

**Republic of Croatia**  
**State Intellectual Property Office**

***DRAFT INDUSTRIAL DESIGN LAW***

---

Zagreb, February 1999

## DRAFT INDUSTRIAL DESIGN LAW

### **Part One BASIC PROVISIONS**

#### **Object of the Law**

##### Article 1

This Law regulates the protection of product design, defines the requirements and procedure for acquiring industrial design rights, rights and obligations of the right holders, infringements of rights, duration, cancellation and termination of rights, and judicial protection.

#### **Object of Protection**

##### Article 2

- (1) Industrial design right shall protect the three-dimensional or two-dimensional design of the whole or a part of a product to the extent that it fulfils the requirements as to novelty and individual character.
- (2) For the needs of this Law the term design shall mean the appearance (outer look) of a product characterized by visible features, in particular: shape, contours, colour composition, texture, lines, motives, or a combination of these features.
- (3) For the needs of this Law the term product shall mean any industrial or handicraft item.
- (4) A design incorporated in or applied to a product which constitutes a part intended for incorporation in a complex product may be protected by an industrial design right:
  1. if the incorporated part, for the design of which protection is sought, remains visible during normal use of the complex product;
  2. if visible features of the incorporated part fulfil in themselves the requirements as to novelty and individual character.
- (1) Normal use within the meaning of item 1 of the preceding paragraph shall mean use by the end user of the product and shall exclude maintenance and repair of the product.

#### **Novelty of Design**

##### Article 3

A product design shall be deemed new if it is not identical to any design available to the public in the Republic of Croatia before the date of filing the application or, if priority is claimed, before the recognized date of priority.

## **Individual Character of Design**

### Article 4

- (1) A product design shall be deemed to have individual character if the overall impression it produces on the informed user of the product substantially differs from the overall impression produced on such a user by any design which was previously available to the public in the Republic of Croatia.
- (2) A product design shall not be deemed to have individual character for the sole reason that it relates to other products.
- (3) In assessing individual character of a product design, the degree of freedom of the designer in creating (developing) the new product design shall be taken into consideration.

## **Availability to the Public**

### Article 5

- (1) For the assessment of novelty and individual character of a product design within the meaning of Articles 3 and 4 of this Law, the design shall be deemed to have been made available to the public:
  1. if it has been published following application or grant of the industrial design right or otherwise,
  2. if it has been exhibited in the Republic of Croatia,
  3. if it has been used on the market in the Republic of Croatia,
  4. if it has been disclosed otherwise, in the normal course of business which has made it known to relevant business circles in the Republic of Croatia .
- (1) The fact that a product design was, within six months from the date of filing the application, made available to the public by the designer, his successor in title or a third person as a result of information provided or activities taken by the designer or his successor in title, will not affect the assessment of novelty and individual character of such a product design within the meaning of Articles 3 and 4 of this Law.

Paragraph (2) of this Article shall also apply when a design has been made available to the public by a third person who has learned the information on a product design in an unauthorized manner or to whom the information has been disclosed as confidential information.

## **Protection Requirements – Absolute Grounds for Exclusion**

### Article 6

An industrial design right shall not protect a product design:

1. which is not the object of protection under Article 2 of this Law;
2. which is contrary to the public order and morality;
3. which represents a technical plan or sketch;
4. which contains, constitutes or imitates a national coat of arms or other public arms, a flag or an emblem, the name or abbreviated name of a

- country or international organization, unless the consent of the competent authority of that country or organization has been given;
5. which contains, constitutes or imitates the figure of a deceased famous person, unless the consent of the competent authority has been given.

### **Protection Requirements – Relative Grounds for Exclusion**

#### **Article 7**

- (1) An industrial design right may not protect a product design:
  1. which is not new within the meaning of Articles 3 and 5 of this Law;
  2. which has no individual character within the meaning of Articles 4 and 5 of this Law;
  3. which is exclusively dictated by the type of that product or the product into which it is incorporated or by technical or functional characteristics necessary for the achievement of a certain technical result or normal function of any of these products.
- (1) An industrial design right may not protect a product design which infringes previously acquired rights of holders specified under Article 24, paragraph (1), items 1 to 5 of this Law.
- (2) Grounds for exclusion from protection by an industrial design right under paragraph (2) of this Article may be invoked only by the applicant of the earlier application or the holder of the earlier right.

