



Designs registered with the International Bureau of the World Intellectual Property Organization in accordance with The Hague Agreement Concerning the International Registration of Industrial Designs (hereinafter referred to as: the Hague Agreement) shall also be effective in Montenegro.

### **Equality of Foreign and National Persons**

#### Article 3

Foreign legal and natural persons shall have rights with respect to design registration and legal protection in Montenegro equal to those of national legal and natural persons, if this results from ratified international agreements or from the reciprocity principle.

Proof of the existence of reciprocity referred to in paragraph 1 of the present Article shall be provided by the person claiming reciprocity.

In any proceedings before a competent authority, a foreign legal or natural person shall be represented by a legal or natural person (hereinafter referred to as: the Representative) entered into the Register of Representatives maintained by the competent authority in charge of intellectual property matters (hereinafter referred to as: the Competent Authority) or a lawyer entered into the Montenegro Bar Association Register.



## Article 7

Within the meaning of Articles 5 and 6 of the present Law, a design shall be deemed to have been made available to the public if it has been disclosed by means of registration or otherwise, exhibited, used in trade or otherwise disclosed prior to the date of filing the application for design registration or if the priority right was claimed prior to the date of registered priority right, except where these events could not reasonably have become known in the usual course of business to the groups in Montenegro specialized in the given sector.

The design shall not be deemed to have been made available to the public within the meaning of paragraph 1 of the present Article, if it has been disclosed to another person under conditions of confidentiality related to the industrial design.

The design shall not be deemed to have been made available to the public, within the meaning of Articles 5 and 6 of the present Law, if a design has been disclosed by the designer, his/her legal successor, or a third person as a result of an information received from the designer or his/her legal successor, or as a result of an action taken by the designer or his/her legal successor, provided that the time period from the design disclosure date to the design registration application filing date or to the date priority right has been claimed, is less than 12 months, if the industrial design has become available to the public as a result of abuse in respect of the author or his/her legal successor.

design registration date, amendments, Register entry date, international registration data, design protection renewal data and the registered design lapse date.

Application records referred to in paragraph 1 of the present Article shall, in particular contain information referred to in Article 25 paragraph 1 of the present Law.

At the request of the interested party and upon payment of the prescribed administrative fees and duties, the competent authority shall issue a Register confirmation slip and the industrial design validity certificate.

The data from the Register shall be published in the Official Gazette of the competent authority.

The competent authority of the state administration in charge of intellectual property issues (hereinafter referred to as: the Ministry) shall prescribe in more detail the content and procedure for maintenance of the Register and the application records referred to in paragraph 1 of the present Article.

## **Relation to Other Laws**

### **Article 9**

Unless otherwise prescribed by the present Law, the provisions of the law governing general administrative procedure shall be applicable to the design registration and protection procedure.

An appeal against the decisions rendered by the competent authority may be filed with the Ministry.

In the procedure before the competent authority, the prescribed administrative fees and duties in keeping with the law governing administrative fees and duties, special procedural costs and information provision services fees, shall be charged.

The amendments to Article 8.5( ) of the Law on the Register of Industrial Designs shall be made in accordance with the provisions of this Article.

## **Protection Excluded Due to Technical Function**

### **Article 10**

Industrial design right shall not subsist with respect to external appearance of a product that is solely dictated by its technical function.

Industrial design right shall not subsist with respect to external appearance of a product that must necessarily be reproduced in its exact form and dimensions in order to permit the

5) If in the process of creating a design a mark for distinguishing goods or services has been used, while the owner of the earlier right was entitled to prohibit such usage;

6) Designs containing signs, symbols, badges or coat of arms and the like referred to in Article 6<sup>bis</sup> of the Paris Convention on the Protection of Industrial Property (hereinafter referred to as: the Paris Convention) and those containing state coat of arms, a flag or a symbol, name or abbreviated name of a country or an international organization, religious or national symbols as well as imitations thereof.

## **Rights of Designers**

### **Article 12**

The right to the industrial design protection shall be vested in the designer, or his legal successor.

