

# THE LAW ON LEGAL PROTECTION OF DESIGN<sup>1</sup>

## General Provisions

### Article 1

This Law shall govern the manner of realizing and the protection of the right with respect to the appearance of the product.

The appearance of the product shall mean the complete visual impression that the product makes on an informed consumer or user.

An informed consumer or user, for the purpose of this Law, shall be a natural person who is regularly in contact with the product concerned.

## I OBJECT AND TERMS OF PROTECTION

### Design

#### Article 2

A design shall mean three-dimensional or two-dimensional appearance of the entire product or a part thereof, defined by its features, in particular the lines, contours, colors, shape, texture and materials of the product itself or its ornamentation, as well as their combination.

A product shall mean any industrial or handicraft item, including, *inter alia*, parts intended to be assembled into a complex product, packaging, graphic symbols and typographic typefaces, but excluding computer programs.

A complex product shall mean a product which is composed of multiple components which can be replaced, and which permit disassembly and reassembly of the product.

### Requirements for Design Protection

#### Article 3

A design shall be protected by the exclusive right (design right) if it is new and has an individual character.

### Novelty

#### Article 4

A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration, or if there is no application previously filed requesting the registration of an identical design.

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<sup>1</sup> Official Gazette of Serbia and Montenegro, No. 61, 24 December 2004. Entered into force 1 January 2005.

Where the priority right has been claimed, the design shall be considered new if it has not been made available to the public prior to the date of registered priority right.

Designs shall be deemed to be identical if their features differ only in immaterial details.

Difference in immaterial details is present if an informed user cannot distinguish between the designs at first sight.

#### Individual Character Article 5

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 made available to the public before the date of filing of the application for registration or the date of the registered priority right of the contested design.

In assessing individual character of the design, the degree of freedom and objective limitations of the designer in developing the design of the particular product, resulting from technological and functional characteristics thereof, shall be taken into consideration.

#### Design of Component Part of Complex Product Article 6

A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and to have individual character, only if:

- 1) the component part incorporated in the complex product remains visible during regular use of such complex product; and
- 2) visible features of the component part themselves meet the requirements concerning novelty and individual character.

Regular use shall mean the use by the end user, excluding maintenance, servicing or repair work.

#### Disclosure Article 7

For the purposes of Articles 4 and 5 of this Law, a design shall be deemed to have been made available to the public, if it has been published, exhibited, used in trade in goods and services, or otherwise disclosed, prior to the date of filing the application for design registration, or if priority right was claimed, the date of priority, except where these events could not reasonably have become known, in the usual course of business, to the groups specialized in the sector concerned.

The design shall not be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality related to the design.

The design shall not be deemed to have been made available to the public, for the purposes of Articles 4 and 5 of this Law, if a design has been disclosed by the designer, his legal successor, or a third person as a result of an information provided or action taken by the designer, or his

legal successor, provided that the time period from the time of the disclosing of the design to the date of filing of the application or, if priority right was claimed, to the date of priority, is shorter than 12 months.

Paragraph 3 of this Article shall also be applicable where the design has been made available to the public as a consequence of an abuse in relation to the designer or his legal successor.

#### Protection Excluded Due to Technical Function Article 8

A design right shall not subsist with respect to features of appearance of a product that are solely dictated by its technical function.

A design right shall not subsist with respect to features of appearance of a product that must necessarily be reproduced in its exact form and dimensions in order to permit the product to be mechanically connected to or placed in, around or against another product, so that either product may perform its function.

Notwithstanding paragraph 2, a design right may, under the conditions set out in Articles 4 and 5 of this Law, subsist with respect to a design enabling multiple assembly or connection of mutually interchangeable products within a modular system.

#### Non-registrability of Design Article 9

The following may not be registered:

- 1) design whose publicizing or use is contrary to public order or morality;
- 2) design infringing copyright or industrial property right of another person;
- 3) design containing state or any other public coat of arms, flag or emblem, name or abbreviated name of a country or an international organization, religious and national symbols, as well as imitations thereof, except under the consent by the competent authority;
- 4) design depicting an image of a person, except with express consent of that person.

