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Text consolidated by Tulkošanas un terminoloģijas centrs (Translation and Terminology Centre) with amending laws of:

8 February 2007.

If a whole or part of a section has been amended, the date of the amending law appears in square brackets at the end of the section. If a whole section, paragraph or clause has been deleted, the date of the deletion appears in square brackets beside the deleted section, paragraph or clause.

The *Saeima*<sup>1</sup> has adopted  
and the President has proclaimed the following Law:

## Law On Designs

### Chapter I General Provisions

#### Section 1. Terms Used in this Law

The following terms are used in this Law:

1) **design** — the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product or its decoration (ornamentation);

2) **product** — any industrial or handicraft item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces. Computer programs as well as the topography of semiconductor products shall not be products within the meaning of this Law;

3) **complex product** — a product which is composed of multiple parts (components) which can be replaced permitting disassembly and reassembly of the product;

4) **designer** — an author of a design, a natural person, as a result of whose creative work, a design has been developed. A person who has provided assistance of a technical or other nature in the development of a design but has not made a creative contribution shall not be considered a designer;

5) **Paris Convention** — Paris Convention for the Protection of Industrial Property of 20 March 1883 (as revised at Stockholm on 14 July 1967, and as amended on 28 September 1979);

6) **Paris Union** — the Union of the states parties to the Paris Convention;

7) **international registration of designs (international registration)** — the registration of designs performed in accordance with the Geneva Act of the Hague Agreement of 6 November 1925 Concerning the International Registration of Industrial Designs (Geneva, 2 July 1999) or another international agreement regarding the international registration of designs binding on Latvia;

8) **International Bureau** — the International Bureau of the World Intellectual Property Organization, which performs the international registration of designs and maintains the International Design Register; and

<sup>1</sup> The Parliament of the Republic of Latvia

9) **the International Design Classification (Locarno Classification)** — classification established by the Locarno Agreement of 8 October 1968 Establishing an International Classification for Industrial Designs.

## **Section 2. Purpose of this Law**

This Law regulates legal relations in the field of registration, use and protection of designs.

## **Section 3. Regulation of Legal Relations in the Field of Designs**

(1) Alongside with the legal protection in accordance with the provisions of this Law or apart from such provisions, a design may be protected as design work in conformity with the provisions of the Copyright Law. Legal relations in the field of designs shall be regulated also by other regulatory enactments.

(2) The regulation included in the Law in respect of designs shall include also the international registration of designs, the rights that are related to the designs registered at the international level, as well as the validity, use and protection thereof, insofar as the provisions of the international registration of designs do not provide otherwise.

(3) A person is entitled to register, use and protect a design in another state, also in the territory of the European Community in accordance with the laws and the approved international agreements of such state.

(4) If the international agreements binding on Latvia include provisions, which differ from the norms of this Law, the provisions of the international agreements shall be applied.

## **Chapter II Preconditions for the Legal Protection of Designs**

### **Section 4. Protected design**

(1) Legal protection shall be granted to a design (also such design as is applied to or incorporated in a complex product) if it is new and has individual character.

(2) A design that is applied to or incorporated in a product, which is a component part of a complex product (component) shall only be considered to be new and have individual character if such design conforms to the following conditions:

1) the part (component) that is incorporated in the complex product is visible during the normal use of the complex product, i.e., when used by the actual user (consumer). The technical maintenance and repair of a product shall not be considered the normal use; and

2) the visible features of the part (component) conform to the requirements of novelty and individual character.

*[8 February 2007]*

### **Section 5. New Design**

(1) A design shall be new (novelty) if no identical design has been made available to the public before the day of the filing of the registration application thereof (filing date) or the date of priority (if priority is claimed) (hereinafter — the date of priority).

(2) Designs shall be deemed to be identical also in cases when their features differ in immaterial details.

## **Section 6. Individual Character of a Design**

(1) A design shall be considered to have individual character if the overall impression it produces on an informed user differs from the overall impression produced on such a user by any other design which has been disclosed to the public before the filing date for the registration or the date of priority of the design in respect of which the protection is requested.

(2) In assessing the individual character of a design, the degree to which the designer, in developing the design, has been dependent on the nature of the product and the peculiarities of the sector of industry or handicrafts shall be taken into account.

## **Section 7. Disclosure**

(1) A design shall be deemed to have been disclosed to the public if such design has been published in relation to the registration, has been displayed at an exhibition, used in commercial activities or has otherwise become available to the public.

(2) A design shall not be deemed to have been disclosed to the public if the activities referred to in Paragraph one of this Section, except for the publishing related to the registration, in the normal course of events could not have become known to the specialists of the relevant sector, operating in the European Community.

(3) A design shall not be deemed to have been disclosed to the public if such design has been disclosed to a third person under explicit or implicit conditions of confidentiality.

(4) The disclosure of a design to the public shall not do any harm to the novelty and individual character of the design if the design has been disclosed by the designer himself or herself or by his or her successor in title, or a third person, by using the information directly or indirectly acquired from the designer or his or her successor in title and if the disclosure has taken place within a time period of 12 months preceding the filing date for the registration or the date of priority. This provision shall apply also to the cases when a design has been made known to the public by deliberately disregarding the rights of the designer or his or her successor in title.

## **Section 8. Scope of Legal Protection of a Design**

(1) The scope of legal protection of a registered design shall include any design (the appearance of the whole or a part of the product) which does not produce a different overall impression on an informed user.

(2) The scope of legal protection of a design shall be assessed on the basis of the features of the design visible on the representations included in the registration and official publication, to which features the legal protection applies in accordance with this Law. If a specimen has been attached to an application for the registration of a design, alongside with the representations also the features of the specimen shall be taken into account insofar as such features are not in contradiction with the representations.

(3) In assessing the scope of legal protection of a design, the degree to which the designer, in developing the design, has been dependent on the nature of the product and the peculiarities of the branch of manufacturing or crafts shall be taken into account.

(4) The scope of legal protection of a design shall not be influenced by the indication of the product to which such design is intended to be applied or incorporated into, the index of the International Design Classification (Locarno Classification), as well as the description of the design (if such description has been attached to the application for the registration of the design).

## **Section 9. Unprotected Objects**

- (1) Legal protection shall not be granted to the appearance of a product, which is in conflict with the public policy or socially accepted principles of morality.
- (2) Legal protection shall not be granted to the features of the appearance of a product that are solely dictated by the technical functions of the product.
- (3) Legal protection shall not be granted to such features of the appearance of a product which must be reproduced in an exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to another product, placed into another product, placed around or against such product, so that in addition both products should be able to perform their functions.
- (4) Protection shall be granted to a design that ensures multiple assembly or connection of mutually interchangeable products within a modular system, notwithstanding the provisions of Paragraph three of this Section, if such design conforms to the requirements of Sections 5 and 6 of this Law.

## **Chapter III Rights to a Design**

### **Section 10. Holders of the Rights to a Design**

- (1) The designer or his or her successor in title shall have the rights to a design.
- (2) If two or more persons have created a design together, the rights to a design shall belong to all of them jointly. Provisions of the Civil Law regarding the joint ownership of movable property shall apply to a design created jointly by two or more persons. If any of the joint owners alienates his or her undivided share of a design, the other joint owners shall have the right of first refusal (or right of pre-emption) in accordance with Section 1073 of the Civil Law.
- (3) A designer shall have the rights to the design that has been created in the performance of a work task, unless provided otherwise by the contract with the employer.

