

## **THE PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA**

Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the 75<sup>th</sup> session of the House of Representatives, held on April 7, 2010, and at the 46<sup>th</sup> session of the House of Peoples, held on May 28, 2010, adopted

### **LAW ON INDUSTRIAL DESIGNS**

#### **PART I – GENERAL PROVISIONS**

##### Article 1 (Subject Matter of the Law)

1. This Law governs the conditions for the protection of a design, the manner of acquisition, maintenance, contents, transfer, termination and protection of an industrial design in Bosnia and Herzegovina (hereinafter: B&H).
2. The provisions of this Law shall apply to the procedure of acquisition and protection of an industrial design that is internationally registered for the territory of B&H under the Hague Agreement on the Protection of Industrial Designs (Geneva Act of 1999), adopted in Geneva On 02/07/1999 (hereinafter: the Hague Agreement), in all the matters which are not expressly regulated by the Hague Agreement.

##### Article 2 Meaning of Terms

For the purposes of this Law, the expressions indicated below shall have the following meanings:

- a) “industrial design” shall be the exclusive right to the appearance of a product;
- b) “appearance of a product” shall be the overall visual impression of a product produced on the informed consumer or user;
- c) “design” shall be a three-dimensional or a two-dimensional appearance of the whole product or part thereof, determined by its visual characteristics, in particular, the lines, contours, colors, shape, texture and/or materials of which the product is made or with which it is ornamented, as well as the combination thereof;
- d) “informed consumer or user” shall mean a natural person regularly in contact with the product;
- e) “product” shall mean any industrial or handicraft product, including, inter alia, parts intended to be assembled into a complex product, packaging, graphic symbols and typographic typefaces, excluding computer programs;
- f) “industrial or handicraft product” shall mean any article that may be produced in industrial and handicraft activities in a number of identical copies;
- g) “complex product” shall be a product which is composed of multiple components which may be replaced permitting disassembly and reassembly of the product.

## **PART TWO – PROTECTION REQUIREMENTS**

### **Article 3 Requirements for the Protection of a Design**

A design shall be protected under this Law if it is new and if it has individual character.

### **Article 4 Novelty of a Design**

1. A design shall be considered new if no identical design has been made available to the public anywhere in the world before the date of filing of the application for the grant of an industrial design for such a design or if no earlier filed application for the grant of an identical industrial design exists.
2. In the case that priority is claimed, it shall be considered that a design is new if it has not been made available to the public before the day on which priority is granted.
3. Designs shall be deemed to be identical if they differ only in inessential details.
4. Difference in inessential details shall exist if the informed user cannot, at first sight, see the difference between the designs.

### **Article 5 Individual Character of a Design**

1. A design shall be considered to have individual character if the overall visual impression it produces on the informed user differs from the overall visual impression produced on such a user by any design which has been made available to the public before the date of filing of the correct application for the grant of an industrial design, or the day on which priority is granted to a conflicting industrial design.
2. In assessing the individual character of a design, the degree of freedom and objective limitations of the author in developing the design of a particular product caused by the technical and functional characteristics of such a product shall be taken into consideration.

### **Article 6 Design of a Product Which Constitutes a Component Part of a Complex Product**

1. A design applied to a product or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
  - a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the complex product, and
  - b) if visible characteristics of the component part fulfill the requirements as to novelty and individual character.
2. The normal use referred to in paragraph (1) item a) of this Article shall mean use by the end- user, excluding maintenance, servicing or repair of the product.

Article 7  
Availability to the Public

1. A design shall be deemed to have been made available to the public, within the meaning of Articles 4 and 5 of this Law, if it has been published or exhibited or used in the trade in goods and services, or otherwise disclosed before the day of filing of the application for the grant of an industrial design or before the date of priority, if claimed, except in the case where in the normal course of business there was no reasonable possibility for the circles specialized in the sector concerned to find out about the disclosure of the design.
2. A design shall not be deemed to have been made available to the public, within the meaning of paragraph (1) of this Article, for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of the confidentiality a design.
3. A design shall not be deemed to have been made available to the public, for the purpose of application of Articles 4 and 5 of this Law, if the design has been disclosed by the author of the design, his successor in title or a third person as a result of information provided or action taken by the author or his successor in title, provided that less than 12 months has elapsed between the disclosure of the design and the day of filing the application for the grant of an industrial design or, if priority is claimed, the date of granted priority.
4. Paragraph (3) of this Article shall also apply if the design has been made available to the public as a consequence of abuse in relation to the author or his successor in title.

