

Act No. 444/2002 Coll. on Designs as amended

Amended by: Act No 344/2004 Coll.

Act No 84/2007 Coll.

Act No. 495/2008 Coll.

The National Council of the Slovak Republic has adopted the following Act:

PART ONE

BASIC PROVISIONS

Article 1

Subject-matter of regulation

- (1) This Act governs legal relations arising in relation to creation, legal protection and application of a design.
- (2) This Act shall not substitute protection afforded to same subjects pursuant to special regulations.¹

Article 2

Definition of terms

For purposes of this Act

- a) design shall mean an appearance of a product or its part consisting in features which are particularly lines, contours, colours, shape, texture or materials of a product itself or of its ornamentation;
- b) registered design shall mean a design entered into the Register of designs;
- c) product shall mean any material item produced industrially or by handcraft, including wrapping, design, graphic symbols, typographic features or parts intended for assembling of a complex product with exception of computer programmes;
- d) complex product shall mean a product consisting of several parts which can be replaced and which enable a product to be disassembled and re-assembled.

Article 3

Terms of protection

- (1) Design which is new and has individual character shall be protected as a design.
- (2) Design used in a product, which is part of a complex product or design embodied in such product shall be considered to be new and to have individual character:

¹ e.g. Act No. 383/1997 Coll. Copyright Act and act amending the Customs Act as amended by later regulations, Act No. 55/1997 Coll. on Trademarks in wording of Act No. 577/2001 Coll.

- a) if a component remains visible also after it has been incorporated into a complex product during normal use; and
 - b) if visible features meet a term of novelty and individual character.
- (3) Normal use pursuant to paragraph 2(a) shall mean using by final user with exception of maintenance, service or repair works.

Article 4 Novelty

- (1) Design shall be considered new if no identical design has been made available to public before priority date (Article 32).
- (2) Designs shall be considered identical if their features differ only in immaterial details.

Article 5 Individual character

- (1) Design shall be considered to have individual character if general impression raised for informed user differs from general impression raised for such user by any design which has been made available to public before priority date (Article 32).
- (2) The degree of freedom of the a designer (Article 11) in creating a design shall be taken into consideration in assessing individual character.

Article 6 Disclosure

- (1) Design shall be deemed to have been made available to public if it was published after its entry into the Register of Designs (hereinafter referred to as "Register") or exhibited, used in trade or made available to public in other way before priority date. This shall not apply if such disclosure could not reasonably become known in normal commercial relation to experts in a concerned branch before priority date (Article 32).
- (2) Design shall not be deemed to have been made available to public if it has been disclosed to a third person under the condition of confidentiality.
- (3) Design for which protection according to this Act has been claimed shall not be deemed to have been made available to public if it has been made available to public by a designer, his successor in title or by a third person as a result of providing information or an action of a designer or his successor in title time limit in a period of 12 months before priority date (Article 32); This shall also apply in case if design has been made available to public as a consequence of an abuse of relation to designer or to his successor in title.

Article 7

Designs set by their technical function and designs of interconnections

- (1) In examination of terms for entry of design into the Register, the features which
 - a) are explicitly set by technical function of a product;
 - b) have to be reproduced in their exact form and size so that a product in which a design is embodied or in which a design is used could be mechanically connected with other product or placed in, around or against such product so that either product could perform its function;shall not be taken into the consideration.
- (2) Paragraph 1 shall not apply if a purpose of a design, which meets the terms pursuant to Articles 4 and 5, is to enable multiple assembly or connection of mutually interchangeable products within a unit principle.

Registration and exceptions of registration

Article 8

The Industrial Property Office of the Slovak Republic (hereinafter referred to as “the Office”) shall enter a design which meets terms according to this Act into the Register.

Article 9

The Office shall not enter into the Register a design which is in contradiction with public order or good manners.

Article 10

- (1) The Office shall not enter into the Register a design identical with design which is a subject-matter of design application (hereinafter referred to as “application”) filed in the Slovak Republic with prior priority date (Article 32) provided its registration.
- (2) The Office shall not enter into the Register a design if an identical design has been registered in the Slovak Republic with prior priority date (Article 32).

Designer

Article 11

- (1) Designer is a person, who has created a design by his own creative activity.
- (2) Designer shall have right to design including right to file an application (hereinafter referred to as “right to design”).
- (3) Designer shall have right to be mentioned in an application if an applicant is other person and shall have right to be entered into the Register as a designer if an owner of a registered design (Article 15) is other person.

- (4) Co-designer is a person, who participated in creation of a design by his creative activity.
- (5) Co-designer shall have right to design to extent of his participation on creation of a design. Participation of co-designers shall be in same extent unless otherwise agreed or unless relative body decides otherwise.

Article 12

- (1) If designer has created a design within the framework of fulfilling tasks from an employment relationship or similar relationship, right to design shall pass to an employer, until parties of this relationship agreed otherwise. Right of being author shall remain unaffected.
- (2) Designer who has created a design pursuant to paragraph 1 shall be obliged to inform the employer about this fact in writing immediately and at the same time he shall submit image of design.
- (3) The employer is entitled to exercise right to design *vis-à-vis* designer in writing within a period of three months from notification pursuant to paragraph 2. If an employer fails exercise right to design within this time limit in writing, this right shall pass back to a designer. An employer as well as a designer shall be obliged to preserve confidentiality about design *vis-à-vis* third parties within this time limit. An employer shall be obliged to preserve confidentiality about design within a period of one month time limit from date, when right to design passed back to designer.
- (4) Designer against whom right to design pursuant to paragraph 3 has been exercised shall be entitled to an appropriate remuneration from an employer. Contribution achievable by exploitation or other application of design shall be decisive for determining the amount of remuneration. Material share of an employer in design creation as well as extent and contents of designer's workload shall be taken into consideration. If remuneration agreed or determined by relative body does not evidently correspond with contribution achieved by later exploitation or other application of a design, a designer shall have the right to supplementary compensation.
- (5) Rights and obligations pursuant to paragraphs 1 to 4 shall remain unaffected after legal relationship between designer and employer has ceased.