The image of a deceased person may be registered only following the agreement by his parents, spouse and children.

The image of a historical or other deceased well-known person may be registered following the permission issued by the competent authority and the consent by his relatives up to the third degree of kinship.

#### Right to Design Protection Article 10

The right to the design protection shall be vested in the designer, or his legal successor, or the employer in cases defined by this Law.

Foreign natural and legal persons shall have rights with respect to design protection equal to of national natural and legal persons, if it results from international agreements or from reciprocity principle.

#### Duration of Protection Article 11

The design right shall be acquired by entering into the Design Register and shall last for 25 years from the filing date of the application, provided the prescribed fees for maintaining the right are paid.

The right subsists from the date of the design application to the authority of the state union competent for intellectual property matters (hereinafter referred to as: the competent authority).

## II GENERAL PROVISIONS ON PROTECTION PROCEDURE

#### Common provisions Article 12

Legal protection of the design shall be realized in the administrative proceedings administered by the competent authority.

The decisions of the competent authority are final in the administrative proceedings, but against such decisions a complaint may be filed to initiate the administrative dispute procedure.

#### Registers Article 13

The competent authority shall maintain the Register of National Applications for Design Registration and the Register of International Applications for Design Registration (hereinafter referred to as: applications registers), and the Design Register.

The Register of International Applications for Design Registration shall be the collection of applications filed for the recognition of design protection, based on the Hague Agreement Concerning the International Registration of Industrial Designs and published by the International Bureau of the World Intellectual Property Organization.

The registers referred to in paragraph 1 of this Article shall be deemed as public books and interested parties may view them in the presence of an official.

The documents related to registered designs, except for parts that are confidential, may be viewed by an interested party only in the presence of an official.

At the written request of an interested party and following the payment of the prescribed fee, the competent authority shall issue copies of the documents and relevant certificates on the facts contained in the official records kept by the authority.

## Availability of Documents

### Article 14

The competent authority shall make its documents and information on designs available to interested parties.

## International Design Registration

### Article 15

The right holder to the design, or the applicant for design right registration, may file the application for international design registration, in accordance with the applicable international agreements.

The application for international registration referred to in paragraph 1 of this Article, with the payment for the prescribed fee, may be filed through the competent authority.

## Representation

### Article 16

In any proceedings before the competent authority, a foreign natural or legal person must be represented by a representative whose full time profession or activity is representation, and who is a local national or locally registered legal person.

## Register of Representatives

### Article 17

Natural or legal persons meeting the requirements specified by the law governing patents shall be entered into the Register of Representatives, maintained by the competent authority.

## III PROCEDURE FOLLOWING THE APPLICATION FOR DESIGN RIGHT REGISTRATION

### Application for Design Right Registration

#### Article 18

The proceedings for registration of the design right shall be initiated by filing the application for the design right registration (hereinafter: the application).

Essential elements of the application shall be the following:

- 1) request for the registration of a design;
- 2) description of a design;
- 3) two-dimensional depiction of the design (hereinafter: the depiction).

## Application for Design Registration Article 19

The application for the registration of a design shall contain:

- 1) information on the applicant;
- 2) information on the designer or the statement by the designer that he/she has waived the right to be cited in the application;
- 3) indication whether the application is made for one or multiple designs;
- 4) actual name and abbreviated name of the design;
- 5) justification for filing of the application, if the designer is not the applicant;
- 6) the signature of the applicant, and
- 7) optionally, request for that the publication of the registered design to be deferred for twelve months after the date of the issuing the decision on design registration (deferred publication).

One application may contain the request for registration for one or multiple designs (up to 100) applicable to products classified in the same class of the international classification set forth by the Locarno Agreement on Establishing an International Classification for Industrial Designs.

## Design Description Article 20

The design description should be a precise and concise description of the entire appearance of the object of protection, based on the submitted depiction, as seen at all times or at time of its regular use, and should meet other prescribed requirements.

## The representation Article 21

The depiction should provide clearly visible details of the design and should meet the prescribed requirements with respect to quality and other technical conditions.