### **Section 11. Moral Rights of Designers**

Designers, irrespective of the fact who is the applicant or the owner of a design, shall have inalienable moral rights to the following:

- 1) authorship — the right to be recognised as the author of the relevant design; and
- 2) name — the right to be mentioned in an application for the registration of the design and in all documents related to the registration of the design, in the register and publications or to refuse from such right and request that their name is not mentioned.

### **Section 12. Exclusive Rights of an Owner of a Registered Design**

- (1) Exclusive rights to a design may be ensured by the registration of the design with the Patent Office of the Republic of Latvia (hereinafter — the Patent Office) or by the registration performed in accordance with the provisions of international registration of designs that apply to Latvia. A person in whose name a design has been registered in the State Register of Designs shall be considered the owner of the design (entitled owner).
- (2) An owner of a design shall have exclusive rights to use the design and to prohibit the use thereof by any other person. The use of a design shall be considered in particular the

production of such product where the design has been applied to or incorporated into, as well as offering of such product for sale, its import, export, use, other types of distribution on the market and storage for the referred to purposes.

(3) The rights of the owner of a design shall come into force to full extent from the day when the registered design is published in the official gazette of the Patent Office or the international registration.

### **Section 13. Restrictions on Exclusive Rights**

(1) Exclusive rights may not be exercised in respect of:

- 1) activities performed for personal needs and non-commercial purposes;
- 2) activities performed for experimental purposes;
- 3) reproduction of a design performed for the purposes of making citations or of teaching, provided that such reproduction is compatible with fair trade practice and does not unduly prejudice the normal exploitation of the design and that a reference to the source is included; and
- 4) the case specified in Section 14, Paragraph two of this Law.

(2) Exclusive rights may not be exercised in respect of:

- 1) the equipment and accessories of ships and aircraft registered in other states, which are temporarily located in the territory of the Republic of Latvia;
- 2) the importation of spare parts and accessories into Latvia for the purposes of repairing the vehicles referred to in Clause 1 of this Paragraph; and
- 3) the repairs of the vehicles referred to in Clause 1 of this Paragraph.

(3) Exclusive rights may not be applied to a person who uses a design if the following conditions are present:

- 1) the product where such design is applied to or incorporated into is a part (component) of a complex product;
  - 2) a design is dependent upon (subordinate to) the appearance of the complex product;
- or
- 3) the aim of the use of a design is to ensure the repair of the complex product, in order to restore the original appearance thereof.

(4) Exclusive rights shall not apply to the activities with a product, where a design, which is included in the scope of legal protection of the protected design, has been applied to or incorporated into, if such product has been included in the economic circuit in the European Economic Area by the owner of the protected design himself or herself or by another person with his or her consent.

### **Section 14. Right of Prior Use**

(1) The right of prior use shall be retained by a person who, prior to the filing date for the registration of a design or the date of priority, has in good faith begun to use in Latvia a design (the appearance of a product or a part thereof) which is included within the scope of legal protection of the referred to protected design, but has not been copied therefrom, or has performed serious and efficient preparatory work which is necessary for such use.

(2) The right of prior use shall permit the person referred to in Paragraph one of this Section to use a design for the purposes, for which, prior to the filing date for the registration of a design or the date of priority respectively, the use of such design has been commenced or serious and efficient preparatory work has been performed.

(3) The right of prior use shall not include the right to grant to another person a licence for the use of a design.

(4) The right of prior use may be transferred to another person only together with the undertaking or a part of the undertaking, in the activities of which the use of the design was commenced or the referred to preparatory work performed.

## **Chapter IV**

### **Registration Procedure of a Design**

#### **Section 15. Application for the Registration of a Design**

(1) A person who wishes to register a design in Latvia shall file to the Patent Office a written application for the registration of a design (hereinafter — the application).

(2) The application shall include the following:

- 1) a request to register a design;
- 2) information, which permits to identify the applicant;
- 3) a representation or representations which provide a clear and complete conception of the features of the design;
- 4) the indication of the product, where the design is intended to be applied to or incorporated into;
- 5) information, which permits to identify the designer;
- 6) information regarding the representative of the applicant and an authorisation of the representative if the application is filed through the intermediation of the representative; and
- 7) a document regarding the payment of the State application fee.

(3) The application may include:

- 1) the index of the International Design Classification (Locarno Classification), if such is known to the applicant;
  - 2) a concise description of the design;
  - 3) a specimen;
  - 4) a request to recognise the priority of the design and a document that attests thereto;
- and
- 5) a request to defer the publication of the design.

(4) The application, with the indication of the product included therein, shall be filed and all the documentation and correspondence of the registration procedure of a design shall be performed in Latvian. Documents in a foreign language may be submitted if a translation into Latvian approved in accordance with the specified procedures has been appended thereto.

(5) When information that permits to identify the designer is entered in the Register of Designs, the name of the designer may be substituted by the name of the group of designers. If a designer has relinquished the right to be mentioned or has asked not to be mentioned, the applicant shall submit a relevant statement. The applicant of a design shall be responsible for the veracity of such statement.

(6) The features of a design visible in the representation (representations) may be illustrated in the description of the design, taking into account that the description does not influence the scope of the legal protection of the design (Section 8, Paragraph four).

(7) A specimen may be submitted only in respect of a two-dimensional design.

(8) The application shall be signed by the applicant of a design or a representative authorised by him or her. The applicant of a design shall be considered the entitled applicant insofar as the opposite has not been acknowledged according to a court judgment that has come into legal effect.

(9) A foreign applicant shall file the application, maintain correspondence and perform all the further activities at the Patent Office and the Board of Appeals of the Patent Office

(hereinafter — the Board of Appeals) only through the intermediation of a professional patent agent (design agent) in conformity with the provisions of the Patent Law regarding the representation.

### **Section 16. Multiple Application**

(1) One application may contain a request to register several designs (multiple application). All products, where it is intended to apply to or incorporate into the designs included in one application [except for cases when an application contains designs of decorative (ornamental) character] shall pertain to the same class of the International Design Classification (Locarno Classification).

(2) In filing a multiple application, the applicant shall specify the number of designs. An additional fee shall be paid for each additional design included in the application.

### **Section 17. Filing Date**

The day when an application that contains the components referred to in Section 15, Paragraph two, Clauses 1, 2, and 3 of this Law and to which a document that certifies the payment of the State fee (additional fee) has been appended within a period of 1 month is received at the Patent Office shall be considered the day of the filing of the application (filing date).

### **Section 18. Priority of a Design**

(1) A person who in accordance with the prescribed procedures has filed a design application to any Member State of the Paris Union or to any other state or a union of states, with which Latvia has entered into an agreement regarding the recognition of the right of priority, or the successor in title of such person, upon filing an application of the same design in Latvia, shall have the right of priority (convention priority) for a period of 6 months from the filing date of the first application.

(2) The priority period of 6 months specified in Paragraph one of this Section shall be applied also in a case when a design application is filed on the basis of an application of the same object filed in accordance with the provisions for the protection of utility models (Article 4, A and E, (1) of the Paris Convention).

(3) An application, which has been filed in the same country in respect of an object whose previous application has been withdrawn, abandoned or refused, and, moreover, has not been made public, no rights are conferred from such application and the application has not yet been a basis for the priority claim, shall be considered the first application for the determination of priority. In such case the priority claim also later may not be based on the previous application.