### **Persons Entitled to Acquire Protection**

#### **Article 8**

- (1) The designer or his successor in title are entitled to initiate the procedure and to acquire an industrial design right under this Law.
- (2) If the designer is not the applicant for industrial design, it is the applicant who shall be deemed to be entitled to file an application unless the opposite is proven.
- (3) If several designers have jointly created an industrial design, all designers or their successors in title shall be deemed authorized persons or co-holders of rights by the subsidiary application of the Law on Ownership and Other Proprietary Rights (Narodne novine, No. 91/96). Co-holding of rights shall be established in proportion to the contributions of designers unless otherwise agreed. If the contributions of designers have not been fixed, they shall be deemed to be equal.
- (4) A person who has only provided technical assistance in the creation of an industrial design shall not be deemed to be the designer.

### **National Status**

#### **Article 9**

- (1) Foreign natural persons or legal entities shall enjoy under this Law the same rights as those enjoyed by the nationals of the Republic of Croatia or legal entities

- having their seat in the Republic of Croatia, if this results from international treaties or conventions or from the application of the principle of reciprocity.
- (2) The existence of reciprocity shall be presumed until the contrary has been proven.

## **Part Two**

### **PROCEDURE FOR THE GRANT OF AN INDUSTRIAL DESIGN RIGHT**

#### **The Office Authority**

##### Article 10

- (1) Administrative procedures relating to the industrial design protection shall be performed by the State Intellectual Property Office (hereinafter: the Office).
- (2) Administrative decisions made by the Office may not be appealed against, but an administrative lawsuit may be instituted by initiating an action before the Administrative Court of the Republic of Croatia.

#### **Filing of the Application**

##### Article 11

- (1) The procedure for the grant of an industrial design right shall be initiated by filing an industrial design application.
- (2) If the application relates to one design (hereinafter: separate application), the design may be applied to one or several products.
- (3) If the application relates to several different designs (hereinafter: multiple application), all designs for which protection is sought must relate to products classified under a single subclass under the Locarno Agreement on the Establishment of International Classification of Industrial Designs (hereinafter: the International Classification).

#### **The Content of an Application**

##### Article 12

- (1) An application for an industrial design shall contain:
  1. a request for the grant of an industrial design;
  2. the name, family name and the residence address if the applicant is a natural person, or the trade name and address of the business seat if the applicant is a legal entity;
  3. a photograph or drawing of the design for which protection is sought;
  4. an indication whether it is a separate or a multiple application and, in the case of a multiple application, an indication as to the total number of designs for which protection is sought;
  5. an indication as to the product to which the design is applied under the International Classification.
- (1) An application shall be deemed to have been filed if it complies with the minimum requirements referred to in paragraph (1) of this Article.

- (2) An industrial design application may contain a description explaining the novelty and individual character of the product design.
- (3) All other elements of the application and attachments thereto shall be filed in the way and in the number of copies as prescribed by the Regulations.

### **Basic Fee for an Industrial Design Application**

#### **Article 13**

- (1) The filing of an industrial design application within the meaning of Article 11, paragraph (2) of this Law shall be subject to the payment of a basic fee.
- (2) For a multiple industrial design application within the meaning of Article 11, paragraph (3) of this Law, the Office shall prescribe an additional fee for each additional design.

### **Filing Priority**

#### **Article 14**

If an industrial design application has been filed in compliance with Article 12, paragraph (1), the applicant shall acquire the right of priority on the basis of the application filing date over any other applicant filing at a later date the industrial design application for the identical design or a design differing only in minor details.

### **Union Priority Right**

#### **Article 15**

- (1) If the industrial design applicant has filed the application for the first time in a state member of the international union founded by the Paris Convention for the Protection of Industrial Property (hereinafter: the Paris Union), he may, when filing the application for the same industrial design in the Republic of Croatia, invoke the date of the first filing, provided that he file the application in the Republic of Croatia within six months from that date.
- (2) The applicant invoking the union priority right shall, in the application he is filing to the Office, indicate the essentials of the application he is invoking (State, date and number of the application) and shall, within three months from the date of filing the application to the Office, attach thereto the true copy of the first application certified by the competent authority of the Paris Union State member.