A person extending only technical support in the process of creating a design shall not be considered a designer.

If two or more persons jointly created a design, all designers shall be entitled to industrial design protection rights.

If the design has been developed by a person while performing his/her regular work related activities or when acting on order and instructions of their employer, the employer shall be entitled to file an application unless otherwise stipulated in the contract.

## **Designer Indication**

### **Article 13**

Designer shall be entitled to be cited in all documents in the process of registration and in the Register as the designer, in much the same way as does the applicant or holder of the design.

If more than one designer or a team of designers jointly created a design, all designers individually or the team of designers

shall be entitled to the rights referred to in paragraph 1 of the present Article.

### **III. SCOPE AND LIMITATIONS OF INDUSTRIAL DESIGN RIGHTS**



## **Limitation of Exclusive Rights**

### **Article 16**

The holder of industrial design rights may not ban another person from performing the following activities:

- 1) Activities performed for private, non-commercial and experimental purposes;
- 2) Reproduction for the purpose of making citations or teaching, provided such activities are in line with the fair business practices and provided they do not unreasonably jeopardize the normal exploitation of the industrial design, as well as provided that the source from which the industrial design has been obtained has been specified.

Exclusive rights to a design shall not pertain to:

- 1) Vessel and aircraft equipment produced by virtue of the protected industrial design and serving exclusively for the functioning of a vessels or aircrafts registered in another country, when they are temporarily on the territory of Montenegro;
- 2) Import of spare parts and tools to Montenegro, for vessels and aircraft repair purposes.

## **Earlier Use of the Design**

### **Article 17**

A person who has been able to prove that prior to the application filing date or prior to the priority right registration date, if claimed on the territory of Montenegro, he/she has already commenced in good faith with the use of the protected industrial design in manufacturing, or has made all the necessary preparations to commence with the use of the designed included in the scope of protection, provided that such design is not the result of copying of a protected industrial design, shall have right of prior use.

Pursuant to the right of prior use, another person shall be entitled to use the industrial design only for purposes it was initially

used for in the manufacturing or for the purpose of necessary preparations for the commencement of utilization of design prior to the application filing date or prior to the priority right registration date, if the priority right has been claimed.

The person entitled to the right of prior use of the design shall not be entitled to transfer the right of industrial design use by virtue of a license agreement.

The right of prior use shall not be transferable, unless such right is transferred together with a company, part of the company, company operational unit (workshop) or branch of the company in which the use of such industrial design has been prepared or commenced, in keeping with paragraph 1 of the present Article.

## **Exhaustion of Rights**

### Article 18

If the holder of industrial design rights in Montenegro releases into the marketplace a product comprising a protected industrial design and/or a product designed in accordance with a protected industrial design, or if the holder of the industrial design right authorizes another person in Montenegro to release such product into the marketplace, the holder of industrial design rights shall not be entitled to ban third parties from further disposing of that product which has been purchased in the course of legal trade.

The exhaustion of rights referred to in paragraph 1 of the present Article shall not apply in the event there exists a legitimate interest on the part of the holder of the industrial design right to oppose further trading in the product comprising the protected industrial design, or the product which has been designed in accordance with the protected industrial design, in particular if a defect has meanwhile occurred in the product or other changes appeared in the features of the product.



The data contained in the deci

design enforced performance procedure for the purpose of entry into the Register.

Pledge and enforced performance shall be published in the Official Gazette.

Pledge and enforced performance shall produce legal effect in relation to third parties following the entry into the Register.

Where the registered design is subject of bankruptcy, the information on initiating the bankruptcy proceeding shall be entered into the Register and published in the Official Gazette at the request of the competent court.

Regulations governing pledge shall be applicable to pledge or enforced performance procedures.

The regulations issued by the Ministry shall prescribe in more detail the content of the request referred to in paragraph 2 of the present Article and the documentation submitted together with the request.