Article 13

- (1) Right to design shall be subject to assignment or transfer.
- (2) Right to design, with an exception to right to authorship, shall belong to successors in title of persons listed in Article 11(2) and (5) and in Article 12(1).
- (3) Agreement on assignment of right to design shall be made in writing.

- (4) Right to design shall be transferred to other person in cases stipulated by special regulations².
- (5) Together with assignment or transfer of right to design, which shall be executed after filing an application, assignment or transfer of rights from application shall occur at the same time. Assignment or transfer of rights from application shall become effective *vis-à-vis* third parties as from date of its entry into the Register.

Article 14
Scope of protection

- (1) Scope of protection shall be determined by image of design as it is entered into the Register, with exception of features pursuant to paragraph 7. Scope of protection shall include any design, which shall not raise different general impression for informed user.
- (2) Extent of creative latitude of designer freedom (Article 11) in creation of design shall be taken into consideration in assessment of scope of protection.

PART TWO

EFFECT OF REGISTERED DESIGN

Article 15
Owner of registered design

- (1) Owner of registered design shall be a legal or natural person entered as owner into the Register.
- (2) Several persons may be co-owners of registered design.

Article 16
Co-ownership of registered design

- (1) Provisions of generally binding regulation³ shall apply *mutatis mutandis* to regulation of relationships among registered design co-owners, provided that this Act states otherwise.
- (2) Each registered design co-owner has right to exploit registered design.
- (3) An agreement on abandonment of registered design co-ownership and on mutual compensation shall be made in writing.
- (4) If registered design co-owner or design co-applicant has no legal successor, after death or forfeiture of registered design co-owner or design co-applicant his share shall be

² e.g. Articles 69, 479 and 487 of the Commercial Code, Articles 460 and 469 of the Civil Code, Articles 12 to 17 of the Act No 111/1990 Coll. on State Enterprise as amended.

³ Articles 136 and 142 of the Civil Code.

transferred to other registered design co-owners or design co-applicants in a rate appropriate to their proportionate ownership.

- (5) If registered design co-owner surrenders his share, it shall be transferred to other registered design co-owners in a rate appropriate to their proportionate ownership.

Article 17 **Rights conferred by registration**

- (1) Registered design owner shall have an exclusive right to exploit registered design, to prevent third parties from exploitation of registered design without his consent, to provide his consent with exploitation of registered design, to assign registered design to another person or to establish a lien to registered design.
- (2) Exploitation of registered design shall be in particular production, offer, placing on the market, import, export or using of a product in which registered design is incorporated or on which it is applied, or stocking such product for these purposes.
- (3) Registered design shall be effective from the date of its entry into the Register. If registered design has not been published (Article 35(2)) in the Official Journal of the Industrial Property Office of the Slovak Republic (hereinafter referred to as "Journal"), the owner shall exercise rights conferred by registration into the Register *vis-à-vis* third parties, only if design included within scope of protection has not been used in a good faith.

Article 18 **Exhaustion of rights**

Registered design owner shall not be entitled to prohibit third parties to dispose of a product in which is design included within scope of protection embodied or on which is design included within scope of protection used, after placing such product on the market by registered design owner or with his consent.

Limitations of effects of registered design

Article 19

- (1) Right of registered design owner shall not be exercised *vis-à-vis* person who before the priority right (Article 32) has exploited a design included within scope of protection in a good faith or has made appropriate arrangement immediately aiming at exploitation of a design included within scope of protection independently from designer or registered design owner (hereinafter referred to as "prior user") in the territory of the Slovak Republic. In case of doubts acting of prior user shall be considered as acting in a good faith, unless proved otherwise.
- (2) Assignment or transfer of right of prior user for exploitation of design pursuant to paragraph 1 shall be possible exclusively as a part of assignment or transfer of a company or its part, within which design included within scope of protection is being

used or appropriate arrangement immediately aiming at exploitation of a design included within scope of protection has been made.

Article 20

Rights conferred by registered design shall not be applied to:

- (a) action performed privately and for non-commercial purposes;
- (b) action performed for experimental purposes;
- (c) reproduction for purposes of citations or teaching provided that such action is in compliance with fair trade practice and does not unduly prejudice usual exploitation of design, provided that a source is mentioned;
- (d) accessories of vessels and aircrafts (hereinafter referred to as “vehicles”) of other states if these crafts temporarily enter the territory of the Slovak Republic;
- (e) import of replacement parts and accessories to the territory of the Slovak Republic for purposes of repairing vehicles pursuant to sub-paragraph (d);
- (f) performing of repairing vehicles pursuant to sub-paragraph (d).

Article 21

Assignment of registered design

- (1) Registered design shall be assigned to another person by an agreement made in writing.
- (2) An assignment of registered design shall have legal effects *vis-à-vis* third parties from the date of entry into the Register.
- (3) Rights of third parties acquired before the date of entry of registered design assignment into the Register shall remain unaffected.