### **Exhibition Priority Right**

#### **Article 16**

- (1) If the applicant has exhibited products bearing or embodying the industrial design at an official or officially recognized international exhibition in the Republic of Croatia or in any of the State members of the Paris Union, he may request that the date of the first day of the exhibition of the products be recognized as the date of

the first application, provided that he files the application in the Republic of Croatia within six months from that date.

- (2) The applicant invoking the exhibition priority right shall, in addition to the application he is filing to the Office, file a certification issued by the competent authority of the Paris Union State member indicating the type of the exhibition, the venue thereof, its opening and closing dates and the first day of the exhibition of the products specified in the application.

### **Examination of the Correctness of an Industrial Design Application**

#### **Article 17**

- (1) The process of examining the correctness of an industrial design application includes the examination of all formal and legal requirements prescribed by this Law and the Regulations.
- (2) An industrial design application shall be correct:
  1. if a separate or a multiple application has been filed within the meaning of Article 11, paragraph (2) and paragraph (3) of this Law;
  2. if the prescribed fee within the meaning of Article 13 of this Law has been paid for the application and the evidence of payment of the fee attached thereto;
  3. if it contains all necessary elements and attachments within the meaning of Article 12, paragraph (1) and paragraph (4) of this Law;
  4. if an orderly power of attorney is attached thereto, if the application has been filed through a representative.

### **Correction of an Industrial Design Application**

#### **Article 18**

- (1) If the application complies with the minimum requirements within the meaning of Article 12, paragraph (1) of this Law, but has not been filed in a way as to contain all necessary elements and attachments in compliance with this Law and the Regulations, the Office shall invite the applicant to remedy all the deficiencies identified within 60 days from the date of the receipt of the invitation.
- (2) If the applicant corrects the application within the prescribed time limit, the application shall be deemed to have been correct as from the beginning.
- (3) If the application does not comply with the minimum requirements within the meaning of Article 12, paragraph (1) of this Law, it shall not be considered to be an industrial design application and the Office shall invite the applicant to remedy all the deficiencies identified within the time limit referred to in paragraph (1) of this Article.
- (4) The applicant shall acquire the right of priority referred to in Article 14 of this Law as from the day and hour of the receipt of the corrected industrial design application in the Office.

### **Extension of the Time Limit**

#### **Article 19**

- (1) On the reasoned request by the applicant, the time limit referred to in Article 18, paragraph (1) may be, for justified reasons, extended by 60 days at the most.
- (2) In respect of the request for the extension of the time limit referred to in paragraph (1) of this Article, the applicant shall pay the prescribed fee.

### **Rejection of the Application**

#### **Article 20**

If the applicant does not, within the prescribed time limit, comply with the invitation and does not remedy the deficiencies identified within the meaning of Article 18, paragraph (1) and paragraph (3) of this Law, the application shall be rejected by a decision.

### **Restitutio in Integrum (Restoration to the Former State)**

#### **Article 21**

- (1) If the Office, due to the non-observance of the time limit, rejects an industrial design application or another request relating to an industrial design, the applicant may request in writing that the procedure be continued.
- (2) The request for the restoration to the former state shall be filed to the Office within three months from the moment the applicant has learned about the failure to observe the time limit, provided that within the same time limit the applicant performs completely the act he has failed to perform, justifies the reasons causing the failure to observe the time limit and pays the prescribed fee for the restoration to the former state.
- (3) With the acceptance of the request referred to in paragraph (2) of this Article, the case shall be restored to the former state.
- (4) The request for the restoration to the former state shall not be accepted failing the observance of:
  1. the time limit for filing the request within the meaning of paragraph (2) of this Article;
  2. the time limit referred to in Article 15, paragraph (1), and Article 16, paragraph (1);
  3. the time limit for filing an opposition within the meaning of Article 24, paragraph (1).

### **Refusal or Partial Acceptance of an Industrial Design Application**

#### **Article 22**



- (1) If the design for which the industrial design application is filed is excluded or partially excluded from protection on the grounds specified in Article 6 of this Law, the Office shall issue a decision on the acceptance or partial refusal of the application.
- (2) The decision on the refusal or the decision on the partial acceptance of the industrial design application may not be issued if the applicant has not been previously notified in writing about the grounds for excluding, entirely or partially, the proposed design from protection, and invited to make a declaration thereon.
- (3) The industrial design applicant shall have the right to make a declaration about the grounds for the exclusion of the design from protection within 30 days from the day of the receipt of the written notification and to submit evidence on the possible new facts that might influence the final decision of the Office.
- (4) On the reasoned request by the applicant, the time limit referred to in paragraph (3) of this Article may, for justified reasons, be extended by 90 days at the most.
- (5) In respect of the request for the extension of the time limit referred to in paragraph (4) of this Article, the applicant shall pay the prescribed fee.