## V. INDUSTRIAL DESIGN REGISTRATION PROCEDURE

### **Initiation of the Industrial Design Registration Procedure**

#### Article 24

The industrial design registration procedure shall be initiated by filing an application to the competent authority.

Changes to the application may be effected at the request of the applicant or *ex officio* only where a correction to the applicant's name or address must be made, the correction to the text or a certified copy must be effected, provided that these changes have no effect on the expansion of the protection scope.

The applicant may withdraw from the registration procedure at any point in time, either entirely or partially, and the competent authority shall render an official decision thereof.

The industrial design registration application and documentation shall not be available to the public without the applicant's consent prior to the industrial design disclosure date.

### **Application Content**

#### Article 25

The application shall include:

- 1) Industrial design registration request;
- 2) Information about the applicant;
- 3) The industrial design depiction (appearance) suitable for reproduction;
- 4) Indication of the product containing the design or to which the design will be applied;
- 5) Information on the authorized representative if the applicant has a representative;
- 6) Information on the joint authorized representative in case of joint applications.

If the subject of the application is a two-dimensional design and should the application include a request to postpone the design disclosure pursuant to Article 35 of the present Law, the depiction

5) Information on the priority right referred to in Articles 29 and 30 of the present Law.

The application containing elements referred to in paragraph 1 items 1, 2 and 3 of the present Article shall bear the application filing date and shall be entered into application records.

Should the application not contain elements referred to in paragraph 4 of the present Article, the competent authority shall notify the applicant thereof instructing him/her to remedy the detected deficiencies within the time period of sixty days from receiving the notification.

Should the applicant fail to remedy the detected deficiencies within the time period referred to in paragraph 5 of the present Article, the competent authority shall render a decision acknowledging the date when the deficiencies have been remedied as the application filing date.

Should the applicant fail to rectify the application within the time period referred to in paragraph 5 of the present Article, the application shall be considered withdrawn, and the competent authority shall render a conclusion to that effect.

The time limit referred to in paragraph 5 of the present Article may be extended at the request of the applicant for a period not to exceed sixty days.





## **Priority Right**

### Article 28

As of the filing date of an orderly and complete applicant shall enjoy a priority right over all other persons who have subsequently filed an application for the same or similar industrial design.

Following the payment of the required administrative fees and duties, the competent authority shall issue a priority right certificate at the request of the applicant or the industrial design holder.

## **Union Priority Right**

### Article 29

An applicant having filed orderly and complete application effective in any member state of the Paris Union for the Protection of Industrial Property (hereinafter referred to as: the Paris Union) or the World Trade Organization member state, shall be entitled to claim the initial application filing date when filing an application in Montenegro for the same industrial design, provided that the application in Montenegro has been filed within six months of the initial application filing date (hereinafter referred to as: the Union

### Article 30

The applicant who has exhibited a product, containing the industrial design or to which that particular industrial design has been applied, at an official or officially recognized international exhibition in any member state of the Paris Union or in any member state of the World Trade Organization, may request that the date when the product has been exhibited for the first time be acknowledged as the first filing date of the application, provided that the application in Montenegro has been filed within six months from that date.

Within the meaning of paragraph 1 of the present Article, an international exhibition shall mean any exhibition pursuant to the Convention on International Exhibitions.

The applicant claiming exhibition priority right shall attach to the application the certificate issued by the competent authority of a member state of the Paris Union or member state of the World Trade Organization which has been translated into the Montenegrin language that the fair or exhibition was international in its character, indicating data on the type of exhibition, venue, date of opening and closing of the exhibition and the date of the first exhibiting the product stated in the application.

## **Order of Application Examination**

### Article 31

The applications shall be examined in the order determined by the date of their filing.

Notwithstanding the provision of paragraph 1 of the present Article, the application may be examined in an expedited procedure:

- 1) In case of the procedure initiated before a court or an inspection authority, or customs related procedure at the request by the court or the competent authority;
- 2) If the application for international registration of an industrial design has been filed.



