as "the joint owners"), the relationship between such persons shall be governed by the general rules of law on shares in joint ownership¹⁷.

(2) Unless otherwise agreed by the joint owners, each of them shall have the right to use the industrial design.

(3) Unless otherwise agreed, the conclusion of a license contract shall require, in order to be valid, the consent of all joint owners; each of the joint owners may independently take action against infringement of the rights deriving from the industrial design.

(4) Assignment of the industrial design shall require the consent of all joint owners. Failing the consent of the other joint owners, each joint owner may only assign his share to another joint owner; assignment to a third party may only be effected if none of the joint owners has accepted a written offer of assignment within a period of one month.

Limitation of Effect of Industrial Design

60. (1) The registration of an industrial design shall not have effect against a person (hereinafter referred to as "the prior user") who has already used the design independently of the creator or owner or who has made preparation therefor, that he can prove, before the priority right arose.

(2) The prior user may request the owner of the industrial design to recognise his right as a prior user.

Lapse of Industrial Design

61. The right in an industrial design shall lapse:

- (a) on expiry of the term of validity of its registration;
- (b) on relinquishment by the owner of the industrial design; in such case, the right shall terminate as from the date on which the Office receives a written declaration by the owner of the industrial design.

Cancellation of Industrial Design

62. (1) The Office shall cancel an industrial design if it ascertains, after registration, that the conditions for registering an industrial design laid down by this Law were not met.

(2) The Office may cancel an industrial design on its own initiative or on request.

¹⁷ See footnote 2, supra

(3) Cancellation of an industrial design shall have retroactive effect to the date on which the registration of the design took effect.

(4) A request for cancellation of an industrial design may be filed even after lapse of the term of validity of its registration if the person filing the request can prove a legal interest.

PART 3
COMMON PROVISIONS
ON PROCEDURE BEFORE THE OFFICE

Administrative Procedure

63. (1) The general statutory rules on administrative procedure shall apply to procedure before the Office, subject to the exceptions laid down by this Law and excluding the provisions on suspension of procedure, declarations of honour, time limits for decisions and measures in the event of failure to act¹⁸.

(2) The Office shall levy administrative fees¹⁹ for acts carried out in connection with the procedure laid down by this Law. The person requesting the procedure under Sections 23, 62 and 68(1) and (2) shall be required to deposit a security for the cost of the procedure; such security shall be refunded to the person filing the request if the request is substantiated by the procedure.

Suspension of Procedure

64. (1) If one of the parties to a procedure does not comply with an invitation by the Office within the stipulated time limit, the Office may suspend the procedure.

(2) The Office may also suspend the procedure at the request of one of the parties; a request for suspension of the procedure may not be withdrawn.

Excusing Failure to Comply With a Time Limit

65. (1) The Office may excuse failure to comply with a time limit on legitimate grounds if a party to the procedure so requests within two months of the day on which the reason for failure to comply has ceased to exist, provided that the omitted act has been performed within that period and that the administrative fee in accordance with the relevant statutory provisions²⁰ has been paid.

(2) Failure to comply with a time limit may not be excused after expiry of a period of one year as from expiry of the period within which the act should have been performed; failure to comply with a time limit for claiming and proving a priority right or for filing a request for full examination of an application for an invention or a request for continuation of the procedure under Section 28(3) may likewise not be excused.

¹⁸ Sections 29, 39, 49 and 50 of the Law on Administrative Procedure (Administrative Regulations) (No. 71/1967 of the Coll.)

¹⁹ See footnote 4, supra

²⁰ Ibid

(3) Rights acquired by third parties between the date of expire of the time limit that has not been complied with and the date on which the failure to comply was excused shall not be affected.

Inspection of Files

66. The Office may allow third parties to inspect the files, provided that they prove a legal interest therein. Prior to publication of an application for an invention or prior to publication of the notice of registration of an industrial design, only the name of the inventor or the creator of an industrial design, the name of the person filing an application for an invention or an application for an industrial design, the particulars relating to the priority right, the title of an application for an invention or of an application for an industrial design and the data serving to identify the application may be communicated to third parties.

Procedure for Declaratory Judgement

67. (1) At the request of any person proving a legal interest therein, the Office shall determine whether the protection deriving from a given patent extends to the subject matter stated in the request or whether the protection deriving from a given registered industrial design extends to the appearance of the product depicted or described in the request.

(2) The declaratory judgement given by the Office shall be binding on the courts and on all other State organs and may not be examined even as a preliminary matter.

Appeals Procedure

68. (1) Decisions taken by the Office, with the exception of decisions on excusing failure to comply with a time limit under Section 65, may be appealed from within one month of service of their notification.

(2) Decisions on appeal shall be taken by the President of the Office on a proposal by an expert commission established by the President.