Article 22

Transfer of registered design

- (1) Registered design shall be transferred to a new owner in cases stipulated by generally binding regulations².
- (2) Transfer of registered design shall have legal effects *vis-à-vis* third parties from the date of entry in the Register.
- (3) Rights of third parties acquired before the date of registered design transfer shall remain unaffected.

Article 23

Right of lien

- (1) The right of lien on registered design may be established.

- (2) Provisions of generally binding regulation⁴ shall be applied *mutatis mutandis* to the right of lien and to relations between pledge creditor and pledge debtor.
- (3) An agreement on establishing the right of lien shall be made in writing.
- (4) The contractual right of lien shall begin on the date of entry into the Register.

Article 24 **Licence agreement**

- (1) The licence agreement (hereinafter referred to as “licence”) shall grant a consent with exploitation of registered design.
- (2) The rise, lapse and enforcement of a right from the licence agreement shall be governed by provisions of a generally binding regulation⁵.
- (3) The licence agreement shall be valid only with consent of all co-owners of registered design, unless otherwise stated.
- (4) The licence agreement shall have legal effects *vis-à-vis* third parties from the day of entry into the Register.
- (5) The granted licence shall be considered non-exclusive, unless the licence agreement stipulates otherwise.
- (6) Assignment or transfer of a right of contractual licence holder shall be possible exclusively as part of assignment or transfer of a company or its part, within which registered design is being exploited on basis of contractual licence, unless the licence agreement stipulates otherwise.
- (7) In case of unauthorised interference with rights protected by this Act or jeopardising these rights the licence holder shall have same rights as registered design owner.

Article 25 **Validity and term of protection of registered design**

- (1) Registered design shall be valid five years from the date of filing an application (Article 32).
- (2) The Office shall extend registered design validity on request for registered design validity extension filed by registered design owner or one of registered design co-owners repeatedly four times for another five years up to total term of protection 25 years from the date of filing an application (Article 32).

⁴ Article 151(a) to (j) and Article 552 of the Civil Code.

⁵ Articles 508 to 515 of the Commercial Code.

- (3) Request for registered design validity extension shall be filed by registered design owner or one of registered design co-owners at the earliest during the last year of its validity. If request for registered design validity extension was not been filed during the last year of its validity at latest on the date which is identical with filing date of application (Article 32), request for registered design validity extension shall be deemed not to be filed.
- (4) If request for registered design validity extension has not been filed pursuant to paragraph 3, registered design owner or one of registered design co-owners shall be entitled to file the request within the additional time limit of six months from the date, on which the request was supposed to be filed at latest pursuant to paragraph 3. If request for registered design validity extension is not filed within this additional time limit, validity of registered design shall expire to the date on which pursuant to paragraph 3 request for registered design validity extension was supposed at the latest to be filed.
- (5) Pledge creditor (Article 23) may request the Office in writing to invite him to file request for registered design validity extension, if pledge debtor as registered design owner shall not file request for registered design validity extension within the time limit pursuant to paragraph 3.
- (6) Registered design shall lapse after inefficient expiry of three months time limit from delivery of invitation to file request for registered design validity extension pursuant to paragraph 5 to the pledge creditor (Article 23).
- (7) Rights of third parties, who, after inefficient expiry of a period for filing request for registered design validity extension pursuant to paragraph 3, started to exploit design in a good faith or have made evident preparations for such exploitation, shall remain unaffected by the extension of validity performed on the basis of request for registered design validity extension filed in an additional period.
- (8) Period for filing request for registered design validity extension shall be interrupted from the date of delivery of request for registration of court proceedings on right to design into the Register (Article 42(3)) up to expiry of six months time limit from the date of legal court decision.

Article 26

Lapse of registered design

- (1) Registered design shall lapse
 - a) by expiry of its validity;
 - b) from the date of effectiveness of abandonment of registered design pursuant to paragraph 2.
- (2) Abandonment of registered design shall be effective from the date of delivery of notice on abandonment to the Office, or from the date which is stated in the notice as a date,

on which registered design owner or all registered design co-owners abandon registered design.

- (3) Abandonment of registered design which affects third parties rights entered into the Register shall come into effect only when a written consent of a party whose rights and justified interests could be affected lapse of registered design is submitted. The same shall apply in case of existence of litigation entered into the Register, the subject-matter of which is a right to registered design namely to expiry of six months from the day of a court decision validity.

Article 27 **Infringement of rights**

- (1) In case of infringement of rights protected by this Act or jeopardising of these rights, person whose right has been infringed or jeopardised is entitled to claim prohibition of infringement or jeopardising of his rights and to eliminate consequences of infringement.
- (2) If damage has been caused by infringement of rights pursuant to paragraph 1, the aggrieved party has right to compensation of actual damage including profit lost. If a non-pecuniary injury has been caused by infringement of rights, the aggrieved party shall have right to adequate satisfaction, which can be in form of pecuniary compensation.^{a)}
- (3) Aggrieved party to which pecuniary or non-pecuniary injury has been caused directly by execution of precaution ordered by a court on request filed without adequate reason shall have right to compensation as well as right to satisfaction pursuant to paragraph 2.