When filing the application for two-dimensional design, the two-dimensional sample (specimen) of the design the application refers to may be submitted, provided the depiction referred to in paragraph 1 of this Article is submitted to the competent authority not later than six months from the date of the filing of the application.

## Procedural Fees and Costs Article 22

In the proceedings before the competent authority, the prescribed fees and payment of special procedural costs and costs for providing information services shall be charged.

## Date of Filing the Application Article 23

The application shall be filed in the relevant register of applications only if it contains essential elements referred to in the Article 18 of this Law.

On the application filed directly to the competent authority (national application) containing the elements referred to in paragraph 1 of this Article, competent authority shall make note of the number of the application and the date and an time of its receipt, and the applicant shall be issued the certificate.

Where the application does not contain elements referred to in paragraph 1 of this Article, the competent authority shall request from the applicant to correct deficiencies within 30 days of the date of the receipt of the notification, warning him that proceedings may be terminated if he fails to act.

Where, within the said time period, the applicant corrects deficiencies, filing date for such an application, established by an individual decision, shall be the date when the motion correcting the deficiencies was received by the competent authority, and the application shall be entered into the relevant register.

Where the applicant fails to correct the deficiencies within the said time period, a decision to terminate proceedings related to such application shall taken.

## Right of Priority Article 24

The applicant shall benefit from the right of priority starting from the date of the filing of the application with respect to any other persons submitting the application for the same design later on.

## International Right of Priority Article 25

A legal or natural person having filed orderly design right application effective in any member state of the Paris Union or the World Trade Organization shall enjoy the right of priority from the date of filing of such application in Serbia and Montenegro if the application for the same design right has been filed in Serbia and Montenegro within six months of the date of filing the application effective in the concerned country, and if the application for design right contains information on the date of filing, the filing number of application and the state for which such application has been filed.

Orderly application referred to in paragraph 1 of this Article shall be understood to mean any application that meets the standard requirements in accordance with the national legislation of any member state of the Paris union or the World trade Organization, or in accordance with an international agreement between these states, regardless of the subsequent legal status of such application.

The legal or natural person referred to in paragraph 1 of this Article shall submit to the competent authority the copy of such application certified by the competent authority of the

member state of the Paris Union, the World Trade Organization, or the international organization where the application was filed, not later than three months as of the date of filing the application in Serbia and Montenegro.

#### Exhibition Priority Right Article 26

The applicant who has exhibited the design at the national fair or international exhibition or in any other member state of the Paris Union or the World Trade Organization within three months preceding the date of the filing of the application, may request in the application the registration of the design right from the date of the first exhibiting the design.

The applicant referred to in paragraph 1 of this Article shall attach to the application the certificate by the competent authority of a member state of the Paris Union or the World Trade Organization that the fair or exhibition was international in its character, indicating data on the type of fair or exhibition, venue, date of opening and closing of the fair or exhibition and the date of the first exhibiting the design.

The certificate that an exhibition or a fair held in Serbia and Montenegro had a recognized international character shall be issued by the Chamber of Commerce of Serbia or the Chamber of Commerce of Montenegro.

The registration of the priority right referred to in paragraph 1 of this Article shall not induce extension of the time limits referred to in the Article 25 of this Law.

#### Modification of Depiction Article 27

The depiction of the design may not be subsequently modified, in such a way that it significantly differs in its extent and contents from the one defined by the description submitted at the time of the filing of the application.

#### Order of Application Examination Article 28

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

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

- 1) in case of the procedure initiated before a court or an inspection authority, at the request by the court or the competent inspectorate;
- 2) if the application for international registration of the design has been filed.

#### Examination of the Application Orderliness

## Article 29

The application shall be considered orderly if it contains all the elements referred to in Articles 19, 20 and 21 of this Law, the proof of payment of the application fee, and other elements laid down by this Law or the implementing regulations thereof.

Where the application has been found not to be orderly, the competent authority shall notify the applicant in writing (by way of the examination report), stating the grounds, and request the applicant to correct it within the period specified by the competent authority.

Upon the justified request of the applicant, and the payment of the prescribed fee, the competent authority may extend the time limit referred to in paragraph 2 of this Article for the time period considered appropriate, not exceeding three months.