(3) Any decision given in an appeals procedure under Sections 20, 23, 62 or 67 may be appealed from before a court²¹.

Patent Register, Industrial Designs Register and Official Bulletin

69. (1) The Office shall keep a Patent Register and an Industrial Designs Register for the purpose of entering the particulars of decisive importance relevant to applications for inventions, applications for industrial designs, the procedure relating to such applications and the relevant particulars of decisive importance concerning granted patents and registered industrial designs.

(2) The Office shall publish an Official Bulletin which shall contain, *inter alia*, all particulars concerning published applications for inventions, granted patents, registered

²¹ Section 244 of the Code for Civil Procedure

industrial designs and other particulars relating to inventions and industrial designs, as also official notices and leading decisions.

Representation

70. (1) Persons who do not have their place of residence or headquarters on the territory of the Czech and Slovak Federal Republic must be represented in proceedings before the Office in respect of applications for inventions and for industrial designs by a representative in accordance with the relevant statutory provisions²² or a patent agent approved by the Office.

(2) The requirements of subsection (1) shall also apply to persons referred to in Section 24(2) in connection with the filing of international applications.

Secret Inventions and Industrial Designs

71. With the exception of the provisions on publication, the provisions of this Law shall apply to procedures with respect to inventions and industrial designs kept secret under the relevant statutory provisions²³.

PART 4

RATIONALISATION PROPOSALS

72. (1) A rationalisation proposal shall be any technical improvement of a manufacturing or operational nature and any solution to a problem of safety, protection of health at work or protection of the environment; the rationalisator shall have the right to dispose of his proposal.

(2) No right may derive from a rationalisation proposal if rights deriving from a patent or a registered industrial design constitute an obstacle thereto.

73. (1) A rationalisator shall offer to his employer his rationalisation proposal if it falls within the scope of his employer's work or activities.

(2) The rationalisator shall have the right to dispose unrestrictedly of his rationalisation proposal if his employer does not conclude an agreement for the acceptance of the offer of the rationalisation proposal and the corresponding remuneration within two months as from receipt of the offer (Section 74).

74. The right to exploit a rationalisation proposal shall begin on conclusion of the agreement of acceptance of the offer of the rationalisation proposal and the corresponding remuneration between the employer and the rationalisator.

²² Law of the Czech National Council on the profession of lawyer (No. 128/1990 of the Coll.)
Law of the Slovak National Council on commercial lawyers and legal assistance offered by them (No. 132/1990 of the Coll.)

²³ Law on the Protection of State Secrecy (No. 102/1971 Coll.) in the wording of Law No. 383/1990 Coll.

PART 5
COMMON, TRANSITIONAL
AND FINAL PROVISIONS

Infringement of Rights

75. (1) Any person suffering a prejudice due to infringement of rights protected under this Law may, in particular, request prohibition of the infringement of his rights and suppression of the unlawful consequences thereof. If damages have been incurred through the infringement, the injured party shall be entitled to claim indemnification; the indemnification shall consist in the loss of value suffered by the injured party's property by reason of the prejudice (actual prejudice) and of the profits that the injured party would have obtained but for the prejudice (loss of profit). If the infringement causes an immaterial prejudice, the injured party shall be entitled to appropriate compensation which may, depending on the circumstances, consist of a monetary indemnity.

(2) Disputes arising from legal relationships with respect to inventions, industrial designs and rationalisation proposals shall be heard and decided by the courts or by economic arbitration boards, as appropriate, except where this Law affords jurisdiction to the Office.

Relations with Foreign Countries

76. (1) Persons having neither domicile nor headquarters on the territory of the Czech and Slovak Federal Republic shall enjoy the same rights and obligations as Czechoslovak citizens in those cases where there is reciprocity.

(2) The provisions of international treaties by which the Czech and Slovak Federal Republic is bound shall not be affected by this Law.

Transitional Provisions

77. Procedures in respect of applications for discoveries that have not been completed on entry into force of this Law shall be completed in accordance with prior law.

78. (1) Applications for inventions for which no decision has been taken prior to entry into force of this Law shall be processed in accordance with the provisions of this Law, whereby the Office shall carry out a full examination *ex officio*.

(2) In the case of inventions governed by the provisions of Section 28(a) of Law No. 84/1972 of the Collection, the right to the patent shall belong to the employer if he files an application for a patent within three months as from entry into force of this Law. The inventor shall be entitled to appropriate remuneration from the employer under Section 9(2) of this Law. If the employer does not apply for grant of a patent within that period, the right to the patent shall be deemed to belong to the employee.

(3) The rights of third parties shall not be affected in the event of using of the subject matter of an application for an invention under subsections (1) and (2), prior to the entry into force of this Law, in accordance with the provisions of prior law. The inventor's right to receive remuneration for using, in accordance with such provisions, the subject

matter of an application for invention requesting the issue of an inventor's certificate under prior law shall not be affected.