Article 27a

- (1) Registered design owner may request in infringement or jeopardising of his rights protected by this Act that a person infringing or jeopardising his rights provided him information related to origin of a product infringing rights pursuant to this Act and to circumstances of its placing on the market.
- (2) Information pursuant to paragraph 1 shall contain particularly:
- a) name and surname or business name or name and place of permanent residence or place of business, or place of business of a producer, processor, storekeeper, distributor, provider, dealer and other previous holders of a product;
 - b) indications on produced, processed, provided or ordered quantity and price of relevant products.
- (3) To provide information pursuant to paragraphs 1 and 2 is obliged also a person who
- a) has in possession products infringing rights pursuant to this Act;
 - b) exploits services infringing rights pursuant to this Act;
 - c) provides services exploited in activities related to infringement of rights pursuant to this Act; or

d) was indicated by a person mentioned in sub-paragraphs a) to c) as a person participating in production, processing or distribution of products or providing services infringing rights pursuant to this Act.

Disputes hearing Article 28

- (1) Disputes on rights pursuant to this Act shall be heard and ruled by courts, unless this Act states otherwise.
- (2) The court shall order on request that products, materials or instruments by means of which rights protected by this Act are infringed or jeopardised were
 - a) withdrawn from a trade network;
 - b) definitely removed from a trade network;
 - c) secured in other way by preventing further infringement or jeopardising of right;
 - d) destroyed in a suitable way.
- (3) Provisions pursuant to paragraph 2 shall be executed at expense of a person infringing or jeopardising rights protected by this Act, unless special circumstances give reason for other process.
- (4) Request pursuant to paragraph 2(d) in the part related to process of destruction of objects shall not be binding for the court.
- (5) The court shall not confer right to provide information pursuant to Article 27a, if seriousness of jeopardising or infringement of right were inadequate to seriousness of consequences resulting from fulfilment of obligation imposed in such way.

Article 29

- (1) In protection of rights pursuant to this Act the court may impose by precaution⁶ same obligations as in the decision on the merit of the case if any delay could cause to entitled person a hardly reclaimable pecuniary or non-pecuniary injury.
- (2) Within a decision on precaution the court may, also without request, impose a duty to a plaintiff to pay a deposit of an adequate amount or to implicate that the decision comes into the force by execution of an imposed duty. The court shall take into account, within its deciding on the amount of a warranty deposit, the seriousness of a pecuniary or non-pecuniary injury which can occur to the adverse party as well as assets of the plaintiff therewith that imposing a duty to pay a deposit shall not be the substantial impediment of efficient application of right.
- (3) The court may on request decide on giving the warranty deposit over to the adverse party as a compensation of pecuniary or non-pecuniary injury in finance caused directly by execution of precaution issued without adequate reason.

⁶ Articles 74 to 77 and Article 102 of the Code of Civil Procedure.

- (4) If within the time limit of six months from detection of injury occurrence pursuant to paragraph 3, compensation or satisfaction is not applied at the court or an agreement on using the warranty deposit between parties is not concluded, the court shall refund the warranty deposit.

PART THREE

PROCEEDINGS BEFORE THE OFFICE

Article 30

The Act on Administrative Procedures⁷, except provisions of Articles 19, 23, 28 to 30, 32, 39, 49, 50, 59(1) and 61(1), shall be applied to proceedings before the Office pursuant to this Act.

Article 31

Application

- (1) A person with right to design pursuant to Articles 11(2) and (5), 12(1) or 13(2) shall be entitled to file an application.
- (2) If several persons have right to design, one or some of these persons *suo nomine* shall be entitled to file an application. The Office shall enter this person into the Register as a co-applicant on request supported with written agreement concluded between an applicant or applicants and a person entitled to file an application pursuant to paragraph 1.
- (3) Application shall contain:
- a) request for entry design into the Register (hereinafter referred to as “request for registration”);
 - b) identification data of an applicant;
 - c) identification data of a designer or statement of an applicant that designer has waived right to be mentioned in an application;
 - d) indication of a product in which design is embodied or to which it is applied;
 - e) image of any design, registration of which is required in an application and from which substance of a design is possible to be distinguished exactly;
 - f) document on acquiring right to a design, if an applicant is not a designer; this shall not be applied if right to design has been transferred pursuant to Article 12 (1).
- (4) Application may also contain:
- a) request for design publication delay (Article 35 (2)),
 - b) description presenting image,
 - c) classifying pursuant to international classification⁸.

⁷ Act No. 71/1967 Coll. on Administrative Procedures (The Administrative Procedure Code).

⁸ Decree of the Minister of Foreign Affairs No 28/1981 Coll. on Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968.

- (5) Application may contain request for registration of only one design into the Register (hereinafter referred to as “simple application”) or request for registration of several designs into the Register (hereinafter referred to as “collective application”) belonging to one class of the international classification⁸; this shall not apply to designs consisting in ornamentation.
- (6) Collective application shall contain list of designs for which registration is requested.
- (7) Data pursuant to paragraph 3(d) and paragraph 4(b) shall not affect scope of protection resulting from a design as such.

Article 32 **Right of priority**

- (1) For purposes to start proceedings and for purposes to establish priority right, filing date shall be delivery date or date of filing amendment, which shall at least contain
 - a) data indicating an apparent intention of an applicant to file an application;
 - b) data allowing identification of an applicant and contact with an applicant; and
 - c) image of any design for which registration is required in an application and from which substance of a design is possible to be distinguished exactly.
- (2) Priority right for an applicant shall be established:
 - a) on filing date of an application or
 - b) on priority date pursuant to an international convention⁹.
- (3) An applicant shall apply priority right pursuant to paragraph 2(b) in an application and within the period of three months from the day of its filing he shall prove this right by a priority right document.
- (4) Priority right pursuant to paragraph 3 may be applied from the first application filed in a state or in relation to a state, which is contractual party to international convention⁹ or which is a member of the World Trade Organisation¹⁰. Otherwise this right may be applied only under the condition of reciprocity.
- (5) The Office shall not take into consideration an application of priority right and proving priority right which fails to meet conditions pursuant to paragraph 3 and requirements pursuant to generally binding provision (Article 50). The Office shall notify this fact to an applicant.
- (6) The Office shall issue a document certifying priority right following an application on request of an applicant or registered design owner.