### **Publication of the Application**

#### Article 23

- (1) If an industrial design application complies with all the requirements regarding the correctness of the application within the meaning of Article 17, paragraph (2), if the product design is not excluded from protection within the meaning of Article 6 of this Law and if the prescribed publication fee has been paid, the application data shall be published in the Office official gazette (hereinafter: the Gazette).
- (2) Data from the application to be published in the official bulletin of the Office shall be prescribed by the Regulations.

### **Opposition**

#### Article 24

- (1) An opposition relating to the published industrial design application may, within three months from the date of publication, be filed to the Office:
  1. by the holder of an earlier industrial design right or the applicant of an earlier application;
  2. by a trader entered in the register of companies or a similar register before the filing date of the industrial design application, provided that his trade name or an essential part of that name is identical to the published design or is imitated by the published design;
  3. by a natural person whose name and family name, pseudonym or image is identical to the published design or is imitated by the published design;
  4. by the holder of an earlier industrial property right, if the subject of such a right is identical to the published design or is imitated by the published design;
  5. by any person having a copyright on the work which is identical to the published design or is imitated by the published design;

6. by any interested person who considers that the published design does not comply with the requirements as to novelty or individual character or is solely dictated by the kind or respectively by the functional features of the product within the meaning of Article 7, paragraph (1) of this Law.
- (1) The time limit for filing an opposition prescribed in paragraph (1) of this Article may not be extended.
- (2) The request for the opposition procedure shall be subject to the payment of the prescribed fee.

### **Opposition Procedure**

#### **Article 25**

- (1) The Office shall examine whether the opposition has been filed by a person entitled to file the opposition within the meaning of Article 24, paragraph (1) of this Law, whether the opposition has been filed within the prescribed time limit and whether it is justified and supported by appropriate documentation.
- (2) If the requirements referred to in paragraph (1) of this Article are not complied with, the Office shall make a decision on the rejection of the opposition.
- (3) If the requirements referred to in paragraph (1) of this Article are complied with, the Office shall notify the industrial design applicant about the grounds specified in the opposition and invite him to make a declaration and to submit his comments thereon within 30 days.
- (4) If the applicant does not make a declaration concerning the grounds specified in the opposition and does not submit his comments within the time limit referred to in paragraph (3) of this Article, the applicant shall be deemed not to oppose the grounds specified in the opposition and the procedure shall be terminated.

### **Examination of the Opposition**

#### **Article 26**

- (1) If the industrial design applicant makes a declaration about the grounds specified in the opposition and submits his comments opposing the opposition, the Office shall examine the justification of the opposition within the framework of the specified grounds, taking into consideration facts and submitted evidence.
- (2) If the Office establishes that the opposition is unjustified, it shall be refused and the written decision to that effect shall be sent to the applicant and to the person who has filed the opposition.
- (3) If, in the examination procedure concerning the opposition, the Office establishes that the opposition is justified, it shall refuse or partially accept the industrial design application and shall to that effect send a written decision to the applicant and to the person who has filed the opposition.

### **Grant of an Industrial Design Right and Entry in the Register**

#### **Article 27**

- (1) If the grounds specified in Article 6 and Article 7, paragraphs (1) and (2), do not constitute a barrier to the grant of an industrial design right, the industrial design shall be entered into the register of industrial designs on the basis of the decision on the grant of the industrial design right, provided that the maintenance fee for the first five-year period has previously been paid.
- (2) If the maintenance fee for the first five-year period is not paid, the industrial design application shall be rejected by a decision.

### **Publication of an Industrial Design**

#### **Article 28**

- (1) The data concerning an industrial design shall be published in the gazette three months from the date on entry of the industrial design in the register at the latest.
- (2) Data to be published in the gazette shall be prescribed by the Regulations.
- (3) The publication of an industrial design shall be subject to the payment of the prescribed fee relating to the publication of the industrial design in the gazette.