Article 8  
Right on Industrial Design

1. The right to an industrial design shall belong to the author of a design or his successor in title under the conditions laid down in this Law.
2. Foreign natural and legal persons shall enjoy the same rights with regard to the protection of industrial designs in B&H as are enjoyed by domestic natural and legal persons, if that arises from international treaties and conventions acceded to or ratified by B&H (hereinafter: international treaties and conventions), or from the application of the principle of reciprocity.
3. The existence of reciprocity shall be presumed until proved to the contrary.

Article 9  
Exclusion from Protection Due to Technical Function

1. An industrial design shall not protect a design which is solely dictated by the technical function of a product.
2. An industrial design shall not protect a design which must necessarily be reproduced in its exact form and dimensions in order to permit it to be mechanically connected to or placed in the product, around the product or against another product, so that each product may perform its function.
3. Notwithstanding paragraph (2) of this Article, a design allowing multiple assembly or connection of mutually interchangeable products within a modular system shall be protected under the conditions laid down in Articles 4 and 5 of this Law.

## Article 10

### Absolute Grounds for Refusal of an Application for the Grant of an Industrial Design

Protection shall not be granted to a design:

- a) which is not a design within the meaning of Article 2 item c) of this Law;
- b) the publication or use of which is contrary to public order or to accepted principles of morality,
- c) which contains a national or other public coat of arms, flag or emblem, the name or abbreviated name of a country or an international organization, as well as the imitation thereof, unless authorized by the competent authority of the country or organization concerned;
- d) which contains the name or abbreviated name, coat of arms, emblem, flag or other official signs of B&H or its entities, cantons or District or imitates them, unless authorized by the competent authority.

## Article 11

### Relative Grounds for Refusal of an Application for the Grant of an Industrial Design

1. Upon a filed opposition, protection shall not be granted to a design:

- a) which is not new within the meaning of Article 4 of this Law;
- b) which lacks individual character within the meaning of Article 5 of this Law;
- c) which is solely dictated by the technical function of a product within the meaning of Article 9 of this Law;
- d) which infringes older copyright or any industrial property right of another person;
- e) which represents or contains the personal portrayal of a particular person, except with the express authorization of such a person;
- f) which is liable to harm national or religious feelings.

2. A design which represents or contains the personal portrayal of a deceased person may be protected only with the consent of the spouse and children of the deceased, and in the absence of them, with the consent of parents, and in the absence of parents, with the consent of other heirs, unless otherwise provided by will.

3. The protection of a design representing or containing the personal portrayal of a historic or another deceased renowned person shall require the authorization given by the competent authority, as well.

## Article 12

### Competence for the Industrial Design Protection Procedure

1. The Institute for Intellectual Property of Bosnia and Herzegovina (hereinafter: the Institute) shall carry out the tasks relating to the industrial design protection in the administrative procedure prescribed by this Law.

2. The provisions of the Law on Administrative Procedure (Official Gazette of B&H volumes 29/02, 12/04, 88/07 and 93/09) shall apply in the procedure carried out before the Institute, unless otherwise provided by this Law.

3. A decision issued by the Institute in the procedure referred to in paragraph (1) of this Article may be appealed before the Board of Appeal of the Institute (hereinafter: the Board of Appeal) within 15 days from the day of receipt of the decision.

4. Against a decision issued by the Board of Appeal, an administrative dispute may be instituted before the Court of Bosnia and Herzegovina, within 30 days from the day of receipt of the decision.

### Article 13 Registers

1. The Institute shall keep, in electronic form, the Register of Applications for the Grant of Industrial Designs (hereinafter: the Register of Applications), the Register of Industrial Designs and the Register of Representatives.

2. The Registers referred to in paragraph (1) of this Article shall form a single system of registers of industrial property of B&H in electronic form.

3. The content of the Registers referred to in paragraph (1) of this Article shall be prescribed by a special regulation for the implementation of this Law (hereinafter: the implementing regulation).

4. The Registers referred to in paragraph (1) of this Article shall be considered as public books, and interested persons may inspect them, without payment of any special fees.