⁹ Decree of the Minister of Foreign Affairs No 64/1975 Coll. on Paris Convention on Protection of Industrial Property of 20 March 1883 revised in Brussels on 14. December 1900, in Washington on 2. June 1911, in the Hague on 6. November 1925, in London on 2. June 1934, in Lisbon on 31. October 1958 and in Stockholm on 14. July 1967 as amended by Decree No 81/1958 Coll.

¹⁰ Communication of the Ministry of Foreign Affairs of the Slovak Republic No 152/2000 Coll. on Conclusion of the Agreement establishing the World Trade Organisation.

(7) Priority right shall be applied only from one application.

Article 33
Interruption of application proceedings

- (1) The Office shall interrupt application proceedings after the court proceedings started.
- (2) Time limits pursuant to this Act shall be stopped during interruption of proceedings.
- (3) When decision of a court comes into effect pursuant to Article 40(1)(a) the Office shall continue in proceedings interrupted pursuant to paragraph 1.

Article 34
Examination of application

- (1) Within examination the Office shall ascertain whether
 - a) conditions for conferring priority right pursuant to Article 32 have been met;
 - b) application meets the conditions pursuant to Article 31(1), (3), (5) and (6);
 - c) application meets requirements pursuant to generally binding provision (Article 50);
 - d) an applicant is represented by an authorised representative¹¹ (Article 49);
 - e) application contains a design, which meets conditions pursuant to Articles 2 to 7, Article 9 and Article 10.
- (2) In case of irregularities pursuant to paragraph 1(a), (c) or (d) or pursuant to Article 31(3), (5) or (6), the Office shall invite an applicant to correct these irregularities within the specified time limit. If an applicant fails to correct irregularities, the Office shall suspend application proceedings. An applicant shall be notified in an invitation of this consequence.
- (3) If an application fails to meet conditions pursuant to paragraph 1(e) or pursuant to Article 31(1), the Office shall refuse an application. Before an application is refused, the Office shall enable an applicant to respond to ascertained reasons for refusal of the application.
- (4) Applicant is entitled to divide collective application and to file excluded application before entry of design into the Register. Priority right pursuant to an international convention⁹ and the filing date of an application as filed shall retain also for excluded application if it contains only designs mentioned in an application as filed.

¹¹ Article 40 of the Act No 237/1991 Coll. on Patent Attorneys as amended by the Act of the National Council of the Slovak Republic No 90/1993 Coll.

Article 35
Entry of design into the Register

- (1) If a subject matter of an application meets conditions pursuant to this Act, the Office shall enter design into the Register and an applicant shall become registered design owner. The Office shall issue certificate on entry of a design into the Register to registered design owner, design shall be published and entry shall be announced in the Journal.
- (2) If an applicant has requested to defer publication of design for the time limit not extending 30 months from the date of the priority right rise, the Office shall publish registered design after expiration of the requested time limit; the Office shall notify deferral of publication of registered design together with notification of registration pursuant to paragraph 1.
- (3) The court proceedings on infringement of rights from registered design, which has not been published yet, shall start only under the condition that person against whose proposal has been instituted should be enabled to access data contained in the Register and in the file related to registered design.

Cancellation of registered design
Article 36

- (1) The Office shall cancel registered design (hereinafter referred to as “cancellation”) from the Register, if
 - a) registered design shall not correspond to definition of design pursuant to Article 2;
 - b) it ascertains, that design has been registered contrary to conditions for registration pursuant to Articles 3 to 7, Article 9 or Article 10;
 - c) its owner is not entitled to design pursuant to Article 11(2) and (5), Article 12(1) or Article 13(2);
 - d) distinctive sign is used in registered design, which confers to owner of this sign right to claim prohibition of using such sign before priority date (Article 32) of registered design;
 - e) registered design constitutes an unauthorised use of a work protected pursuant to copyright law;
 - f) registered design constitutes unauthorised use of any features mentioned in an international convention¹² or other symbolic features, flags or escutcheons to which an international convention is not related and which are of particular public interest in a member state.
- (2) The Office shall cancel industrial design registered pursuant to existing regulations, if proceedings started on proposal of third party or *ex officio* have proved that conditions for its registration pursuant to rules valid in time of its registration were not met.

¹² Article 6ter of the Decree of the Minister of Foreign Affairs No 64/1975 Coll. on Paris Convention on Protection of Industrial Property of 20. March 1883 revised in Brussels on 14. December 1900, in Washington on 2. June 1911, in the Hague on 6. November 1925, in London on 2. June 1934, in Lisbon on 31. October 1958 and in Stockholm on 14. July 1967 as amended by Decree No 81/1958 Coll.