(4) An applicant who wishes to take advantage of the priority of the first application shall submit such claim simultaneously with the subsequent application, specifying the date of the first application, the country (regional design registration institution) where it has been filed, as well as the application number, if such is known at the time of filing of the subsequent application. A copy of the first application, the conformity of which with the original has been certified by the institution that has accepted such application, shall be submitted within a period of 3 months after the day of filing of the subsequent application.

(5) An applicant, who has displayed at an international exhibition provided for by Article 11 of the Paris Convention a product, where the design is applied to or incorporated into, is entitled to claim the right of priority (exhibition priority) from the first day when such product

was displayed at an exhibition if the design application has been filed within a period of 6 months from the day referred to.

(6) An applicant who wishes to take advantage of the priority (exhibition priority) specified in Paragraph five of this Section shall submit such claim concurrently with an application, specifying the date of the first display of the product and the exhibition. A document that certifies the right for priority, i.e., proves the identity of the materials displayed at the exhibition and the date of the first display thereof, and which has been issued by a competent institution of the exhibition, shall be submitted within a period of 3 months after the day of the filing of an application.

(7) The exhibition priority shall not extend the time period specified in Paragraph one of this Section.

(8) The design priority (right of priority) shall manifest itself so that in the cases specified in Sections 5, 6, 7, 14, Section 19, Paragraph one and Section 37, Paragraph one, Clause 4 of this Law the date of priority shall be taken into account instead of the filing date.

### **Section 19. Deferment of Publication**

(1) An applicant may request that the publication of a design is deferred for a period of time not exceeding 30 months, counting from the filing date or priority date. Such request may be included in an application or appended thereto before the Patent Office has taken a decision regarding the registration of a design and has invited the applicant to pay the State fee for the registration and publication. The Patent Office shall take into account the request to defer the publication of a design, if the specified State fee has been paid.

(2) An applicant is entitled to withdraw a request regarding the deferment of publication or to ask to reduce the time period for the deferment of publication. If a decision has been taken regarding the registration of a design and within the period of time when the publication is deferred, the applicant pays in full the State fee for the registration and publication of the design, it shall be considered that the request to defer publication has been withdrawn and the Patent Office shall without delay prepare a representation (representations) of the design and information regarding the design for the registration and publication.

(3) In case of a multiple application a request to defer the publication of a design or the withdrawal of such request may apply only to all of the designs included in the application. The same publication deadline shall be determined for all the designs included in a multiple application.

(4) If an applicant wishes that the time period for the publication of individual designs included in a multiple application is different, he or she, in accordance with the procedures specified by this Law, shall submit a request regarding the division of the application and shall attach a relevant request regarding the deferment of publication to each divisional application.

### **Section 20. Verification of the Formal Requirements of an Application**

(1) The Patent Office shall examine an application within a period of 3 months from the day of the receipt thereof. If the application does not conform or conforms only partially to the (formal) requirements of Sections 15, 16, and 18 of this Law, the Patent Office shall notify the applicant in writing thereof, substantiating the non-conformity and determining a deadline of 3 months for the submission of a reply (for the rectification of deficiencies), and shall concurrently suspend the running of the time period for the examination of the application. The running of the time period for the examination of the application shall be resumed with



the day when the reply of the applicant is received or the time period for the provision of such reply has expired.

(2) The Patent Office shall verify whether all the documents and materials referred to in Section 15, Paragraph two, Clauses 1, 2, and 3 of this Law have been submitted and the State fee of the application has been paid, and, in accordance with Section 17 of this Law, shall determine the filing date. If an application does not initially conform to such requirements but the applicant rectifies the deficiencies within the time period specified by the Patent Office, the filing date shall be determined with the day when all the referred to documents and materials were received by the Patent Office. If following the request of the Patent Office the applicant does not rectify such deficiencies, the application shall be considered not filed and the applicant shall be notified thereof in writing.

(3) The Patent Office, in verifying the conformity of an application to the formal requirements, shall, in accordance with the International Design Classification (Locarno Classification), specify a classification index for a product, where a design is intended to be applied to or incorporated into.

(4) If it is impossible to make a qualitative reproduction from the submitted representation of a design, the Patent Office shall invite the applicant to submit another representation that is suitable for reproduction. The new representation that is to be submitted may not contain new features of a design that are not visible in the original representation. If the Patent Office establishes such features, then pursuant to the consent of the applicant the day of submission of the later submitted representation may be considered as the filing date. If the applicant does not agree to the transfer of the filing date, he or she shall submit a representation that is suitable for the reproduction and does not contain new features of the design.

(5) If a multiple application does not conform to the requirements of Section 16, Paragraph one of this Law, the Patent Office shall invite the applicant to divide such application into two or several applications in conformity with the requirements of the Law. If the applicant does not make use of such possibility, the Patent Office shall proceed with the examination of the application only in respect of the designs, which do not exceed the framework specified for a multiple application.

(6) If an application contains a request to specify the priority of a design, the Patent Office shall verify the conformity of the information specified in the application with the requirements of Section 18 of this Law and shall determine the date of priority. If an applicant does not fulfil the requirements specified for the recognition of the right of priority within the specified period of time, the priority shall not be granted.

(7) If an application contains other serious deficiencies, and the applicant does not rectify them after a relevant request, the application shall be rejected and the applicant shall be notified thereof in writing.

## **Section 21. Decision Regarding the Refusal to Register a Design**

(1) The Patent Office shall take a decision regarding the refusal to register a design if in the course of verification of the formal requirements of an application it becomes clear that the submitted design does not conform to the definition of a design (Section 1, Clause 1) or, in accordance with Section 9, Paragraph one of this Law, is not to be protected.

(2) Before the taking of a decision, the Patent Office shall inform the applicant in writing regarding the grounds for the expected refusal of registration providing the applicant with an opportunity to express within a period of 3 months his or her considerations, to withdraw or modify the application (maintain in force in an amended form), observing the provisions of Section 39, Paragraph two of this Law.

## **Section 22. Withdrawal, Restriction and Amendment of an Application**

(1) An applicant has the right to withdraw the whole application or the registration of individual designs included therein at any time during the processing of the application. In such case the State fee already paid shall not be refundable.

(2) Only such amendments, clarifications and corrections may be made in an application as do not alter the essence of a design and do not extend the list of such products, where the design is intended to be applied to or incorporated into. Also the maintenance of an application in force in an amended form in conformity with the provisions of Section 39, Paragraph two shall be regarded as an amendment of the application. The Patent Office is entitled to request amendments, clarifications and corrections at any time during the processing of the application.

(3) An applicant for a design shall without delay notify the Patent Office regarding amendments to the application or errors established therein. Amendments to an application shall be made after the payment of the relevant State fee. Errors committed by the Patent Office shall be corrected without a fee.

(4) The Patent Office shall attach to an application also a notification regarding the commencement of judicial proceedings in cases regarding the recognition of rights to a design, a court judgment that has come into effect in the relevant case or a notification regarding the termination of judicial proceedings, as well as shall take into account any changes in the rights of ownership that are based on a court judgment that has come into effect.

(5) Amendments received by the Patent Office after the notice of registration has been prepared for publication, shall be deemed to be amendments to the registration information, and the provisions of Section 33, Paragraph two of this Law shall apply to such amendments.

(6) If during the procedure of examination and registration of an application, with the exception of the cases referred to in Section 20, Paragraph two, five and six and Section 21, Paragraph two of this Law, the applicant has failed within the specified period of time to reply to the request of the Patent Office or to pay the relevant State fee, and has not asked for an extension of the term, the application shall be deemed to have been withdrawn and the applicant shall be notified thereof in writing.