## **Entry of an Industrial Design into the Industrial Design Register**

### **Article 34**

The issuance of the decision on the registration of the industrial design, entitles the applicant to the industrial design.

The date of issuing the decision on the registration of the industrial design shall be considered as the date of entry into the Register.

Data from the decision referred to in paragraph 1 of the present Article shall be published in the Official Gazette.

The regulations issued by Ministry shall prescribe the particulars referred to in paragraph 3 of the present Article which are published by the Official Gazette.

## **Postponed Disclosure of the Registered Design**

### **Article 35**

The applicant may submit a request accompanying the application, to postpone the disclosure of the registered industrial design for a period of thirty months from the application filing date or from the acknowledged priority right, if the priority right has been claimed.

If the postponement of the industrial right registration disclosure has been sought, the information that the given industrial design has been registered, information on the industrial design holder, application filing date and a note stating that the postponement of the disclosure of the registered industrial design has been sought, shall be published in the Official Gazette.

The industrial design holder shall be entitled to request the disclosure of the design prior to the deadline expiry referred to in paragraph 1 of the present Article following the payment of the prescribed administrative fees and duties.

In case of multiple applications the industrial design disclosure postponement may be sought only for certain designs listed in the application.

### **Entry of Changes into the Register**

#### **Article 36**

At the request of a holder of industrial design rights the competent authority shall render a decision entering changes which occurred following the industrial design registration in the appropriate Register of the competent authority, in particular changes in the name or address of the holder of the industrial design right and assignment of rights.

Changes referred to in paragraph 1 of the present Article shall not alter the appearance and scope of the industrial design protection.

Changes entered into the Register shall be published in the Official Gazette.

The regulations issued by the Ministry shall prescribe in more detail the content of the request referred to in paragraph 1 of the present Article and the documentation submitted together with the request.

### **Continuation of the Procedure**

#### **Article 37**

The applicant or another person who has failed to perform an action within a specified period of time may file a request with the competent authority for the continuation of the procedure.

The procedure continuation request may be filed within a time period of sixty days from the expiry of the deadline within which the action should have been undertaken.

The competent authority shall ensure that the request is processed within the prescribed time limit.





## **Cessation of Protection**

### **Article 40**

The industrial design right shall cease:

- 1) With the expiry of the protection time period referred to in paragraph 39 of the present Law;
- 2) If the right holder abandons the right in writing, on the day of filing the statement of abandonment;
- 3) Based on a court decision, or a decision of a competent authority, on the day indicated in such decision;
- 4) If the legal person has been dissolved, or if the natural



## **International Registration Procedure**

### Article 41

The international industrial design registration shall be done in accordance with the Hague Agreement.

The application for international industrial design registration



the he/she is the industrial design holder together with the person to whom the industrial design has been registered.

Following the receipt of the final court decision, the competent authority shall enter the plaintiff into the Register at his/her request as a holder of the industrial design.

### **Complaint for Acknowledging Authorship**

#### Article 45

By filing a complaint with the court, the person who considers himself/herself as being the author of the industrial design or his/her legal successor, may seek the declaration that he/she is the author of the industrial design registered to the defendant's name contrary to the provisions of Article 13 of the present Law, and that he/she be entered into all documents and the Register as the author of the design.

The plaintiff referred to in paragraph 1 of the present Article may request that the judgment be published at the expense of the defendant, seek compensation for moral and property damage as well as payment of costs and expenses of the court proceedings.

The period for filing the complaint referred to in paragraph 1 of the present Article shall not have a time limit.

### **Protection in Case of Industrial Design Rights Infringement**

#### Article 46

Industrial design rights infringement shall be considered to be any unauthorized exploitation of a registered industrial design by any party to trade, within the meaning of Article 15 of the present Law.

In case of infringement of industrial design rights, the design rights holder may request from the competent court to determine the industrial design rights infringement.

In the complaint referred to paragraph 2 of the present Article, the plaintiff shall be entitled to request:

1) Cessation of the industrial design rights infringement;

of any activities by way of which the infringement may be committed.