### **Industrial Design Certificate**

#### **Article 29**

- (1) After the entry of an industrial design in the register and after the payment of the prescribed fee for the issuance of the industrial design certificate, the Office shall issue to the right holder the industrial design Certificate six months from the date of publication of the industrial design in the gazette at the latest.
- (2) Data contained in the industrial design Certificate shall be prescribed by the Regulations.

### **Part Three**

## **EFFECTS OF AN INDUSTRIAL DESIGN RIGHT**

### **Moral Rights of the Designer**

#### **Article 30**

- (1) The designer shall always have the right to be specified as the designer of the industrial design in all documents and public presentations, irrespective of the fact that he is not the applicant nor the holder of the industrial design right.
- (2) The transfer or waiver of the right referred to in the preceding paragraph shall be deemed null and void.
- (3) If several designers have jointly created an industrial design, all designers shall have equal right to the title of the designer of the industrial design, no matter what their contribution to the creation of the industrial design may have been, so that all of them must be specified, unless otherwise agreed and confirmed in writing.

### **Exclusive Rights**

### Article 31

- (1) The right holder shall acquire exclusive rights to use the industrial design and to prevent any unauthorized use of the industrial design by third persons.
- (2) No third person may, without the consent of the right holder, make, offer, put on the market, import, export or use any product bearing, embodying or imitating the industrial design, or store such a product for the specified purposes.
- (3) The holder of an industrial design right is entitled to demand from each person who puts or intends to put on the market a product bearing, embodying or imitating the industrial design, information about the origin of the product and trade channels of the product or the documentation relating to that product.

### **Limitation of Industrial Design Rights**

#### Article 32

- (1) Exclusive industrial design rights shall not affect the use of products bearing or embodying the protected product design:
  1. for private and non-commercial purposes,
  2. for experimental purposes;
  3. for the purpose of informing the public or for the purpose of education, if this is in compliance with good business practices and does not harm the interests of the right holder, and if it refers to the right holder and designer.
- (1) Exclusive industrial design rights shall not relate to products containing the protected product design or to which the protected product design has been applied if these products constitute equipment, accessories or spare parts of ships or aircrafts temporarily entering the territory (territorial waters) of the Republic of Croatia, including the import of products for the purpose of repair, as well as the repair of such ships or aircrafts itself.

### **Right of a Third Person on the Basis of Prior Use**

#### Article 33

- (1) The right holder may not invoke exclusive rights in relation to a third person who has used the same industrial design or who has performed convincing preparations for the use of the same industrial design prior to the day of application filing to the Office or to the acquisition of the right of priority, if the right of priority has been demanded, provided that the third person has created the industrial design without knowing about the existence of the industrial design which was not available to the public at that time.
- (2) The third person referred to in the preceding paragraph may not use the industrial design in a manner exceeding the framework of regular entrepreneurial activities.
- (3) The third person may not transfer the right referred to in this Article without transferring at the same time the ownership of the form of entrepreneurship he has used in the exercise of the right to the use of the industrial design.
- (4) Data referred to in this Article shall be entered in the register in the manner defined by the Regulations.

## **Acquiescence in the Use of an Industrial Design**

### **Article 34**

- (1) The holder of an industrial design right shall allow the use of a later identical or similar industrial design if he has consciously acquiesced in that use for a period of five years, except where the holder of the industrial design right with the later priority right has protected the industrial design in bad faith.
- (2) The holder of the industrial design right with the later priority right may not prohibit the use to the holder of the earlier industrial design right.
- (3) Acquiescence in the use of an industrial design within the meaning of paragraph (1) of this Article may not constitute the reason for its cancellation from the register.

## **Part Four CHANGES TO AN INDUSTRIAL DESIGN**

### **Entry of Changes**

#### **Article 35**

- (1) On the request by the applicant or the industrial design holder, the Office shall enter in the appropriate register all changes relating to the personal name, if a natural person is concerned, to the trade name or business seat or the residence of the applicant or the residence of his employment, as well as other changes occurring after the filing of the industrial design application or after the grant of the industrial design right, provided that these changes reflect the real situation and do not affect the industrial design itself.
- (2) The changes effected shall be published in the gazette.
- (3) All requests for the entry of changes relating to an industrial design shall be subject to the payment of prescribed fees.