## **Section 23. Division of a Multiple Application**

(1) A multiple application may be divided into two or several separate applications by including one or several designs in each of them. The divisional application shall retain the date and priority of the initial application.

(2) An applicant upon his or her own initiative is entitled to submit a request for the division of an application before the Patent Office has taken a decision regarding the registration of the design.

(3) An applicant shall specify in the request which designs are to be left in the initial application and shall draw up each of the divisional applications in conformity with the requirements of Section 15 of this Law regarding the contents of an application, as well as shall pay the State fees specified for the filing of a new application. The additional fee that has been paid for designs that are transferred from the initial application to a divisional application, upon the request of the applicant may be applied to the divisional application for a partial covering of the total amount of the State fee specified for such application. If within a period of 1 month from the day when the Patent Office has received a request for the division of an application the applicant fails to submit the necessary documents and materials with respect to the divisional application or to pay the specified State fee, the request for the

division of the application shall be deemed to have been withdrawn and the applicant shall be notified thereof in writing.

(4) The examination of the divisional application shall take place in accordance with the procedures specified in Section 20 and 21 of this Law. When a decision regarding the registration of a design has been taken, the request for the division of the design may not be withdrawn.

#### **Section 24. Decision Regarding the Registration of a Design**

After the examination of an application the Patent Office shall take a decision regarding the registration of a design. Having examined a multiple application, the Patent Office may take a decision regarding the registration of an individual design included in the multiple application. The decision shall be notified to the applicant in writing by inviting the applicant to pay within a period of 3 months a State fee for the registration and publication of the design.

#### **Section 25. Registration, Publication of a Design and Issuance of a Certificate**

(1) If a State fee (additional fee) has been paid, the Patent Office within as short a period of time as possible shall prepare the representation (representations) of a design and information regarding the design for the registration and publish in the official gazette of the Patent Office.

(2) If the request of an applicant to defer the publication of a design has been received and the relevant State fee has been paid, the registration and publication of the design shall be deferred and the Patent Office shall inform the applicant regarding the intended time of registration and publication.

(3) The registration of a design in the State Register of Designs shall take place concurrently with the publication thereof in the official gazette of the Patent Office.

(4) After the registration and publication of a design the Patent Office shall issue to the owner of the design a registration certificate of the design, the sample form of which certificate shall be specified by the Cabinet.

#### **Section 26. Submission of an Appeal**

An applicant or another addressee of a decision of the Patent Office (the owner of a design, the former owner, the successor in title, the licensee) who disagrees in full or in part with the results of the examination of the application or with a decision of the Patent Office taken at another stage of the procedure related to the registration of the design, is entitled within a period of 3 months from the day of the receipt of the decision, after the payment of a relevant State fee, to submit to the Patent Office a substantiated written appeal. The submission of an appeal shall suspend the performance of the decision of the Patent Office.

#### **Section 27. Progress of an Appeal**

(1) The Patent Office shall without delay revoke or amend the relevant decision insofar as it acknowledges that the submitted appeal is substantiated.

(2) If the revocation or amendment of a decision may concern the rights or legal interests of a third person or the decision has not been rectified or amended in accordance with the procedures provided for in Paragraph one of this Section within a period of 2 weeks after the

submission of an appeal, the Patent Office shall transfer the appeal for examination in the Board of Appeal.

(3) If the Patent Office has revoked or amended the decision taken by it and the appellant is satisfied therewith, the appellant shall withdraw the appeal. The State fee paid for the submission of an appeal shall be refunded in accordance with the procedures provided for by the Administrative Procedure Law.

(4) If the Patent Office has amended the decision taken by it and the appellant is not satisfied therewith, the appellant shall within a period of 3 months after the receipt of such decision notify the Patent Office thereof, and the Patent Office shall without delay transfer the appeal for examination in the Board of Appeal.

(5) Before the examination in the Board of Appeal, the appellant is entitled to clarify and supplement the submitted appeal.

## **Section 28. Opposition to the Registration of a Design**

(1) Within a period of 3 months after the publication of a design, upon the payment of a relevant State fee, an opposition to the registration of the design may be submitted to the Patent Office. An opposition shall be submitted in writing, arguments of the submitter of the opposition and references to the provisions of the Law shall be specified therein. After the expiration of the time period referred to, the submitter of an opposition is not entitled to alter (expand) the initial legal basis of the opposition, but may, before the decision of the Board of Appeal is taken, submit additional documents and materials that confirm (clarify) the facts on which the opposition is based.

(2) An opposition to the registration of a design may be submitted on the basis of the provisions of Section 37, Paragraph one, Clause 1, 2, 4, 5, 6, 7 or 8 of this Law. An individual design registered by a multiple registration may be disputed also separately from the remaining designs included in the multiple registration.

(3) An opposition to the registration of a design may be submitted by any interested person, also by professional associations, associations of manufacturers, traders and providers of services, as well as by organisations and institutions whose task is to protect the rights of consumers or to perform the monitoring of competition, observing the provisions of Section 37, Paragraphs three and four of this Law.

(4) The Board of Appeal shall inform the owner of a design regarding the submitted opposition and shall determine a time period of 3 months for the submission of a reply.

(5) If an opposition is not submitted within the time period specified in Paragraph one of this Section, the registration of a design may be appealed only in court.

## **Section 29. Examination of Appeals and Oppositions**

(1) Appeals submitted in accordance with Section 26 of this Law and oppositions submitted in accordance with Section 28 of this Law shall be examined by the Board of Appeal.

(2) An appeal shall be examined within a period of 3 months after the receipt thereof at the Patent Office. If a decision of the Patent Office has been amended in accordance with the procedures provided for by Section 27, Paragraph one of this Law but the appeal has not been withdrawn, it shall be examined not later than within a period of 2 months after the receipt of the notification provided for by Paragraph four of the referred to Section.

(3) Oppositions shall be examined within a period of 3 months after the receipt of a reply of the owner of the disputed design or after the expiration of the time period specified for the submission of a reply.

(4) An appellant or his or her representative shall be invited to the meeting of the Board of Appeal where the appeal against a decision of the Patent Office is examined but, if the decision of the Board of Appeal may concern a third person, also such person or his or her representative shall be invited. A submitter of an opposition and the owner of the disputed design (their representatives) shall be invited to the meeting of the Board of Appeal where oppositions against the registration of a design are examined. The interested parties are entitled to submit the necessary documents and materials, and to provide oral explanations.

(5) The Board of Appeal shall take a decision regarding the satisfaction of the appeal, in full or in part, or regarding the dismissing thereof. Pursuant to such decision the relevant decision of the Patent Office may be revoked, amended or allowed to remain in effect. If an appeal has been submitted against a decision of the Patent Office in respect of refusal to register a design (Section 21, Paragraph one), it may be declared that a design shall be registered in conformity with the application, registered in an amended form (Section 39, Paragraph two) or a decision regarding the refusal to register may remain in effect. If new facts are revealed in a case in connection with the appeal, the Board of Appeal may take a decision to re-examine the application.

(6) The Board of Appeal shall take a decision regarding the satisfaction of an opposition, in full or in part, or regarding the rejection thereof, in addition, pursuant to such decision the disputed registration of a design may be declared invalid from the day of registration, declared valid in an amended form (Section 39, Paragraph two) or declared valid without any amendments.