Where the applicant fails to correct the application within the said time limit, or to pay the prescribed fees, the competent authority shall decide to reject the application.

In the case referred to in paragraph 4 of this Article, the applicant may, with the payment of the prescribed fee, file a motion and request the return into the status preceding the rejection, but not later than six months after the date of the receipt of the decision to reject the application.

## Examination of Registration Requirements Article 30

Where the application was found orderly within the meaning of the Article 29, paragraph 1 of this Law, the competent authority shall examine whether the requirements for the design right registration have been met.

## Decision on Refusal of Registration Article 31

Where the competent authority has found that the application failed to meet the requirements for design registration, it shall notify the applicant in writing (by way of the examination result) of the reasons for non-registration of the design right and request from the applicant to comment the reasons within 30 days of the day of the receipt of the examination results.

Following the justified request of the applicant, along with the payment of the prescribed fee, the competent authority may extend the time period referred to in paragraph 1 of this Article for the time period considered to be appropriate, not exceeding three months.

Where the applicant fails to respond, or where he responds but the competent authority nevertheless considers that the design right may not be registered, the competent authority shall issue a decision on refusal of design registration.

## Separation of Application

## Article 32

The applicant filing an application containing the request for registration of multiple designs (hereinafter referred to as: multiple application) pursuant to Article 19, paragraph 2 of this Law, may, following the payment of the prescribed fee, file the request for separation of the multiple application to several individual or multiple separated applications.

Each of the separated applications referred to in paragraph 1 of this Article shall be issued a new application number and registered in the relevant register, but shall retain the date of the filing of the original multiple application and the right of priority thereof.

A separate decision shall be issued with respect to the separation of the application, which shall indicate the number(s) of new applications, designs from the original multiple application, as well as designs remaining in the original application and the designs to remain in the separate application(s).

## Partial Refusal of Multiple Application Article 33

Where the competent authority has found that the multiple application, along with the designs that are registrable, contains one or more designs which may not be registered, it shall notify the applicant in writing (by way of the examination result) and request him to comment reasons cited in the examination result, but not later than 30 days from the date of the receipt of the examination results.

Following the justified request by the applicant, the competent authority shall extend the time period referred to in paragraph 1 of this Article for the time period considered to be appropriate, not exceeding three months.

Where the applicant fails to respond, or where he responds but the competent authority nevertheless finds that some of the designs contained in the multiple application may not be registered, the competent authority shall issue the decision to partially refuse the registration of the design right, and request the applicant to pay the prescribed fees in order to acquire the right to the remaining designs referred to in the multiple application that fulfill the requirements for registration, as well as the costs of their publication.

## Application for Design Registration to be Accepted as Application for Patent Registration or Petty Patent Registration Article 34

Any time prior to the termination of the proceedings, the application for design registration may be altered to become the application for patent or petty patent registration.

## Conclusion on Fee Payment for Design Right Registration Article 35

Where the application was found to meet the registration requirements, the competent authority shall issue a decision requesting the applicant to pay the fee for the first five years of registration, and the costs of design publication, and to submit the proof of payments made.

Where the applicant fails to submit proof of the payments made, referred to in paragraph 1 of this Article in the time period specified, the competent authority shall issue a decision on refusing the application.

In the case referred to in paragraph 2 of this Article, the applicant may file the motion and request the return into the status preceding the decision on refusing the application, but not later than six months as of the date of the receipt of the decision on refusal of the application.

#### Decision on Registration and Entering the Design Right in the Design Register Article 36

Where the applicant has submitted proof of payments made referred to in the Article 33, paragraph 3 and Article 35, paragraph 1 of this Law, the competent authority shall issue the decision on the registration of the design right, and the registered design right, along with the prescribed bibliographical data, shall be entered into the Design Register.

#### Issuing the Design Certificate and Publication of the Registration Information Article 37

The design right holder shall be issued the certificate on design, and the prescribed information on the registered design right shall be published in the official publication of the competent authority.

### IV CONTENT, SCOPE AND LIMITATIONS OF THE DESIGN RIGHT

#### Content of the Design Right Article 38

The holder of the design right shall have the exclusive right to utilize the protected design for commercial purposes and to deny such right to any third party.