- (3) Only person with right to design pursuant to valid decision of a court is entitled to file request for cancellation of registered design pursuant to paragraph 1(c).
- (4) Person whose prior rights have been infringed is entitled to request cancellation of registered design pursuant to paragraph 1(d) and (e).
- (5) Person affected by such unauthorised use is entitled to request cancellation of registered design pursuant to paragraph 1(f).
- (6) The Office may cancel registered design pursuant to paragraph 1(a) and (b) also on its own initiative.
- (7) Registered design may be cancelled partially pursuant to paragraph 1 (b), (d), (e) or (f), if it meets terms of protection also after such cancellation.

Article 37

- (1) If registered design is cancelled, it shall be deemed not to have been registered.
- (2) If a plaintiff proves his legal interest, cancellation may be performed also after registered design has lapsed.
- (3) The Office shall publish decision on cancellation in the Official Journal.

Article 38

- (1) If request for cancellation shall not contain requirements stipulated by generally binding regulation (Article 50) or a plaintiff shall not be represented by an authorised representative¹¹, the Office shall invite the plaintiff to correct irregularities within the specified time limit. If a plaintiff fails to comply with delivered invitation within the specified time limit, the Office shall suspend proceedings on request for cancellation. The plaintiff shall be notified about the consequence of proceedings suspension in the invitation.
- (2) If proceedings have not been suspended pursuant to paragraph 1, the Office shall deliver request for cancellation to registered design owner and invites him concurrently to respond to request within the specified time limit.
- (3) If registered design owner fails to respond within the time limit specified in the notice, the Office shall decide on basis of file contents.
- (4) The Office shall proceed pursuant to paragraph 3 also in case if registered design owner is not being represented by an authorised representative¹¹. If registered design owner fails to comply with notice for submitting authorisation within the specified time limit, he shall be deemed not to have responded to request for cancellation.

- (5) If character of matter requires, the Office shall order an oral proceedings. The Office shall set a date for oral proceedings and shall concurrently deliver registered design owner's response to request for cancellation to the plaintiff.
- (6) The Office may continue in proceedings and decide on merit also in case that duly summoned party fails to participate in oral proceedings.
- (7) Extending or supplementing request for cancellation as well as extending or supplementing registered design owner's response shall be inadmissible; the Office shall not take into consideration such extending or supplementing within proceeding and deciding.

Article 39

The plaintiff is obliged to pay a deposit of 82,50 € together with request for cancellation. If it is proved that request for cancellation has been justified, the Office shall return the deposit without delay.

Article 40

Forfeiture of registered design and transfer

- (1) The Office shall forfeit on request registered design from owner and requesting person shall be entered as registered design owner, if
 - a) it has been determined by valid decision of a court, that the person originally entered as an owner was not entitled to right to design pursuant to Article 11(2) and (5), Article 12(1) or Article 13(2);
 - b) person, who has right to design according to valid decision of a court or his successor in title has filed request, and
 - c) request has been delivered within a time limit of six months from the date of validity of a court decision.
- (2) Request for forfeiture of registered design and transfer shall be furnished with valid decision of a court pursuant to paragraph 1(a).
- (3) Provided that condition pursuant to paragraph 1(a) has been met, if request pursuant to paragraph 1 has not been filed or it has not been filed by an authorised person or within the specified time limit, the Office shall cancel registered design *ex officio* [Article 36(1)(c)].
- (4) Paragraph 1 shall apply *mutatis mutandis* to forfeiture of rights from an application and their transfer to entitled person. If transfer of rights from an application is not made pursuant to paragraph 3, the Office shall refuse the application.
- (5) After entry of entitled person as registered design owner pursuant to paragraph 1 licences and other rights granted to originally entered owners shall lapse.

- (6) If originally entered owner or third party, who acquired a licence from the owner, before the start of court proceedings on right to design, in good faith has exploited design falling within scope of protection or has made evident preparations directly aimed to exploitation of design falling within scope of protection, may continue with exploitation of design, if they request for granting non-exclusive licence under usual conditions within the time limit of three months from the date of entry of an authorised person into the Register.
- (7) Article 38 shall apply *mutatis mutandis* to proceedings pursuant to paragraphs 1 to 4.

Article 41 Determination proceedings

- (1) On request, the Office shall determine, whether the subject matter mentioned in request falls within the scope of protection of a certain registered design (hereinafter referred to as “determination request”).
- (2) On explicit request of the proponent, also a person whose rights and obligations may be affected by decision on determination shall be a party to proceedings pursuant to paragraph 1.
- (3) If determination request have been filed in connection with pending court proceedings, subject matter of which is right protected by this Act, all parties to court proceedings whose rights and obligations may be affected by proceedings and deciding shall be parties to the determination proceedings.
- (4) Article 38(1), (5) first sentence and (6) shall apply *mutatis mutandis* for determination proceedings party to which is requester exclusively, otherwise Article 38(1) to (6) shall apply *mutatis mutandis* for determination proceedings.

Article 42 Registration of licence, right of lien, assignment or transfer of registered design and court litigation in the Register

- (1) Article 38(1) shall apply *mutatis mutandis* to request for registration of licence, right of lien, assignment or transfer of registered design (hereinafter referred to as “request for registration of right”) or court litigation into the Register.
- (2) In case of any doubts, the Office is entitled to require filing verified copy or eventually original of a document proving acquiring a right or other supplementary data.
- (3) On basis of request of a party to court proceedings, subject matter of which is a right protected by this Act, furnished with a counterpart of filing with the court authorised by the court, the Office shall enter into the Register the fact that the court proceedings are pending as well as the subject matter of proceedings, with effect from delivery date of request to the Office.