(7) The Board of Appeals shall take a decision without the presence of other persons. The operative part of the decision shall be announced at the end of the meeting, but a substantiated written decision shall be sent to the persons referred to in Paragraph four of this Section within 1 month. If a decision of the Board of Appeal does not satisfy any of the participants in a case, any such person within a period of 6 months after the receipt of the true copy of the decision may appeal such decision to the court.

(8) Submission of an application to the court shall suspend the operation of the decision of the Board of Appeal.

(9) Irrespective of the fact whether an application has been submitted regarding a decision of the Board of Appeal, an interested person may in accordance with the specified procedures dispute the registered design in court. If such claim has been submitted before an administrative matter regarding a decision of the Board of Appeal is examined, the administrative proceeding shall be suspended until the adjudication of the claim.

### **Section 30. Division of the Registration**

(1) Multiple registration may be divided into two or several separate registrations by dividing the designs included in the initial registration between them. The divisional registration shall retain the filing date and priority of the initial registration.

(2) A request for the division of registration may be submitted only after the expiration of the time period for the submission of oppositions (opposition period) provided for by Section 28, Paragraph one of this Law.

(3) In submitting a request for the division of registration, the owner of a design shall specify which designs shall be retained in the initial registration and which shall be included in the divisional registration (registrations), as well as shall pay the State fee for the registration and publication of the design in respect of each divisional registration.

(4) If within a period of 1 month from the day when the Patent Office receives a request for the division of registration, the specified State fee has not been paid, the request shall be considered withdrawn and the owner of the design shall be notified thereof in writing.

(5) The Patent Office in as short a period of time as possible shall include in the Register the divisional registration and amendments in respect of the initial registration, shall publish the relevant notifications in the Official Gazette of the Patent Office, as well as shall issue a registration certificate for the divisional registration and supplement the certificate of the initial registration in accordance with Section 25, Paragraph four and Section 33, Paragraph two of this Law.

(6) When the information regarding the divisional registration has been prepared for registration and publication, a request for the division of the registration may not be withdrawn.

### **Section 31. Term of Validity of the Registration of a Design and Renewal of Registration**

(1) The registration of a design shall be valid for 5 years counting from the filing date. Upon the expiration of this period of time, registration may be renewed each time for a new five-year period until the maximum time period for the protection of a design — 25 years from the filing date — is reached.

(2) An owner of a design shall submit a submission regarding the renewal of registration within a period of 1 year before the end of the term of validity of the registration, by paying the relevant State fee. The Patent Office shall renew the registration also within a period of 6 months after the expiration of the term of validity of the registration in conformity with Article 5*bis* of the Paris Convention. In such case an additional fee shall be paid.

(3) Renewal of registration need not apply to each design included in a multiple registration. The designs, to which the renewal of registration applies, shall be specified in the submission.

(4) The Patent Office shall enter the information concerning the renewal of the registration of a design into the Register, shall publish a notification regarding the renewal of the registration in the Official Gazette of the Patent Office and send it to the owner of the design in order to attach it to the registration certificate of the design. The renewed registration of a design shall come into force on the next day after the expiration of the previous period of validity.

### **Section 32. Extension and Renewal of Specified Time Periods**

(1) The periods provided for in the provisions for the registration procedure of a design, except such periods as are specified in Section 18, Paragraphs one, two and five, Section 19, Paragraph one, Section 28, Paragraph one, Section 29, Paragraph seven and Section 31 of this Law, may be extended by the Patent Office or the Board of Appeal respectively for a specified period of time but not longer than for 3 months, if such request has been received by the Patent Office before the expiration of the relevant period and the State fee for the extension of such period has been paid.

(2) The time periods provided for by Paragraph one of this Section, if such are expired, may be renewed if a relevant request has been received by the Patent Office not later than 6 months after the expiration of the time period, legitimate reasons for the failure to comply with the specified period of time have been confirmed and the State fee for the renewal of the time period has been paid.

### **Section 33. Information to be Included in the State Register of Designs**

(1) The Patent Office shall maintain the State Register of Designs (hereinafter — the Register). Information regarding a design (the representation or representations thereof), information regarding the designer (except for cases, when a statement regarding the

relinquishment of a designer from the right to be mentioned has been included in the application), the owner of the design and his or her representative, if such has been appointed, the filing date, information regarding the priority, if such has been granted, the date of registration and publication, the indication of the product where the design is intended to be applied to or incorporated into, as well as other information provided for by this Law or other regulatory enactments shall be included in the Register.

(2) The owner of a design shall without delay notify the Patent Office regarding amendments to or errors established in the information pertaining to the registration of a design, the change of the name of the owner, the change of a representative, clarifications in the information regarding the designer, amendments in the addresses of such persons or regarding the wish to maintain the design in force in an amended form by refusing from the exclusive rights in accordance with Section 39, Paragraph two of this Law. If the specified State fee has been paid, the Patent Office shall include the permissible amendments in the Register, publish a notification regarding the amendments made in the Official Gazette of the Patent Office and send it to the owner of the design in order to attach it to the registration certificate of the design. Errors committed by the Patent Office shall be corrected without a fee.

(3) The Patent Office shall include in the Register also the information regarding the commencement of judicial proceedings in cases related to the registered designs if it has received a relevant notification thereof, a court judgement that has come into effect in the relevant case or a notification regarding the termination of judicial proceedings. If the registration of a design has been declared as invalid or partly invalid, also the decision of the Board of Appeal of the Patent Office or a court judgement that is in force shall be attached to the registration documents.

#### **Section 34. Public Access to Information Included in the Application and Register**

(1) Prior to the registration and publication of a design the application documents and materials shall be available to the third persons only with a written consent of the applicant.

(2) The Patent Office may allow to get acquainted with the documents and materials of an application and registration case without the consent of the applicant of a design if the interested person provides information that indicates that the rights arising from the registration of the design may concern the rights or duties of such person. Such information shall also be a proof that the applicant or owner of a design takes measures in order to utilise his or her rights against the referred to person or that such person has rights to the design in accordance with Section 10, Paragraph one, two or three of this Law.

(3) The documents and materials of the case after the registration and publication of a design shall be available to any person who has submitted a relevant request.

(4) In permitting to get acquainted with the application and registration case in accordance with Paragraph one, two or three of this Section, the Patent Office is entitled to deny access to individual documents and material the disclosure of which may cause harm to the legal interest of the applicant or owner of a design, unless the applicant or owner himself or herself has directly permitted to get acquainted with such documents and materials. Internal documents, draft decisions and their preparatory materials of the Patent Office included in a case shall be considered restricted access information.

(5) Entries in the Register, to the extent provided for by Section 33, Paragraph one of this Law, after the publication thereof shall be available to any person.

(6) The Patent Office shall issue extracts from the information included in the Register, as well as copies of documents and materials if the State fee for the receipt of the information has been paid.

## **Section 35. State Fee**

The State fee shall be paid in the cases provided for by this Law. The amount of the State fee shall be determined by the Cabinet.

### **Chapter V**

#### **Invalidation of the Registration of a Design and Exclusion from the Register**

## **Section 36. Cancellation of a Design from the Register upon the Initiative of the Owner of the Design**

(1) The owner of a design may request the cancellation of the design from the Register before the expiration of the term of validity of the registration. If a relevant submission has been received by the Patent Office and the State fee has been paid, a design shall be cancelled from the Register as of the date specified by the owner, but not earlier than from the date of receipt of the submission. The Patent Office shall make a corresponding entry in the Register and publish a notification thereof in the Official Gazette of the Patent Office and send it to the owner of the design.

