

**Republic of Croatia  
State Intellectual Property Office**

***DRAFT INDUSTRIAL DESIGN LAW***

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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 or 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.

## **Extension of the Time Limit**



- (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

Article 31

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## **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.



- (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

- (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 procedur



- (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 unauthorormmitatstrial design holder; (163hin 15 he indhadereinsg

- (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

- 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.