Utilization for commercial purposes referred to in paragraph 1 of this Article shall be understood to mean:

- 1) industrial or handicraft fabrication of the product intended to be marketed, based on the application of the protected design;
- 2) utilization of such product in any commercial activity;
- 3) warehousing of such product with for the purpose of placing it in circulation;
- 4) offering such product for the purpose of placing it in circulation;
- 5) putting such product in circulation;
- 6) importation of such product; and
- 7) exportation such product.

#### Design Author Rights Article 39

Author of the design shall have moral and economic rights.

The moral right shall be understood to mean the right of the design author to have his name indicated in the registration application, documents and certificate of the design.

The economic right shall be understood to mean the right of the design author to enjoy economic benefits from utilization of the protected design.

Where the author of the design is not the holder of the design right, the form of the economic benefit deriving from the utilization of the design, enjoyed by the author of the protected design shall be regulated by the contract between the holder of the design right and the design author.

#### Scope of the Design Right Article 40

Scope of the design right that is obtained based on the recognized design shall be determined by the content of the design description that is based on the submitted depiction.

The applicant may, on his own initiative or on the written request of the competent authority, or within the time limit set by such authority, state that he does not claim any exclusive rights on any element of the design indicated in the description.

When determining the scope of the design right, in any dispute that might arise, the court shall take into account freedom of the author in creating the design, within the meaning of the Article 5 paragraph 2 of this Law.

#### Right of Prior Use Article 41

The design right shall not have an effect on a person acting in good faith who, prior to the date the application was recognized the priority right in the domestic territory, has already commenced to use the protected design in the production, or has made all necessary preparations to commence such use.

The person referred to in paragraph 1 of this Article shall be entitled to use the design for the purpose of production only, in his own company or workshop, or in a third party's company or workshop for his own needs.

The person referred to in paragraph 1 of this Article may not transfer to a third person his right to use the design, unless transferring such right together with the company or workshop, or a part of the company in which use of such design has been prepared, or has commenced.

#### Limitation of Right Article 42

The holder of the design right may not prohibit third parties referred to Article 38 to take:

- 1) any acts for non-commercial and experimental purposes;
- 2) any acts of reproducing for the purpose of coaching or citing, provided such acts are in compliance with the fair competition practices and not unreasonably interfering with normal use of the design, and provided the source of the design is indicated.

#### Limitation of Rights to Ensure Normal International Traffic

## Article 43

The exclusive rights of the holder of design right shall not include rights with respect to:

- 1) the equipment on the ships and aircrafts registered in a third country when temporarily staying in the domestic territory;
- 2) importation of spare parts or additional equipment for the repair of such ships or aircrafts;
- 3) repairs made on such ships or aircrafts.

## Exhaustion of Rights

### Article 44

The holder of the design right who has placed in circulation in Serbia and Montenegro a product containing the protected design or the product modeled after the protected design, or who has authorized any person in Serbia and Montenegro to place in circulation such product, shall not have the right to prohibit third persons any further disposal of such product if it was acquired through the legal marketing channels.

Paragraph 1 of this Article shall not be applicable where the design right holder has a legitimate interest to contest any further circulation of the product containing protected design or the product modeled after the protected design, particularly if deterioration or any alteration of product characteristics took place in the meantime.

## Relationship with other Forms of Protection

### Article 45

Provisions of this law shall not affect any existing rights with respect to trademarks, patents, or petty patents. The design protected pursuant to the provisions of this Law shall also enjoy protection based on the legislation governing the copyright as of the date of its creation, or as of the date it was expressed in a certain form.

## V PROTECTION OF THE DESIGN CREATED IN THE CONTEXT OF EMPLOYMENT

### Article 46

The provisions of the law governing the patents apply *mutatis mutandis* to the protection of the design created in context of employment.

## VI CIRCULATION OF RIGHT

### Contracts on Circulation of Right

#### Article 47

The design right or any right arising from the application may be the subject matter of a contract on transfer of rights, licenses, lien, franchise, etc.