5. At a written request of interested persons, and subject to payment of the prescribed fee, the Institute shall issue the copies of documents and relevant attestations and certificates, with respect to the facts concerning which it keeps official records.

### Article 14 Representation

1. Natural and legal persons practicing representation in the industrial design grant procedure before the Institute shall be entered in the Register of Representatives referred to in Article 13 paragraph (1) of this Law.

2. A foreign natural or legal person must be represented in the procedure carried out before the Institute by a representative entered in the Register of Representatives, whereas a domestic natural or legal person may act before the Institute even by himself.

3. Natural and legal persons fulfilling the conditions laid down in the implementing regulation shall be entered in the Register of Representatives.

### Article 15 Information Providing

1. Upon a written request, the Institute shall provide search services of applied for and registered industrial designs in B&H.

2. The Institute shall allow any person, at his written request, to inspect the documentation relating to a published industrial design.

3. The content and manner of the search referred to in paragraph (1) and inspection referred to in paragraph (2) of this Article shall be regulated by the implementing regulation.

## Article 16

### Fees and Charges in the Procedures of Acquisition and Maintenance of an Industrial Design and Provision of Information Services

1. All the acts in the procedure for the acquisition, maintenance, transfer and termination of an industrial design, and the provision of information services shall be subject to payment of the fees, in accordance with the Administrative Fees Act (hereinafter: the fees) and special procedural charges (hereinafter: the procedural charges) in the amount specified by a special tariff, enacted by the Ministry of Foreign Trade and Economic Relations of Bosnia and Herzegovina, upon the motion of the Director of the Institute.
2. Evidence of payment of the fees and procedural charges referred to in paragraph 1 of this Article shall be filed with the Institute, in the manner as defined by the implementing regulations.

## **PART THREE – PROTECTION PROCEDURE**

### Article 17

#### Institution of the Procedure for the Grant of an Industrial Design

1. The procedure for the grant of an industrial design shall be instituted by an application for the grant of an industrial design (hereinafter: the application), filed with the Institute.
2. The essential elements of the application shall be:
  - a) a request for the grant of an industrial design;
  - b) a two-dimensional representation of a design (hereinafter: a representation)
3. The description of a design (hereinafter: the description) shall be an optional element of the application.
4. The contents of the application, a manner of presentation and the number of copies of particular essential elements of the application, as well as the content of the attachments to be filed with the application shall be regulated by the implementing regulation.

### Article 18

#### Request for the Grant of an Industrial Design

1. A request for the grant of an industrial design shall contain in particular:
  - a) information on the applicant;
  - b) information on the author of design or his declaration to the effect that he does not wish to be mentioned in the application;
  - c) indication on whether the application relates to one or more designs;
  - d) actual and short title of a design;
  - e) legal basis for filing the application if the author of design is not the applicant;
  - f) signature of the applicant, and
  - g) optionally, a statement to the effect that publication of the granted industrial design is requested to take place within 12 months following the date of issue of a decision on the grant of the industrial design (deferred publication).

2. One application may contain a request for the grant of an industrial design for one or more designs (up to 100) to be applied to the products classified in the same class of the international classification, prescribed by the Locarno Agreement Establishing an International Classification for Industrial Designs.

3. The author of design may withdraw his declaration to the effect that he does not wish his name to be mentioned in the application, in the registers nor in other documents prescribed by this Law, or to request that his name be deleted as the name of the author of the mentioned design in the application and registers, during the grant procedure, as well as during the whole term of protection of the industrial design.

#### Article 19 Representation

1. A representation shall be such as to allow all the details of the appearance of the subject matter of protection to be clearly visible.

2. The details of the appearance of the subject matter of protection shall be presented in the manner clearly allowing assessment of the extent of novelty and individual character of a design.

3. A representation shall, as regards the quality and other technical requirements, fulfill the conditions prescribed by the implementing regulation.

4. If an application containing a two-dimensional design is concerned, a two-dimensional specimen of the product applied for may be filed as a representation, provided that a representation fulfilling the conditions referred to in paragraphs (1) to (3) of this Article is filed not later than within six months from the day of filing the application with the Institute.

5. A two-dimensional specimen referred to in paragraph (4) of this Article shall be filed to the Institute in the manner prescribed by the implementing regulation.