(2) In case of a multiple registration a submission regarding the cancellation of an individual design from the Register before the expiration of the term of validity of the registration shall be examined as an amendment to the registration information in accordance with the procedures specified in Section 33, Paragraph two of this Law.

(3) If information regarding a valid licensing agreement or other rights based on the registration of a design has been included in the Register, the design may be cancelled from the Register before the expiration of the term of validity of the registration only pursuant to the written consent of the licensee or the acquirer of the referred to rights.

(4) If a person has brought an action in court regarding the recognition of a right to a design and has notified the Patent Office thereof, the cancellation of the design from the Register prior to the expiration of the term of validity of the registration shall be deferred until the adjudication of the case in court.

## **Section 37. Grounds for Invalidation of the Registration of a Design**

(1) The registration of a design may be declared invalid in the following cases:

1) the object applied for registration does not conform to the definition of a design specified in Section 1, Clause 1 of this Law;

2) the design does not conform to the requirements of Section 4, 5, 6, 7 or 9;

3) the person who has filed an application for the registration of a design (applicant of a design) or the owner of a registered design has no rights to such design in conformity with Section 10, Paragraph one, two or three of this Law;

4) the design is in conflict with the design, to which in accordance with the procedures for the registration of designs specified by this Law or with the procedures of the international registration of designs an earlier filing date or an earlier priority has been determined but which has been disclosed to the public only after the date of the filing for the registration or the date of priority of the disputed design;

5) a sign that ensures distinction has been used in the design — a trademark, trade name, commercial designation, also the name, portrait of a person or another similar sign, whose owner or the subject of the corresponding moral rights is entitled to prohibit such use in conformity with the requirements prescribed by regulatory enactments;



- 6) a work protected by copyright has been unlawfully used in the design;
  - 7) any of the signs provided for by Article 6ter of the Paris Convention has been included or imitated in the design, also the coat of arms or flag of a Member State of the Paris Union, its official sign of hallmark, control or warranty, an emblem or flag of an international organisation, its name or the abbreviation of the name, and the use of such sign in the design may be declared as improper, inappropriate or not conforming with the provisions of Article 6ter of the Paris Convention; or
  - 8) a sign to which Article 6ter of the Paris Convention does not apply has been included or imitated in the design, but which sign is of special social significance in Latvia or another state (heraldry, state award, official Service insignia, another sign or different mark with a high symbolic value, also a religious symbol).
- (2) Only a person who has the right to a design in conformity with Section 10, Paragraph one, two or three of this Regulation may refer to the justification provided for by Paragraph one, Clause 3 of this Section.
  - (3) Only the applicant for or owner of the relevant earlier rights may refer to the justification provided for by Paragraph one, Clause 4, 5 or 6 of this Section.
  - (4) A person or institution, which has the right to use the referred to signs or monitor their use, or the rights or legal interests of which person or institution the use of such signs in a design concerns, may refer to the justification provided for by Paragraph one, Clause 7 or 8 of this Section.

### **Section 38. Full or Partial Invalidation of the Registration of a Design**

- (1) The registration of a design shall be declared invalid by a court on the basis of the provisions of Section 37, Paragraph one of this Law.
- (2) A request regarding the invalidation of the registration of a design may be submitted by any person, also by professional associations, associations of manufacturers, traders or providers of services, as well as by organisations and institutions whose task it is to protect the rights of consumers or to perform the monitoring of competition, observing the provisions of Section 37, Paragraphs two, three and four of this Law.
- (3) A request regarding the invalidation of the registration of a design may be submitted during the whole term of validity of the registration of the design. The registration of a design may be declared as not having been valid also in the case if at the time of submission or examination of the request the term of validity of the registration has already expired or the design has been excluded from the Register upon the initiative of its owner.
- (4) A request regarding the invalidation of the registration of a design may apply also to an individual design included in a multiple registration irrespective of the remaining designs.
- (5) If, in accordance with Section 39, Paragraph two of this Law, justification for the invalidation of registration is established only in respect of individual features of a design and if, in addition, it can be acknowledged that without these features the design conforms to the preconditions for the protection of designs and the essence thereof remains unaltered, the design shall be declared as partly invalid and the registration shall be permitted to be maintained valid in an amended form.
- (6) A person shall submit to the Patent Office a true copy of the court judgment, if the action brought by such person in court has been satisfied. The Patent Office shall make a relevant entry in the Register and publish a notification in the Official Gazette of the Patent Office regarding the invalidation or partial invalidation of the registration of a design.

### **Section 39. Consequences of Invalidation of the Registration of a Design**

(1) The registration of a design shall be declared invalid from the day of the registration thereof. This provision shall not apply to a court judgment that has come into effect in the case of violation with respect to the relevant design, as well as to a contract governed by civil law concluded before the invalidation of the registration of the design, insofar as such contract has been fulfilled.

(2) If the registration of a design is declared invalid in accordance with Section 37, Paragraph one, Clause 2, 5, 6, 7 or 8 of this Law, the design may be registered or maintained valid in an amended form if in such form the design conforms to the preconditions of the legal protection of designs and the essence of the design remains unaltered. Registration may be maintained valid in an amended form so that an indication regarding a partial exclusion of rights based on a partial refusal from the exclusive rights by the owner of the design (disclaimer), or a decision of the Patent Office or the Board of Appeal, or a court decision, pursuant to which the design has been declared partly invalid is attached thereto.

### **Section 40. Cancellation of a Design from the Register after Expiration of the Term of Validity of Registration**

(1) The Patent Office shall cancel a design from the Register if the regular five-year term of validity of the registration of the design has expired, but the registration has not been renewed in accordance with the procedures specified in Section 31 of this Law or if the final term of 25 years of validity of the registration of the design has expired.

(2) In the cases specified in Paragraph one of this Section a design shall be cancelled from the Register on the day following the expiration of the term of validity of the registration of the design. The Patent Office shall publish a relevant notification in the Official Gazette of the Patent Office and send it to the owner of the design.

## **Chapter VI Use of a Design**

### **Section 41. Essence of Ownership Rights Related to Designs**

(1) Rights to a design based on the registration or the application thereof, shall be governed by the same legal rights as personal property rights within the meaning of the Civil Law, but may not be an object of property claims.

(2) Designs included in a multiple application or multiple registration may be transferred also by entering into a licensing agreement or may be in some other way included in the circulation governed by civil law independently from each other.

(3) The transfer of a design to another person (Section 42) and the issuance of a licence (Section 43) shall not concern the licences that have been issued to the third persons before. Nevertheless, if a person brings an action in court regarding the recognition of the right to a design, such person may also request that the previously granted licences and the encumbrances of the design are declared invalid, insofar as they do not apply to or impose unjustified obligations on the successor in title.

## **Section 42. Transfer of a Design to Other Persons**

(1) The owner of a design may transfer the ownership rights to the design to another person together with the undertaking or a part thereof that uses such design, or independently from such undertaking.

(2) The Patent Office shall include in the Register and publish in the Official Gazette of the Patent Office the information regarding a change of the registered owner of a design after a relevant submission, a document attesting to the succession of rights and a document attesting to the payment of the State fee has been received, as well as shall send to the owner (owners) a notification regarding the entry made in the Register.