The contract referred to in paragraph 1 of this Article shall be made in writing and entered in the appropriate register referred to in Article 13 of this Law, upon request of any of the contracting parties.

The contract referred to in paragraph 1 of this Article that is not entered in the register shall not have legal effect with respect to any third persons.

#### Transfer of Right Article 48

The holder of the design right or the applicant may transfer the design right or the right arising from the application.

The contract on transfer of the right referred to in paragraph 1 of this Article shall be made in writing and shall contain indication of the contracting parties, the design registration number, the application registration number, and the amount of remuneration, if any remuneration has been stipulated.

#### License Article 49

The holder of the design right or the applicant may concede the right to use the design right, or the right arising from the application.

The license contract referred to in paragraph 1 of this Article shall be made in writing and shall contain indication of the contracting parties, design registration number, application registration number, and the amount of remuneration, if any remuneration has been stipulated.

### VII CESSATION OF RIGHT

#### When the Design Right Ceases Article 50

The design right shall cease:

- 1) if the design right holder fails to pay the prescribed fee for maintenance of the right, on the day following the expiry of the payment term;
- 2) if the right holder abandons the right, on the day following the day of filing the statement of abandonment;
- 3) based on a court decision, or a decision of a competent authority, in the events specified by this Law, on the day designated in such decision;
- 4) if the legal person has been dissolved, or if the natural person who is the holder of right has died, on the day of dissolution of legal person, or death of natural person, unless the design right has been transferred to legal successors of such persons.

#### Right of a Third Party Entered in Registers

## Article 51

If a right in favor of a third person has been entered in the Design Register or the Register of Applications (license, lien, etc.), the design right holder or applicant may not renounce the right without written consent of the person whose name has been entered in the Register.

If the holder of the design right has failed to pay the fee for maintenance of the validity of the design right within the prescribed term, and the license, lien, or any other right in favor of a third person has been entered in the Design Register, the competent authority shall notify such person that the fee has not been paid and that he may make due payment within six months following the receipt of the notification and thus maintain validity of the entered right.

## VIII ANNULMENT OF THE DECISION ON DESIGN RIGHT RECOGNITION OR INTERNATIONAL REGISTRATION

### Annulment of the Decision on Design Right Recognition Article 52

The decision on recognition the design right, or international registration of the design for Serbia and Montenegro, may be annulled if it is established that at the moment of issuing such decision the requirements for recognition of the design right as prescribed by this Law have not been met.

The decision on recognition of the design right, or international registration of the design for Serbia and Montenegro, may be annulled for the entire period of validity of the right, upon a written proposal of the interested person.

### Proposal to Annul Article 53

The proposal referred to in the Article 52 paragraph 2 of this Law shall be filed in minimum two copies and shall contain:

- 1) the company or name, or name and surname and domicile, or address of the party submitting the proposal;
- 2) the company or name, or surname and name and domicile, or address of the holder of the design which is requested to be annulled;
- 3) indication that annulment is requested of the recognition of the design right, or international registration;
- 4) registration number of the design, or international registration the annulment of which is requested;
- 5) the reasons for requesting the annulment;
- 6) the evidence support such reasons;
- 7) orderly power of attorney when the proceedings are initiated through a representative;  
and
- 8) the proof that the prescribed fee for the proposal has been paid.

Where the proposal for annulment does not meet the prescribed requirements referred to in paragraph 1 of this Article, the competent authority shall notify the proposing party in writing to correct the proposal, within 30 days following the receipt of such notification.

Where the proposing party fails to correct the proposal within the term referred to in paragraph 2 of this Article, the competent authority shall decide to reject the proposal.

#### Proceedings On the Orderly Proposal for Annulment Article 54

The competent authority shall deliver the copy of the orderly proposal referred to in Article 53 paragraph 1 of this Law to the party opposing the proposal and invite him to respond to it within 30 days from the receipt date of the invitation.

In the proceedings referred to in this Article, the competent authority may schedule a hearing.

Where the proposing party referred to in Article 53 paragraph 1 of this Law abandons the proposal in the course of the proceedings, the competent authority may continue the proceedings *ex officio*.