Provisional measures referred to in paragraph 1 of the present Article and the securing of evidence referred to in Article 48 of the present Law, may be requested prior to the filing of a complaint against the infringement of a protected industrial design or of the rights arising from the application, provided the complaint has been filed within a time period of fifteen days from the date of execution of the request for pronouncing a provisional measure and/or the request for securing of evidence.

An appeal against the court decision pronouncing the provisional measure referred to in paragraph 1 of the present Article shall not delay the enforcement of the decision.

### **Securing of Evidence**

#### Article 48

At the request of the person who makes it credible that his/her industrial design rights or rights arising from the application have been infringed, or that there is a reasonable suspicion that evidence thereof will be destroyed or that it will not be possible to obtain such evidence later on, the court may order an interim measure to secure evidence without giving prior notice to or hearing the person from which evidence is to be collected.

For the purposes of paragraph 1 of the present Article, the securing of evidence shall mean the inspection of premises, vehicles, books, document





- 1) At his/her own request;
- 2) If a final court judgment has been passed prohibiting him/her from performing representation activities;
- 3) If he/she has been convicted to a prison sentence exceeding six months, of which he/she must duly notify the competent authority.

## **XI. TRANSITIONAL AND FINAL PROVISIONS**

### **Initiated Procedures**

#### Article 54

Procedures initiated prior to the effectiveness of the present Law shall be finalized in keeping with the present Law, if this is more favorable to the party.

The Industrial Design Register established prior to the effectiveness of this Law shall be harmonized with the present Law within a time period of six months from the date of effectiveness of the present Law.

Industrial Design Application Register established prior to the effectiveness of the present Law shall become a record of applications and shall be harmonized with this Law, within a time period of six months from the date of effectiveness of the present Law.

### **Recognized Rights**

#### Article 55

Industrial designs registered and entered into the Industrial Design Register with the Serbia and Montenegro Intellectual Property Institute (herein after referred to as: Serbia and Montenegro Institute), and/or Serbia Intellectual Property Institute (herein after referred to as: Serbia Institute) until 28 May 2008, shall be valid in Montenegro without requiring the payment of the fee until the expiry of their validity, and/or until the expiry of the time



period for which the Serbia Institute has been paid the rights maintenance fee, if their holders have submitted the application for entry into the Register within the time period of one year from the effectiveness date of the present Law.

Industrial designs for which the competent authority has issued the industrial design validity certificate in a form of a note affixed to the copy of the certificate issued by Serbia and Montenegro Institute or Serbia Institute, the competent authority shall enter such designs into the Register without requiring that a separate request be filed, within a time period of one year from the effectiveness date of the present Law.

The competent authority shall issue the rights validity certificate for industrial designs for which rights validity applications have been filed and it shall enter those industrial designs into the Register within a time period of one year from the effectiveness date of the present Law.

Industrial design validity renewal applications, assignment applications and applications for the change of name and address for industrial designs referred to in paragraph 1 of the present Article shall be deemed as applications for the entry into the Register.

Industrial design rights referred to in paragraph 1 of the present Article shall be established on the basis of design documentation and/or certificate issued by the Serbia Institute.

## **By-laws**

### Article 56

By-laws for the enforcement of the present Law shall be adopted within six months from the date of its adoption.

Gazette of Serbia and Montenegro”, No. 61/04) shall be applicable, unless they are contrary to the provisions of the present Law.

### **Cessation of the Application of the Law**

#### Article 57

The Law on the Legal Protection of Designs („Official Gazette of Serbia and Montenegro” No. 61/04) shall cease to be applicable as of the date of the present Law taking effect.

### **Effectiveness**

#### Article 58

This Law shall enter into force on the eighth day from the date of its publication in the “Official Gazette of the Montenegro”.

SU-SK No. 01-692/7

Podgorica

22 December 2010

PARLIAMENT OF MONTENEGRO  
IN ITS 24<sup>TH</sup> CONVOCATION