79. The Office shall grant a patent on a request for recognition of an inventor's certificate filed in accordance with an international treaty²⁴, prior to entry into force of this Law, provided that the applicant makes the application for recognition of an inventor's certificate comply with the conditions for granting a patent within six months as from entry into force of this Law. If the applicant fails to do so, the Office shall terminate the procedure.

80. (1) Applications for industrial designs on which no decision has been taken prior to entry into force of this Law shall be processed in compliance with the provisions of this Law.

(2) The employer of a creator of an industrial design, for which an application has been filed, created under the provisions of Law No. 84/1972 of the Collection, shall be entitled to file the application if he submits a request to be entered as the applicant within three months of the entry into force of this Law. The creator shall be entitled to receive from the employer remuneration in accordance with Section 44(4) of this Law. If the employer does not submit a request to be entered as the applicant within that period, the registration of the industrial design shall be deemed to have been applied for by the creator of the industrial design.

(3) The rights of third parties to exploit the subject matter of applications for industrial designs referred to in subsections (1) and (2) that began prior to entry into force of this Law under the provisions of prior law shall not be affected. The right of the creator to receive remuneration for exploitation under the provisions of prior law shall not be affected.

81. (1) An inventor's certificate issued under Law No. 84/1972 of the Collection shall terminate on expiry of the fifteenth year as from the filing date of the application. However, its term of validity shall not terminate earlier than one year after the entry into force of this Law. Maintenance of the validity of the inventor's certificate after the expiry of one year as from the entry into force of this Law shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions²⁵.

(2) An industrial design certificate issued under Law No. 84/1972 of the Collection shall terminate on expiry of the fifth year as from the filing date of the application; on request, the Office shall extend the term of validity of the industrial design certificate for a further five-year period. However, the term of validity of the certificate shall not terminate earlier than one year after the entry into force of this Law. Submission of the request shall be subject to payment of an administrative fee in accordance with the relevant statutory provisions²⁶.

(3) An organisation which possesses or has obtained, under prior law, the right to use an invention or industrial design shall have the same rights as the owner of a patent or of an industrial design.

²⁴ Decree of the Minister for Foreign Affairs of the Czechoslovak Socialist Republic on the Agreement on the Mutual Recognition of Inventions Certificates and Others Titles of Protection for Inventions (No.133/1978 Coll.)

²⁵ See footnote 4, supra

²⁶ Ibid

(4) Any person who has made, in circumstances other than those laid down in Section 28(a) of Law No. 84/1972 of the Collection, an invention that is protected by an inventor's certificate granted under prior law and of which the right to dispose belongs to an organisation or has been obtained by an organisation, but which has not been used by that organisation, shall have the right to request the Office, at any time during the term of validity of the inventor's certificate, to transform the inventor's certificate into a patent. Transformation of an inventor's certificate into a patent shall be subject to payment of an administrative fee. This provision shall be set out in more detail in the Regulations.

(5) The inventor or the creator of an industrial design shall have the right to exploit the right in the invention or in the industrial design, as appropriate, within the framework of his enterprise, if the invention protected by an inventor's certificate has not been made in accordance with the provisions of Section 28(a) of Law No. 84/1972 of the Collection or if the industrial design protected by an inventor's certificate has not been created under the provisions of Section 82 of that Law²⁷.

(6) If an organisation having the rights referred to in subsection (3) does not pay the administrative fee for maintaining the inventor's certificate in accordance with the relevant statutory provisions²⁸ or does not submit a request for entry in the Industrial Designs Register within six months of expiry of the period laid down in subsection (1), the right shall revert to the owner of the patent or industrial design provided he performs those acts within an additional period of six months. Failure to comply with this time limit may not be excused.

82. (1) At the request of the owner of a patent granted abroad and of which subject matter falls under Section 28(b) and (c) of Law No. 84/1972 of the Collection, the Office may grant a priority right in accordance with the international treaty²⁹ for an application for an invention filed in the Czech and Slovak Federal Republic after expiry of the time limit laid down in that treaty.

(2) The request referred to in subsection (1) must be submitted when the application for the invention is filed and a document certifying grant of a patent abroad must be furnished within 12 months of entry into force of this Law.

(3) The Office shall not grant a patent on an application for an invention filed under subsection (2) if:

- (a) the applicant has not submitted a document certifying the authorisation given in any country for the sale or manufacture of the subject matter of the patent;
- (b) if the applicant has not submitted a document certifying authorisation to sell or manufacture the subject matter of the patent in the Czech and Slovak Federal Republic given by the competent Czechoslovak body on a request submitted within six months of grant of the authorisation for sale or manufacture of the subject matter of the patent in any country;
- (c) the subject matter of the patent granted abroad has not been placed on the market in the Czech and Slovak Federal Republic prior to filing of the application in accordance with subsections (1) and (2).