Upon completion of the annulment proceedings, the competent authority may issue the decision on partial or complete annulment of the decision on recognition of the design right or international registration, or on rejection of the proposal.

Within three months from the date when decision on annulment became final and enforceable, the competent authority shall publish prescribed data about the annulled right in its official publication.

#### Validity of the Decision on Annulment Article 55

Annulment of the decision on recognition of the design right or international registration, shall have no retroactive effect on any final and enforceable court decisions with respect to determination of the infringement of right, or on the concluded contracts on transfer of right, or concession of license, to the extent in which such contracts have been realized, provided the plaintiff, or the holder of design right, was acting in good faith.

### IX CIVIL LAW PROTECTION

#### Protection in Case of Design Right Infringement Article 56

In case of infringement of the design right, the plaintiff may request :

- 1) that infringement of the right be determined;
- 2) cessation of the infringement of right;
- 3) that the articles used in infringement of the right be destroyed or modified;
- 4) that the tools and equipment used for production of the articles used in infringement of the right be destroyed or modified, if that is necessary for protection of the right;
- 5) compensation for material injury and reasonable costs of procedure;
- 6) compensation for moral injury;
- 7) publication of the verdict at the expense of the defendant;
- 8) information on any third persons participating in infringement of the right to be revealed.

The person infringing the right shall be held liable for the injury pursuant to the general rules on compensation of damages.

If infringement of the design right was intentional, the plaintiff may request of the defendant, instead of the damages for material injury, the compensation in the amount of up to triple usual license fee he would have received for utilization of the design.

The proceedings on the complaint referred to in paragraph 1 of this Article shall be administered in an expedited manner.

#### Design Right Infringement Article 57

Any unauthorized utilization of the protected design within the meaning of Article 38 of this Law and any unauthorized disclosure of the subject of the application shall be deemed infringement of the design right.

Any replication of the protected design shall be also deemed infringement of the design right.

When determining the existence of the design right infringement, the court shall particularly take into consideration the provisions of Articles 8, 9, and 40 of this Law.

#### Right to File the Complaint Article 58

The complaint on the grounds of infringement of the design right referred to in Article 56 of this Law may be filed by the applicant, holder of the design right and the acquirer of exclusive license.

The court shall suspend the proceedings on the complaint for infringement of the right arising from the application, until the competent authority issues the decision on recognition of the design right.

If the proceedings referred to in Article 52 of this Law have been initiated before the competent authority, the court shall have to halt the proceedings on the complaint referred to in paragraph 1 of this Article until the competent authority issues the final decision.

#### Time Limit for Filing the Complaint Article 59

The complaint for infringement of the design right may be filed within three years following the day the plaintiff has become aware of the infringement and the infringer, but not later than within five years following the day when infringement was committed for the first time.

### X INTERIM MEASURES

Interim Measure of Seizure or Withdrawal from Circulation  
Article 60

At the request of the person who makes it credible that his design right or the right arising from the application has been infringed, or that such infringement is imminent, the court may order an interim measure of seizure or withdrawal from circulation of the articles used in infringement and means for production of such articles, or the measure of prohibiting continuation of any activities by way of which the infringement may be committed.

Interim Measure of Provision of Evidence  
Article 61

At the request of the person who makes it credible that his design right or the right arising from the application has been infringed, or that such infringement is imminent, or that irreparable harm is likely to occur, or that there is a reasonable suspicion that evidence of that will be destroyed or that it will not be possible to obtain it later on, the court may order an interim measure to secure evidence without giving prior notice to, or hearing the person from which evidence is to be collected.

For the purposes of paragraph 1 of this Article, the securing of evidence shall mean the inspection of premises, vehicles, books, documents, as well as the seizure of documents and infringing goods, questioning of witnesses and expert-witnesses.

The court order for interim measures to secure evidence shall be served to the person from which evidence is to be collected, on the occasion of the collection of evidence, and to an absent person, as soon as that becomes possible

Time Limit to Request Interim Measures  
Article 62

The interim measures referred to in Articles 60 and 61 of this Law may be requested before filing the complaint for infringement of the design right, or infringement of the right arising from the application, provided that such complaint is filed within 15 days from the execution date of the request for temporary measure.