#### Article 20 Description

1. A description shall be based on the representation as filed and shall refer only to the appearance of the subject matter of protection, including the surfaces of a product, or the parts thereof, as visible permanently or during normal use, or only to a picture or drawing showing the subject matter of protection, and which may be applied to a certain product or the part thereof.

2. A description shall not contain information relating to the construction, function or functional advantages and similar information concerning a product or the parts thereof.

3. A description shall not contain more than 150 words.

4. The content of a description shall be regulated more closely by the implementing regulation.

Article 21  
Register of Applications

The data concerning the essential elements of the application referred to in Article 17 of this Law and other data prescribed by the implementing regulation shall be entered in the Register of Applications.

Article 22  
Filing Date of an Application

1. The accordance of the filing date of an application shall require that the application filed with the Institute on such a date contains:

- a) an indication that the grant of an industrial design is applied for;
- b) the name and surname, or the trade name and address of the applicant,
- c) a representation.

2. The Institute shall acknowledge the receipt of the application on the applicant's copy thereof.

3. Upon receipt of the application, the Institute shall examine whether the application contains the elements referred to in paragraph (1) of this Article.

4. If the application does not contain the elements referred to in paragraph (1) of this Article, the Institute shall invite the applicant to correct the deficiencies due to which the application could not be entered in the Register of Applications, within a period of 30 days, which shall not be extended.

5. If the applicant fails to correct the deficiencies within the period referred to in paragraph (4) of this Article, the Institute shall reject the application by a conclusion.

6. If the applicant corrects the deficiencies within the period referred to in paragraph (4) of this Article, the Institute shall accord the date on which the applicant corrected the detected deficiencies as the filing date of the application by a conclusion.

7. The application to which the filing date has been accorded shall be entered in the Register of Applications.

Article 23  
Right of Priority

As of the filing date of the application, the applicant shall have the right of priority over any other person filing later the application for the identical design.

Article 24  
Union Priority Right

1. Any natural or legal person who has filed a correct industrial design application having effect in any of the Member States of the Paris Union or the World Trade Organization shall be granted the right of priority in B&H as of the date of filing such an application if he files an application for the identical industrial design in B&H within a period of six months from the day of filing the application having effect in the country concerned.

2. The person invoking the right of priority referred to in paragraph (1) of this Article shall indicate in the application for the grant of an industrial design the filing date, the number of the application and the country for which the application was filed.

3. A correct application referred to in paragraph (1) of this Article shall be considered to be an application fulfilling the conditions of correctness under the national legislation of a Member State of the Paris Union or the World Trade Organization for which the application was filed, or under the provisions of an international organization arising from a treaty concluded among such countries, regardless of the subsequent outcome of such an application.

4. The person referred to in paragraph (1) of this Article shall file with the Institute a true copy of the first application referred to in paragraph (1) of this Article, certified by the competent authority of a Member Country of the Paris Union, or the World Trade Organization or the international organization with which such application was filed, as well as a certified translation of the true copy in one of the official languages of B&H, within three months from the day of filing the application in Bosnia and Herzegovina.

5. If the person referred to in paragraph (1) of this Article fails to comply with the obligation referred to in paragraph (4) of this Article, the Institute shall not grant the priority as claimed, and shall specify in a conclusion that a right of priority exists as of the filing date of the application as accorded under Article 22 of this Law, and shall continue the procedure on the application as filed.

6. The content of the request for priority certificate and the content of the priority certificate, issued by the Institute, shall be regulated by the implementing regulation.

#### Article 25 Exhibition (Fair) Priority Right

1. The applicant who has displayed a design on an official or officially recognized international exhibition in B&H or in any of the Member States of the Paris Union or the World Trade Organization, in accordance with the Convention on International Exhibitions, may claim in the application a right of priority to be granted from the first day of display of such a design on the exhibition, within a period of three months from the closing day of the exhibition.

2. The person claiming the grant of the priority right referred to in paragraph (1) of this Article shall submit with the application a written certificate issued by the competent authority of a Member State of the Paris Union or the World Trade Organization in which the exhibition took place, indicating that the exhibition or a fair concerned had an international character, and specifying the type of the exhibition or fair, the venue thereof, its opening and closing dates, and the first day of display of the design for which the grant of an industrial design is applied for.

3. The Foreign Trade Chamber of B&H shall issue a certificate to the effect that the exhibition or fair, held in B&H, has an officially recognized international character.