²⁷ Code of the Economy (Law No. 109/1964 Coll.) in its current wording.
Law on Citizens' Private Enterprise (No. 105/1990 Coll.)

²⁸ See footnote 4, supra

²⁹ See footnote 3, supra

(4) After submitting a request under subsections (1) and (2), the owner of a patent issued abroad must produce the documents referred to in subsection (3)(a) and (b) within three months as from their issue and, at the latest, before expiry of the term of validity of the patent in accordance with subsection (5).

(5) The term of validity of a patent granted as a result of an application submitted in accordance with subsection (2) shall be 16 years as from the priority date afforded to it

(6) Failure to comply with the time limits set out in subsections (2), (3)(a) and (b) and (4) may not be excused.

83. Prior law shall apply to legal relationships deriving from patents for inventions and patents for industrial designs granted before the entry into force of this Law.

84. The using of an invention protected by an inventor's certificate or an industrial design protected by a certificate under prior law which began before entry into force of this Law or using which was authorised on a contractual basis before entry into force of this Law shall not constitute an infringement of the rights of the owner of the patent. The right of the inventor to remuneration for such using shall not be affected.

85. (1) The processing of applications for rationalisation proposals not terminated before the entry into force of this Law shall be completed in accordance with this Law, it being understood that the time limit laid down in Section 73(2) shall begin to run on the date of entry into force of this Law.

(2) Prior law shall be applicable to legal relationships deriving from rationalisation proposals on which a favourable decision has been given before entry into force of this Law, it being understood that the term of validity of a rationalisation certificate shall be three years as from the entry into force of this Law.

86. (1) Claims to remuneration for a discovery or for using an invention, an industrial design or a rationalisation proposal, claims for reimbursement of the appropriate cost of preparing drawings, models or prototypes, for the spirit of initiative in participation in the execution, trials and implementation of discoveries, inventions, industrial designs or rationalisation proposals, as also claims to remuneration for drawing attention to the possibility of using an invention or rationalisation proposal, that originated before the entry into force of this Law shall be governed by prior law.

(2) Where an invention, protected by an inventor's certificate and for which an organisation has obtained in accordance with Section 81(3) of this Law the rights of the owner of a patent, is used after the entry into force of this Law, the organisation shall pay to the inventor remuneration in accordance with Section 9(4) of this Law. Where an industrial design, protected by a certificate and for which an organisation has obtained in accordance with Section 81(3) of this Law the rights of an industrial design certificate holder, is used after the entry into force of this Law, the organisation shall pay to the holder of the industrial design remuneration in accordance with Section 44(4) of this Law.

(3) Claims to remuneration for using a rationalisation proposal for which a rationalisator's certificate has been issued and that originated before the entry into force of this Law shall be governed by prior law.

87. Thematic tasks announced before the entry into force of this Law shall be governed and treated in accordance with prior law.

Empowering, Repealing and Final Provisions

88. (1) The Office shall set out in detail, by Decree, the procedure in matters of inventions and industrial designs.

(2) New methods of prevention, diagnosis and treatment of human diseases shall be the subject of certificates. Details shall be laid down by decree of the Ministry of Health of the Czech Republic and the Ministry of Health of the Slovak Republic, in agreement with the Office.

(3) New methods of prevention, diagnosis and treatment of animal diseases and new methods for the protection of plants against pests and diseases shall be the subject of certificates. The details shall be set out by decree of the Ministry of Agriculture of the Czech Republic and the Ministry of Agriculture of the Slovak Republic, in agreement with the Office.

89. The following instruments are hereby repealed:

1. Law No. 84/1972 of the Collection on discoveries, inventions, rationalisation proposals and industrial designs;

2. Decree No. 104/1972 of the Collection on the procedure relating to discoveries, inventions and industrial designs;

3. Decree No. 105/1972 of the Collection on rationalisation proposals;

4. Decree No. 107/1972 of the Collection on relations with foreign countries in matters concerning foreign inventions and industrial designs;

5. Decree No. 93/1972 of the Collection on the conciliation procedure in disputes concerning remuneration for inventions, rationalisation proposals and industrial designs;

6. Decree No. 27/1986 of the Collection on remuneration for discoveries, inventions, rationalisation proposals and industrial designs;

7. Decree No. 28/1986 of the Collection on the administration of inventions, rationalisation proposals and industrial designs and on their planned utilisation in the national economy;

8. Decree No. 29/1986 of the Collection on the planning of thematic tasks;

9. Decree No. 68/1974 of the Collection determining exceptions to the provisions of Law No. 84/1972 of the Collection on discoveries, inventions, rationalisation proposals and industrial designs.

90. This Law shall enter into force on January 1, 1991.