An appeal against the decision establishing the interim measure referred to in Articles 60 and 61 of this Law shall not stay execution of the decision.

Security  
Article 63

Upon the request of a person against whom the proceedings for infringement of the design right or proceedings for establishing of temporary measure have been initiated, the court may order the party initiating the proceedings to deposit an appropriate amount of money as a security, should the claim be found groundless.

Duty to Provide Information  
Article 64

The court may order the infringer of the design right or the right arising from the application to furnish information about third parties who have taken part in infringement of the right, and about their distribution channels

The person that fails to perform its duty referred to in paragraph 1 of this Article shall be liable for the damage thus incurred.

XI CONTESTING THE DESIGN RIGHT AND DISPUTES OVER AUTHORSHIP

Contesting the Design Right  
Article 65

The design author or his legal successor may file a complaint to request that the court determines that he has the right to file an application rather than, or together with, the person who has filed the application.

If the design right has been recognized by a decision of the competent authority, the design author or his legal successor may file a complaint to request that the court determines that he is the holder of the design right rather than, or together with, the person indicated in the decision of the competent authority as the holder of the design right.

The complaint referred to in paragraph 1 of this Article may be filed any time before conclusion of the proceedings for recognition of the design right, and the complaint referred to in paragraph 2 of this Article may be filed any time before expiry of the design right validity period.

Entering Court Decision in the Register  
Article 66

Where the claim referred to in Article 65 was granted by a final and enforceable court decision, the competent authority shall, upon receipt of the final and enforceable decision or upon request of the plaintiff, enter the plaintiff in the appropriate Register as the applicant, or holder of the design right.

Rights of a Third Person Acting in Good Faith  
Article 67

The right which a third person acting in good faith has obtained from the former applicant, or holder of the design right, shall cease on the day the new holder of right or the applicant is entered in an appropriate register.

Dispute over Authorship

## Article 68

The design author or his legal successor may file a complaint to request that the court determines who is the author of the design that is the subject of the application, or a recognized design right, and to have such person indicated as the author in the application and all other documents, and in appropriate registers.

The plaintiff referred to in paragraph 1 of this Article may also request that the verdict be published at the expense of the defendant, and compensation for moral injury and material injury and all costs of the proceedings.

There shall be no time limit for filing the complaint referred to in paragraph 1 of this Article.

## XII. THE ENFORCEMENT OF THE LAW

### Article 69

This Law shall be enforced in the territory of each individual Member State in a uniform manner, in accordance with specific laws governing enforcement of the legislation on protection of intellectual property rights, that shall be enacted and enforced by the competent authorities of both member states of the state union.

The specific laws referred to in paragraph 1 of this Article shall contain penal provisions that will determine criminal offences, economic offences and misdemeanors with respect to design right infringement.

The member states shall enact specific laws referred to in paragraph 1 of this Article within 60 days following the this Law comes into force.

## XIII. TRANSITIONAL AND FINAL PROVISIONS

### Validity of Registered Models and Samples

#### Article 70

Models and **samples** that are registered at the date this Law comes into force shall continue to effective, and the provisions of this Law shall be applicable to such models and **samples**.

The provisions of this Law shall be also applicable to all applications for recognition of models or samples filed before the date this Law comes into force where the administrative proceedings was not completed.

### Existing Registers

#### Article 71

From the date this Law comes into force, the Register of Model Applications and Register of Sample Applications shall be kept as a single Register of domestic applications for recognition of design, beginning with the application with ordinal number 1.

The registers of models and samples shall be renamed in the Register of design that shall continue to be maintained from the appropriate ordinal number onwards.

Enforcement Regulations  
Article 72

The enforcement regulations for of this Law shall be enacted not later than 60 days from the date this Law comes into force.

The Date of Coming into Force and Implementation  
of the Law on Legal Protection of Design  
Article 73

This Law shall come in force eight days after being published in the “Official Gazette of Serbia and Montenegro”.

Article 74

On the date this Law comes into force, the Law on Models and Samples ("Official Gazette of FRY", No. 15/95) shall cease to apply.