### **License**

#### **Article 36**

- (1) The holder of an industrial design right may transfer to third persons the right to use the industrial design, for the whole or a part of the territory of the Republic of Croatia.
- (2) The right to use an industrial design shall be acquired on the basis of a licence contract, and such right shall have the effect against third persons after the entry of the licence in the register. The entry of the licence in the register shall be made on the request on the industrial design holder.

- (3) The licence contract shall be drawn up in writing and signed by the contracting parties.
- (4) The holder of the registered industrial design may exercise industrial design rights against the licensee breaching any provision from the licence contract, particularly with regard to the duration, the registered scope of the industrial design use, the kind of products covered by the licence, the territory on which the industrial design may be used and the quality of the products manufactured.
- (5) The licensee may institute a court proceedings concerning the infringement of rights arising from the industrial design only if the holder of the industrial design right has given his consent thereto.
- (6) The licensee shall be authorized to grant a sub-license only if this has been expressly agreed upon.

### **Rights in Rem and Levy of Execution**

#### *Article 37*

- (1) An industrial design may be the subject of rights in rem and levy of execution.
- (2) The rights referred to in paragraph (1) of this Article shall be effective against third persons only after the entry thereof in the register.

### **Assignment of Rights**

#### *Article 38*

- (1) The industrial design applicant or holder may assign, entirely or partially, his right from the application or the industrial design to another person.
- (2) The assignment of rights shall be made in the form of a written contract which, after the entry thereof in the register, shall have effect against third persons.
- (3) The contract on the assignment of rights shall particularly contain the indication of contracting parties, the industrial design registration number or the number of the industrial design application.
- (4) The entry of the assignment of rights shall be made on the request of the new holder of the industrial design right and shall be published in the gazette.
- (5) Actions against an earlier holder of the industrial design right may be instituted until the assignment of rights has been entered in the register.

## **Part Five ACQUISITION, DURATION, MAINTENANCE AND TERMINATION OF AN INDUSTRIAL DESIGN VALIDITY**

### **Acquisition of an Industrial Design Right**

#### *Article 39*

- (1) An industrial design right shall be acquired by a decision on the grant of the right and by the entry of the industrial design in the register.

- (2) An industrial design right shall be valid as from the date of filing the industrial design application.
- (3) The date of entry of the industrial design in the register shall be the same as the date of making the decision on the grant of the industrial design right.

### **Duration and Maintenance of an Industrial Design Right**

#### **Article 40**

- (1) An industrial design right shall be valid for 5 years counting from the date of filing the industrial design application.
- (2) An industrial design right may be renewed by periods of five years each up to the total term of 20 years of uninterrupted protection, provided that the industrial design holder, during the last year of the five-year protection or at the latest six months after the expiry of such a period, file to the Office a request for the extension of the industrial design validity and pay the appropriate fee.
- (3) The new period of protection shall begin with the day of expiration of the preceding five-year period of protection.

### **Termination of an Industrial Design Validity**

#### **Article 41**

- (1) An industrial design shall cease to be valid:
  1. if the term of the industrial design validity within the meaning of the previous Article of this Law has expired;
  2. on basis of the statement by the holder on the waiver of the industrial design right, on the day following the day of submitting to the Office the written statement on the waiver; this statement shall have no legal effect if a certain right is entered into the register in favour of third persons and the industrial design holder did not previously obtain a written consent from these persons;
  3. with the termination of the legal capacity of the industrial design holder or with his death; the right shall cease to be valid on the day of the termination of the legal capacity of the industrial design holder or on the day of his death, unless the industrial design right has been transferred to another holder.
- (2) The termination of an industrial design validity shall be entered in the register of industrial designs.

### **Declaration of the Decision on the Grant of an Industrial Design Right Null and Void**

#### **Article 42**

- (1) The decision on the grant of an industrial design right shall be declared null and void if it is established that the conditions for the grant of that right, provided by this Law, did not exist.
- (2) The decision on the grant of an industrial design right may be declared null and void during the whole term of protection, as well as after the termination of the validity of the industrial design right within the meaning of the previous paragraph, ex officio, on the request of an interested person or on the proposal of the state attorney.
- (3) A proposal to declare the decision on the grant of an industrial design right null and void shall be supported by necessary evidence.
- (4) The procedure for declaring the decision on the grant of an industrial design right null and void shall be regulated in detail by the Regulations.