Article 43
Further proceeding

- (1) On basis of request of a party to proceedings on extension of a time limit set by the Office for performing an act, filed before the expiry of such time limit, the Office is entitled to extend the time limit.
- (2) If a party to proceedings before the Office failed to comply with the time limit for performing an act set by the Office, he is entitled to ask the Office for further proceeding and at the same time to perform the omitted act no later than two months from delivery of a decision of the Office issued as a consequence of failure to comply with the time limit.
- (3) Request shall be refused pursuant to paragraphs 1 or 2 in case of failure to comply with the time limit for filing request for further proceeding pursuant to paragraph 2 and *restitutio in integrum* (Article 44(1)).
- (4) Request shall be refused pursuant to paragraph 2 in case of failure to comply with the time limit for response of an owner to request for cancellation (Article 38(2)).
- (5) The Office shall refuse request for extension of time limit or request for further proceeding which fails to comply with conditions pursuant to paragraphs 1 or 2 or shall be refused pursuant to paragraphs 3 or 4; before the request is refused, the Office shall enable the requester to respond to ascertained reasons on basis of which the request is to be refused.
- (6) If the Office satisfies request for further proceeding, legal effects of decision issued as a consequence of failure to comply with the time limit shall cease or shall not arise.
- (7) If the Office fails to decide on request pursuant to paragraphs 1 or 2 within two months from the date of delivery, request shall be deemed to be satisfied.

Article 44
Restitutio in integrum

- (1) If a party to proceedings before the Office unintentionally fails to comply with legal time limit or time limit for performing an act set by the Office whereas the consequence of failure to perform this act is proceedings suspension or forfeiture of other right, he is entitled to ask the Office for *restitutio in integrum* and at the same time to perform the omitted act within two months from elimination of the impediment causing the failure of performing the act at the latest within 12 months from expiry of non-complied time limit.
- (2) Party to proceedings shall be obliged to sustain request pursuant to paragraph 1 and to state facts preventing performing the act. The Office shall not take into consideration

statements submitted after time limits pursuant to paragraph 1 expired in deciding about request.

- (3) In case of reasonable doubts about veracity of a statement pursuant to paragraph 2, the Office is entitled to invite the requester to prove his statements other way.
- (4) Request for *restitutio in integrum* shall not be satisfied in case of failure to comply with time limits for:
 - a) filing request for extension of registered design validity in an additional time limit;
 - b) claiming priority right (Article 32);
 - c) filing an appeal (Article 46);
 - d) delivery of legal court decision pursuant to Article 40(1)(c);
 - e) performing acts pursuant to paragraph 1;
 - f) performing acts pursuant to Article 43(3) or (4).
- (5) The Office shall refuse request for *restitutio in integrum* which fails to comply with conditions pursuant to paragraphs 1 and 2, or it is not possible to be satisfied pursuant to paragraph 4, or the requester fails to prove his statements pursuant to paragraph 3; before the request is refused the Office shall enable the requester to respond to ascertained reasons on basis of which request is to be refused.
- (6) If the Office satisfies request for *restitutio in integrum*, legal effects of decision issued as a consequence of failure to comply with the time limit shall cease or shall not arise.
- (7) Rights of third parties, acquired within the territory of the Slovak Republic in a good faith from validity of a decision issued as a consequence of failure to comply with the time limit till forfeiture of legal effects of this decision pursuant to paragraph 6, shall remain unaffected.
- (8) Assignment or transfer of rights pursuant to paragraph 7 shall be possible exclusively as a part of assignment or transfer of a company or its part, within which registered design is being used.

Article 45 **Grounds for decision**

- (1) Party to proceedings before the Office shall be obliged to submit or propose evidence to support his statements.
- (2) The Office shall exercise evidence and evaluate evidence at its discretion, namely each evidence separately and all evidences in their mutual relations.
- (3) The Office shall decide on basis of facts ascertained from exercised evidences submitted or proposed by parties to proceedings.

Article 46
Remedies

- (1) An appeal against decision of the Office may be lodged within one month time limit from delivery of decision; an appeal filed in due time shall have deferring effect.
- (2) The Office shall be bound by scope of an appeal in deciding on it; this shall not apply
 - a) for matters in which proceedings can be started *ex officio*,
 - b) for matters of joint rights or obligations concerning several parties to proceedings on one side.
- (3) Filing an appeal shall not be admissible against decision by which
 - a) request for further proceedings or for *restitutio in integrum* has been satisfied,
 - b) proceedings on application, to which court litigation registered in the Register relates, has been suspended after submitting written consent of a person, who filed request for registration of court litigation into the Register.

Article 47
Data accessibility

- (1) Before entry of design into the Register or before registered design is being published, where deferring of publication was requested, the Office shall be entitled to notify third parties without consent of an applicant only data, who is designer, who is an applicant, a name of an application and file number of an application and data about priority right.
- (2) After entry of design into the Register, the Office shall enable third party on request to inspect file relating the application and registered design.
- (3) If publication of registered design has been deferred, the Office shall enable only person, who has been determined by registered design owner as an infringer of rights protected by this Act, to inspect file after entry of design into the Register and before its publication.
- (4) Right to a file inspection shall include right for making photocopies on payment.
- (5) On written request and by proving emergent legal interest the Office shall be entitled to notify requester whether a person identified by him is or is not stated in the application as a designer.
- (6) On written request of registered design applicant or owner parts of file containing trade secret or other confidential information, publication of which is not necessary to secure right to information of third parties including parties to proceedings, shall be excluded from file inspection.