(3) The person, who has been entered in the Register as the owner of a design, shall be considered the owner of the design. Before the change of an owner is entered in the Register, the successor in title may not exercise the rights arising from the registration of the design.

(4) If the transfer of ownership rights to a design to another person does not apply to all designs included in a multiple registration, the Patent Office shall divide such registration, by applying Section 30 of this Law with the necessary changes and establishing a new registration in respect of the design or designs, the owner of which has changed.

(5) If an application is transferred to another person before the Patent Office has taken a decision regarding the registration of a design, then, after the receipt of a relevant submission, of a document attesting to the succession of rights and of a document attesting to the payment of the specified State fee, the Patent Office shall take into account the change of the applicant as an amendment to the application within the meaning of Section 22 of this Law and shall continue the examination of the application in respect to the new applicant.

(6) The procedures provided for by Paragraph four of this Section with the necessary changes shall apply also to a multiple application, to the division of which, if the transfer thereof (change of an applicant) does not apply to all the designs included therein, Section 23 of this Law shall be applied accordingly.

## **Section 43. Licensing Agreement of a Design**

(1) The owner of a design shall have the right, pursuant to a licensing agreement, to grant to another person in full or in part the right to use the design. According to the nature of the licence (an exclusive or nonexclusive licence) the person granting the right to use a design (the licensor) and the person receiving the right (the licensee) shall undertake certain rights and obligations.

(2) A licence shall be recognised as an exclusive licence if the licensee acquires exclusive rights to use a design in accordance with the provisions provided for in the licensing agreement but the licensor retains the right to use the design insofar as this right has not been transferred to the licensee.

(3) A licence shall be recognised as a nonexclusive licence if the licensor, when granting to another person the right to use a design, retains the right to use such design, as well as the right to issue a licence for the use of the same design to third persons. If a licensing agreement contains no specification whether such licence is an exclusive licence or a nonexclusive licence, the licence shall be considered a nonexclusive licence.

(4) The owner of a design is entitled to exercise the exclusive rights against a licensee who violates the provisions of the licensing agreement with regard to:

- 1) the term of validity of the licence;
- 2) the form in which it is permitted to use the design;
- 3) the products, in respect of which the licence has been granted;
- 4) the territory, in which it is permitted to use the design; or

- 5) the quality of the products of the licensee.
- (5) The licence issued may not be transferred to third persons and the licensee is not entitled to issue a sub-licence, unless provided otherwise by the licensing agreement.
- (6) The Patent Office shall include in the Register and publish in the Official Gazette of the Patent Office the information regarding the licensing agreement of a registered design after a relevant submission, a document attesting to the rights of the contracting party and the licensed rights and a document attesting to the payment of the specified State fee has been received, as well as shall send to the parties a notification regarding the entry made in the Register.
- (7) Information regarding the expiration of the term of validity of a licensing agreement and regarding the amendments to the provisions of such agreement shall be included in the Register after the receipt of a relevant notification. Documents that attest to such information, as well as a document attesting to the payment of the State fee shall be attached to the notification.
- (8) The fact that the information regarding a licensing agreement is not included in the Register or published, or that a licensee has not provided an indication regarding the use of a design in conformity with the licence on the products, their packaging or in an advertisement, or that such indication has been provided inaccurately, does not prevent the licensee to enter the case regarding a violation with respect to the design and to receive a compensation for damages caused to the licensee in relation to the illegal use of the licensed design.

#### **Section 44. Open Licence**

The owner of a design is entitled to notify the Patent Office with a view of official publication of the readiness to grant the right to use the design to any interested person (open licence). Such notification may be submitted also by the applicant of a design concurrently with the application or during the examination thereof. From the day of submission of the notification the State fees specified for further activities shall be reduced by 50%. If an open licence is withdrawn, the State fees shall be paid in the full amount. A dispute regarding the provisions for the use of an open licence shall be settled by a court.

### **Chapter VII Protection of the Rights Related to Designs**

#### **Section 45. Protection of the Moral Rights of a Designer**

- (1) If anyone without justification infringes the authorship of a designer or otherwise violates the moral rights of the designer (Section 11), the designer shall have the right to apply to a court on the basis of the provisions of the Civil Law and other regulatory enactments.
- (2) The persons at fault shall be subject to criminal liability in the cases provided for by Law.

#### **Section 46. Recognition of the Right to a Design**

- (1) A person, who in accordance with Section 10, Paragraph one, two or three of this Law has the right to a design and the relevant evidence, may bring an action to a court to recognise his or her right to the application for the registration of the design or to the design, if the design has been applied for the registration by a person who did not have such right or if the registration has already been performed for the benefit of such person.

(2) If a person in accordance with Section 10, Paragraph two of this Law has joint rights to a design together with another person or persons, and such rights have not been observed, the referred to person may in accordance with the procedures specified in Paragraph one of this Section request to be recognised as the owner of the design together with another person or persons.

(3) The rights provided for by Paragraphs one and two of this Section shall be used not later than within a period of 3 years from the day when a design was published in the Official Gazette in relation to its registration. The time period restriction shall not be applied if the person who has applied for the registration of a design or who has been entered in the Register as the owner, acted in bad faith in the time period when the registration of the design was applied for or the ownership rights to the design were transferred to such person.

(4) In case of a multiple application or multiple registration a request regarding the recognition of rights may apply also to an individual design or several designs independently from the remaining designs.

(5) A person who has brought an action to a court regarding the recognition of rights to a design, shall without delay inform the Patent Office thereof. If an action has been brought prior to the publication of the registration of a design in the Official Gazette or other disclosure of the design to the public, the Patent Office, court and participants in the matter shall observe the necessary confidentiality in respect of the essence of the design.

(6) A person shall submit to the Patent Office a true copy of the court judgment, if the action brought by such person in court has been satisfied, and the Patent Office shall take into account in the examination of the application the changes in the ownership rights and other facts arising from the judgment that has come into effect or, if the registration of a design has already been performed, shall enter such changes in the Register and publish a relevant notification in the Official Gazette of the Patent Office.

(7) Provisions of this Section shall not prevent a person whose rights to a design have not been observed from the use of also other legal means provided for by regulatory enactments for the protection of their rights.

#### **Section 47. Warning Mark**

(1) The owner and licensee of a registered design shall have the right to mark the products, where such design has been applied to or incorporated into, with a warning mark (sign) — an encircled letter D — or a text that warns regarding the registration of a design. The warning mark may include the name or a sign of the owner of a design and the registration or filing date may be indicated.

(2) The warning mark may not be placed on products to which the protection of a design does not apply or no longer applies. If such condition is not observed, the provisions of the regulatory enactments regarding unfair competition shall be applied.

#### **Section 48. Illegal Use of a Design**

(1) Violation of the exclusive rights of the owner of a design, that is, use of a design without the owner's permission (Section 12, Paragraph two), if such use takes place within the term of validity of the registration of the design shall be deemed illegal use of a design.

(2) In determining, whether an activity may be classified as violation of the exclusive rights of the owner of a design, activities with the products, the outer appearance of which applies to the scope of legal protection of the registered design (Section 8), the provisions of this Law regarding the restrictions on exclusive rights (Section 13), as well as the right of prior use provided for in this Law (Section 14) shall be taken into account.

(3) An action in court regarding the illegal use of a design may be brought also if the exclusive rights of the owner of a design may be violated or will be violated soon (possible violation), because the defendant him or herself or with the assistance of other persons (intermediary) has performed measures, which are considered to be preparations for the illegal use of a design.