## **Part Six**

### **COMMON PROVISIONS RELATING TO THE PROCEDURE BEFORE THE OFFICE**

#### **Other Provisions Applied in the Procedure before the Office**

##### Article 43

- (1) Specific matters relating to the procedure conducted before the Office shall be regulated in detail by the Regulations enacted by the Director of the Office.
- (2) The Law on the General Administrative Procedure shall apply to specific matters relating to the procedure which are not regulated by this Law.

#### **Fees in the Procedure for the Acquisition and Maintenance of an Industrial Design Right**

##### Article 44

- (1) All actions in the procedure for the acquisition and maintenance of an industrial design right shall be subject to the payment of fees in the amount fixed by a special tariff (hereinafter: the tariff) enacted by the Director of the Office.
- (2) The obligation to pay the fee exists from the moment of filing a particular request, from the moment when the payment of the fee falls due, or as decided by the Office.
- (3) If the party to the procedure fails to pay the fees provided for by the Law and the related Regulations, the procedure shall be ended on the basis of a decision by the Office.
- (4) If the party to the procedure fails to pay the maintenance fee, the right shall cease to be valid.

## **Registers**

##### Article 45



- (1) The Office shall keep the register of applications, register of industrial designs and the register of representatives.
- (2) The registers referred to in paragraph (1) of this Article shall be open to the public.
- (3) The Office shall enable any interested persons the inspection of data and documentation concerning the published applications and the granted industrial design rights.

## **Office Official Gazette**

### **Article 46**

The Office shall publish the official gazette in which industrial design applications, rights granted, extensions of industrial design validity, transfers of rights, cancellations of industrial designs from the register and other data concerning industrial designs provided for by this Law shall be published.

## **Search**

### **Article 47**

- (1) On the request of any interested person, the Office shall carry out services of searches concerning the identity and similarity of industrial designs applied for and registered with effect in the Republic of Croatia.
- (2) Services related to searches carried out by the Office shall be subject to the payment of prescribed fees.

## **Representation**

### **Article 48**

- (1) Foreign natural persons or legal entities not having residence or business seat on the territory of the Republic of Croatia shall appoint an authorized representative with the seat in the Republic of Croatia.
- (2) General principles of representation and special requirements on the basis of which foreign natural persons or legal entities may exercise rights under this Law in the procedure before courts and administrative authorities through their authorized representatives shall be regulated by special regulations.

## **International Registration**

### **Article 49**

In the procedure for granting industrial design rights under the provisions of international treaties the Republic of Croatia is a party to, the provisions of this Law shall apply to all issues not regulated by these treaties.

## **Part Seven CIVIL PROTECTION**

### **Action concerning the Infringement of Rights**

#### **Article 50**

- (1) An industrial design holder may, if his rights referred to in Article 31 of this Law have been infringed or are threatened to be infringed, require the following from the competent court by instituting an action:
1. the prohibition of committed or intended infringement of the industrial design right;
  2. removal of the condition caused by the infringement of the industrial design right;
  3. information about products which unlawfully bear, embody or imitate the industrial design or the documentation concerning these products;
  4. compensation for damages under the general rules on compensation for damages and the refund of profit earned on the basis of an unjustified acquisition of wealth;
  5. publication of the court decision establishing the infringement of the industrial design right at the expense of the defendant.
- (2) The procedure following the action within the meaning of paragraph (1) of this Article shall be urgent.

### **Limitation of an Action**

#### **Article 51**

An action concerning the infringement of an industrial design right may be instituted within three years after learning about the infringement and the infringer and at the latest within five years from the infringement.

### **Provisional Measures**

#### **Article 52**

- (1) If the holder of registered industrial design makes it likely that his right has been infringed or that there is a danger of his right being infringed which might cause an irreparable harm, he may require from the court:

1. the ordering of a provisional measure of the prohibition of acts infringing the right of the industrial design holder;
  2. provisional seizure of articles which unlawfully bear, embody or imitate the industrial design or their exclusion from circulation;
  3. measures aimed at providing evidence on the articles referred to in the previous item (of this paragraph) and measures aimed at maintaining the existing state.
- (2) The holder of registered industrial design may require the ordering of provisional measures even before instituting an action, provided that the action be instituted within 15 days from the day of submitting the request for ordering the provisional measure.
- (3) An appeal against the decision ordering the provisional measure shall not suspend the execution thereof.