Article 48
Register and Official Journal

- (1) The Office shall keep the Register in which decisive data concerning applications and registered designs are entered.
- (2) Data entered into the Register shall be considered valid unless a decision of a relevant authority states otherwise.
- (3) Changes in data entered into the Register ensuing from valid and enforceable decision of a relevant authority shall be entered without delay into the Register by the Office after delivery of decision with a validity clause.
- (4) Entry of data and facts ensuing from law or from decision of a relevant authority pursuant to paragraph 3 shall not be considered a decision issued in proceedings pursuant to provisions of the Administrative Procedure Code⁷.
- (5) Any person shall be entitled to inspect the Register of registered designs; this shall not apply for designs, for which applicant requested to defer publication (Article 35(2)), until expiry of requested time limit for deferral.
- (6) The Office shall issue the Official Journal in which facts concerning applications and registered designs are published and notified.

PART FOUR

COMMON, AUTHORISING, TRANSITIONAL AND REVOCATION PROVISIONS

Article 49
Common provision

- (1) Parties with permanent residence or seat in a territory of a member state of an international treaty⁹ or in a territory of a state which is a member to the World Trade Organisation¹⁰ shall have same rights and obligations as national applicants or registered designs owners; if a state in which parties have permanent residence or seat is not a member state of an international treaty or a member of the World Trade Organisation, rights and obligations in accordance with this Act shall be conferred only under condition of reciprocity.
- (2) Parties without permanent residence or seat in the Slovak Republic shall be represented in proceedings on designs by an authorised representative¹¹.
- (3) If a party to proceedings fails to comply with an invitation of the Office within the specified time limit, the Office is entitled to suspend proceedings. A party shall be notified about this consequence in the invitation. The Office shall suspend proceedings also on request of a person who filed the proposal to its beginning. The proposal for suspension of proceedings shall not be withdrawn.

- (4) In case of proposal for suspension of proceedings on application to which a court litigation entered in the Register is related, the Office shall suspend proceedings only after submission of a written consent of a person, who filed request for entry of the court litigation into the Register.
- (5) Unless this Act or generally binding regulation (Article 50) stipulates otherwise, filing with the Office shall be made in writing and in an official language¹³.
- (6) Filing with the Office may be made by means of electronic media. If such filing shall be supplied in a written form within time limit¹⁴ days, otherwise such filing shall be deemed not to be filed.
- (7) The Office shall provide for an enforceable decision of the Office for Harmonisation in Internal Market pursuant to a special regulation¹⁴ with an acknowledgement of enforceability¹⁵.

Article 50 **Authorising provision**

Generally binding provision issued by the Office shall stipulate details about

- a) method of filing and requirements of an application,
- b) method and requirements of claiming and proving priority right,
- c) requirements of a request for registered design validity extension, request for registered design validity extension in an additional time limit, request for delay of registered design publication,
- d) requirements of a request for cancellation and forfeiture of registered design and transfer, request for determination, request for further proceedings and request for *restitutio in integrum*,
- e) method of filing with the Office, delivery and about filing via electronic media,
- f) method of filing and requirements of a request for entry of right, transfer or assignment of an application into the Register,
- g) the data entered in the Register and published in the Journal.

Article 51 **Transitional provisions**

- (1) Proceedings on applications of designs and proceedings on matters of registered designs which have not been concluded lawfully before this Act comes into effect shall be concluded pursuant to this Act. In proceedings on request for remission of failure to comply with time limit actual regulations shall apply.

¹³ Act of the National Council of the Slovak Republic No 270/1995 Coll. on official language of the Slovak Republic as amended.

¹⁴ Section 71 of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.

¹⁵ Section 275(1) of Civil Court Code.

- (2) Rights and relations from designs entered into the Register before the date of entry into force of this Act shall apply pursuant to this Act. Arising of these rights and relations as well as claims arising from them before of entry into force of this Act comes into effect shall be assessed in accordance with provisions effective in time of their arising.
- (3) Validity of registration of designs entered before of entry into force of this Act comes into effect shall be assessed in accordance with an Act effective in time of entry of design into the Register.
- (4) If the term industrial design is being used in Acts and other special regulations, the term design shall be meant.

Article 51a

Legal acts of the European Communities and the European Union mentioned in Annex shall be governed by this Act.

Article 52 **Repealing provision**

The following shall be repealed

1. Article 1 in extent modifying legal relations and proceedings related to designs, Articles 36 to 71, Article 75(2) in extent modifying legal relations and proceedings concerning industrial designs, Article 83, Article 86 in extent modifying legal relations and proceedings concerning industrial designs and Article 88(1) of the Act No. 527/1990 Coll. on Inventions, Industrial designs and Rationalisation proposals as amended by the Act No. 519/1991 Coll., the Act of the National Council of the Slovak Republic No. 90/1993 Coll., the Act of the National Council of the Slovak Republic No. 185/1994 Coll. and the Act No. 435/2001 Coll. on inventions, supplementary protection certificates and on amendment of some acts (the Patent Act),
2. Decree of the Federal Office for Inventions No. 550/1990 Coll. on procedure in matters of inventions and industrial designs as amended by the Act No. 435/2001 Coll. on inventions, supplementary protection certificates and on amendment of some acts (the Patent Act).

Article 53 **Entry into force**

This Act shall enter into force on 1 October 2002.
Act No. 495/ 2008 Coll. entered into force on 1 February 2009

Rudolf Schuster s. m.
Jozef Migaš s. m.
Mikuláš Dzurinda s. m.