(4) An action in court regarding the illegal use of a design may be brought by the owner of the design or the successor in title. A licensee is entitled to bring an independent action regarding the illegal use of a design pursuant to the consent of the owner of the design. The consent of the owner of a design shall not be necessary if the right to bring an action has been conferred in the licensing agreement or the owner of the design does not bring an action although the licensee has asked the owner in writing to do this. Any of the licensees of the respective design are entitled to enter the matter and seek compensation for the losses that have caused them in relation to the illegal use of the licensed design.

(5) A person against whom an action for the illegal use of a design has been brought may, in accordance with the provisions of Section 38 of this Law, bring a counter-claim to invalidate the registration of the design. In such cases a violation with respect to a design may be determined insofar as the registration of the design is not declared invalid.

(6) An action for the illegal use of a design may also be substantiated by the provisions of the Copyright Law, regulatory enactments regarding unfair competition or other regulatory enactments.

*[8 February 2007]*

#### **Section 48.<sup>1</sup> Procedures for the Specification of the Amount of Compensation for Losses and Moral Injury**

(1) If due to the fault of a person the illegal use of a design has occurred, the holders of the right referred to in Section 48, Paragraph four of this Law are entitled to claim compensation for the losses and moral injury caused.

(2) The amount of compensation for losses and moral injury shall be determined in accordance with the Civil Law. In determining the amount of compensation, the fraudulently acquired profits of the person who has illegally used the design may be taken into account.

(3) If the amount of actual compensation for losses may not be specified in accordance with Paragraph two of this Section, the amount of compensation shall be in conformity with such an amount as may have been received by the owner of the design in respect of a transfer of the right to use the design to a licensee.

*[8 February 2007]*

#### **Section 49. Jurisdiction of Disputes**

(1) The Riga Regional Court as the Court of First Instance shall examine the following disputes related to the legal protection of designs:

- 1) regarding the recognition of the right to a design;
- 2) regarding invalidation of the registration of a design;
- 3) regarding the illegal use of a design (violation with respect to a design); and
- 4) regarding the granting of a licence, the provisions of a licensing agreement or the performance thereof.

(2) Jurisdiction of other disputes shall be determined by the provisions of the Civil Law.

## **Section 50. Time Period for Bringing an Action**

In disputes regarding designs the time period for the bringing an action to a court shall be 3 years from the time when a person found out or had to find out the fact that his or her rights had been violated.

## **Chapter VIII International Registration of a Design**

### **Section 51. Activities Related to the Application for International Registration and Registration**

(1) Persons who in accordance with the provisions of international registration are entitled to apply designs for international registration, shall, without the intermediation of the Patent Office, file the applications for international registration directly to the International Bureau. An application for international registration, observing the preconditions of protection of designs (Section 1, Clause 1, Sections 4, 5, 6, 7, and 9) may apply also to Latvia.

(2) The Patent Office shall examine the international registration of a design that applies to Latvia in conformity with the provisions of international registration and assess the essence of the internationally registered design within the scope specified in Section 21, Paragraph one of this Law.

(3) The Patent Office, in accordance with the procedures and within the time periods provided for by the provisions of international registration, shall notify the International Bureau regarding a decision of the Patent Office to refuse the protection of a design in full or in part (Section 52, Paragraph five), or regarding a decision of the Board of Appeal that has come into legal effect, or a court judgment pursuant to which the international registration has been fully or partly invalidated in Latvia.

### **Section 52. Validity of International Registration in Latvia**

(1) The international registration of a design that in accordance with the specified procedures has come into effect in Latvia shall have the same legal effect as the registration of the design, which has been included in the Register in accordance with the procedures provided for by this Law (registered in accordance with the national registration procedure).

(2) The international registration of a design shall be deemed as not having come into effect at all or insofar as the protection of the respective design has been refused in Latvia in accordance with the specified procedures.

(3) The priority of an internationally registered design in Latvia shall be determined from the day when the design was registered internationally in respect to Latvia, but, if the priority has been recognised in respect of the international registration from an earlier filing date of a design — from such earlier filing date.

(4) Oppositions provided for by Section 28 of this Law against the coming into force of an international registration of a design in Latvia shall be submitted within a period of 3 months from the day when the design, the international registration of which applies to Latvia, was published in the Official Gazette of the international registration of designs.

(5) If an international registration is to be refused in accordance with Section 21, Paragraph one of this Law or an opposition against such registration has been submitted, the Patent Office shall take a decision regarding a refusal of the protection of the international registration in full or in part (initial refusal). Within a period of 3 months from the receipt of

such a refusal, the owner of the international registration is entitled to submit an appeal (reply to the opposition) as provided for in Section 26 of this Law.

(6) The examination of appeals and oppositions in the Board of Appeal shall take place in accordance with Section 29 of this Law, unless provided otherwise by the provisions of the international registration of designs.

(7) The maximum term of validity specified in Section 31, Paragraph one of this Law shall be applied to the validity of the international registration of a design in Latvia if the registration is accordingly renewed in accordance with the procedures provided for by the provisions of the international registration.

### **Transitional Provisions**

1. With the coming into force of this Law, Cabinet Regulation No. 252, Regulations Regarding Designs, issued in accordance with Article 81 of the Constitution (*Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs*, 2004, No. 13), is repealed.

2. In the determination of novelty and individual character of a design that has been applied to the Patent Office from 15 April until 30 April 2004, it shall be considered that a design has not been disclosed to the public if such design has not been known from open publications in Latvia or foreign states or from the facts of open use in Latvia.

3. Chapter VIII of this Law shall be applied from the day when the Geneva Act of the Hague Agreement of 6 November 1925 Concerning the International Registration of Industrial Designs (Geneva, 2 July 1999) comes into effect in Latvia.

4. Section 16, Paragraph one of this Law, which permits that only the designs which pertain to the same class of the International Design Classification (Locarno Classification) may be included in a multiple application, shall be applied from the day the Locarno Agreement of 8 October 1968 establishing an international classification for designs comes into effect in Latvia.

5. In respect of designs which have been applied to the Patent Office prior to the coming into force of this Law the procedures for the issuance of patents of designs or registration of designs, patentability provisions or preconditions of legal protection and provisions for disputing thereof that were in force on the day when an application for a design was submitted shall be applied.

6. Designs, in respect of which in accordance with the regulatory enactments in force a patent has been issued or which are registered in the Patent Office, and which are valid on the day of coming into force of this Law, shall be used and protected in accordance with the provisions of this Law. The scope of legal protection of such designs and the rights arising from a patent, also the exclusive rights, shall be equivalent to the scope of legal protection of a design and the rights specified by this Law, taking into account the representations and specimens, which, in accordance with the legal enactments in force at the time of filing of the relevant application, are considered a part of the application.

7. The term of validity of the patents of designs which are valid on the day of coming into force of this Law or the term of validity of which has expired not earlier than 6 months prior to the coming into force of this Law may be extended until the period of 25 years specified by



this Law is reached, by applying, with the necessary changes, the procedures specified in Section 31 of this Law.

### **Informative Reference to European Union Directive**

Legal norms have been included in this Law arising from:

1) Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs; and

2) Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.

[8 February 2007]

This Law shall come into force on the day following its proclamation.

This Law was adopted by the *Saeima* on 28 October 2004.

President

V. Vīķe-Freiberga

Rīga, 17 November 2004