### **Compensation for Damages**

#### Article 53

- (1) The court may order the holder of registered industrial design to pay damages if the measures required under Article 52, paragraph (1) of this Law are proved to be unjustified.
- (2) The court may order the holder of registered industrial design to deposit an appropriate amount of money as a security for the persons against whom the provisional measure is being ordered.

### **Judicial Grant and Transfer of Rights**

#### Article 54

- (1) If the application was filed by an unauthorized person or if the industrial design right has been granted and entered in the register to the name of an unauthorized person contrary to the provisions of Article 8 of this Law, the authorized person may submit to the court a request for the grant of authorities grounded on the law and/or for the complete or partial transfer of the pertaining rights, irrespectively of other rights and requests arising from the industrial design.
- (2) The authorized person referred to in the preceding paragraph may initiate a court proceedings within three years from the day of the publication of the application, or, in the case when the court establishes that the unauthorized person did not act in good faith, during the entire term of protection of the industrial design.
- (3) If the court adopts a final decision on the grant and transfer of the rights referred to in this Article, the right of licence and other rights entered in the register in favour of third persons shall cease to be valid on the day of the entry of the changes in the register. If, before the grant of the rights referred to in this Article, the unauthorized right holder or licensee used the right or performed convincing preparations for the use of the right in good faith, they may obtain the right of non-exclusive licence within the time limit and under the conditions which are commonly needed for the use of the right if they require this within three months from the day of the receipt of a notification sent to them by the Office after the entry of the new right holder.

- (4) The Office shall enter in the register the established facts from the submitted final court decision and other changes referred to in this Article.

## **Part Eight PENAL PROVISIONS**

### **Offenses**

#### **Article 55**

- (1) Any legal entity which makes, offers, puts on the market, imports, exports or uses a product bearing or embodying another person's industrial design, or stores such a product for the said purposes, shall be punished with a fine of 5,000.00 to 50,000.00 kunas.
- (2) Any natural person and the responsible person at a legal entity who refuses to provide data on the origin and the manner of acquiring a product, who has been found in the possession of products unlawfully manufactured or put into circulation, or who transfers rights to a third person or is using a licence against the provisions of the licence contract, or who unlawfully usurps the title of the designer of the industrial design, shall be punished with a fine of 1,000.00 to 5,000.00 kunas.
- (3) For the offense referred to in paragraph (1) of this Article, the responsible person at the legal entity shall be punished with a fine of 6,000.00 to 60,000.00 kunas.
- (4) For the offence referred to in paragraph (1) of this Article a natural person shall be punished with a fine of 1,000.00 to 5,000.00 kunas.
- (5) A natural person shall be punished for offenses referred to in paragraph (1) of this Article committed for the purpose of a financial gain by a fine of 20,000.00 kunas.

## **Part Nine TRANSITIONAL AND FINAL PROVISIONS**

### **Pending Procedures**

#### **Article 56**

- (1) Procedures for the grant of industrial design rights, pending on the day of the commencement of application of this Law, shall be continued under the provisions of this Law.
- (2) The holder of a model or pattern right, the validity of which has not ceased by the day of entry into force of this Law, may, after 10 years of validity, require the

extension of the protection twice by five-year periods under the same conditions and with the same rights as the holders of industrial design rights under this Law.

- (3) In a case referred to in paragraph (2) of this Article, the Office shall rename a model or pattern the validity of which is being extended, enter it in the register of industrial designs and publish the extension of the right in the official bulletin.

### **Termination of Validity of Other Regulations**

#### **Article 57**

On the day of the commencement of the application of this Law, the part of the Industrial Property Law (“Narodne novine”, No. 53/91, 19/92, 61/92 and 26/93) relating to models and patterns and the part of the Law on Administrative Fees (“Narodne novine”, No.59/96) relating to models and patterns shall cease to be valid.

### **Time Limit for the Enactment of the Regulations**

#### **Article 58**

The Director of the Office shall enact the Regulations referred to in Article 43, paragraph (1), and Article 44, paragraph (1), of this Law within three months from the day of entry into force of this Law.

### **Entry into Force of this Law**

#### **Article 59**

This Law shall enter into force on the eighth day following the day of its publication in “Narodne novine” and shall be applied as from the expiration of the period of three months from the day of its entry into force.