#### Article 26 Multiple Priorities

The applicant may claim multiple priorities on the basis of earlier filed applications in one or more of the Member States of the Paris Union or the World Trade Organization under the conditions laid down in Article 24 of this Law.

Article 27  
Calculation of Time Limits of Priorities

1. The grant of the right of priority referred to in Article 25 of this Law shall not extend the time limits referred to in Article 24 of this Law.
2. In the case of claiming multiple priorities referred to in Article 26 of this Law, the time limits which, according to Article 24 of this Law, run from the date of priority, shall be calculated from the priority date of the first application.

Article 28  
Alteration of a Representation

A representation contained in the application as filed may not be subsequently altered in such a manner as to become substantially different from the original representation, in terms of the scope and content of the subject matter as represented, extending thereby the novelty and individual character of the design as originally represented.

Article 29  
Order of Examination of Applications

1. The applications shall be examined in the order determined by their filing dates.
2. By way of derogation from the provision of paragraph (1) of this Article, the application may be examined in an expeditious procedure in the case of a legal dispute or inspection control as initiated or customs procedure, upon a request of court or competent market inspection authority or customs authority.
3. In the case referred to in paragraph (2) of this Article, a request for the examination of the application in an expeditious procedure shall be filed.

Article 30  
Examination of the Correctness of the Application and the Rejection Thereof

1. The procedure for the examination of the correctness of the application shall include the examination of all the conditions prescribed by this Law and the implementing regulation.
2. The application shall be correct if it contains the essential elements referred to in Article 17 of this Law, evidence of payment of the fee and procedural charges and other prescribed data.
3. If the Institute finds that the application is not correct, it shall invite the applicant in writing, stating the reasons therefor, to correct the application within a period, which shall neither be less than 30 days nor more than 60 days.
4. At a reasoned request of the applicant, against payment of the prescribed fee and procedural charges, the Institute shall extend the time limit referred to in paragraph (3) of this Article for a period it considers to be appropriate, but which shall neither be less than 15 days nor more than 60 days.
5. If the applicant fails to correct the application or to pay the fee for its correction, within a specified time limit, the Institute shall reject the application by a conclusion.

6. In the case referred to in paragraph (4) of this Article, the applicant may, against payment of the prescribed fee and procedural charges, file a proposal for *restitutio in integrum*, within three months from the day of receipt of the conclusion on the rejection.

#### Article 31 Abandonment of the Application

1. The applicant may abandon the application in whole or only in respect of some of the designs, during the entire course of the procedure.
2. If a particular right on behalf of a third party has been entered in the Register of Applications, the applicant may not abandon the application without a written consent of the person on behalf of whom such right has been entered in the Register.
3. Where the applicant abandons the application in whole, the Institute shall issue a special conclusion on suspension of the procedure.
4. In the case referred to in paragraph (3) of this Article, the application shall cease to have effect on the day following the day on which a declaration on the abandonment is delivered to the Institute.

#### Article 32 Division of the Application

1. The application containing a request for the grant of several industrial designs (hereinafter: a multiple application) may, at the request of the applicant, be divided into two or more single or multiple divisional applications, before the entry of an industrial design in the Register of Industrial Designs.
2. The content of the request for the division of the application shall be regulated by the implementing regulation.
3. Each of the divisional applications referred to in paragraph (1) of this Article shall be assigned a new number and shall be entered in the Register of Applications, but it shall retain the filing date of the original multiple application and its right of priority.
4. A special decision on division of an application shall be issued, specifying the number or the numbers of new applications, designs remaining in the original multiple application and designs to be contained in a divisional application or applications.
5. A divisional application or applications shall be entered in the Register of Applications.

#### Article 33 Examination of the Absolute Grounds for Refusal of the Application

If the application is correct within the meaning of Article 30 of this Law, the Institute shall examine whether the absolute grounds for the refusal of the application, prescribed by Article 10 of this Law, exist.

Article 34  
Refusal of a Request for the Grant of an Industrial Design

1. If the Institute finds that the application does not fulfill the conditions laid down in Article 10 of this Law, it shall, on the basis of the examination results, inform the applicant in writing of the grounds for which an industrial design shall not be granted and shall invite him to file his observations, within a period which shall neither be less than 30 days nor more than 60 days.
2. At a reasoned request of the applicant and against payment of the administrative fee and procedural charges, the Institute may extend once the time limit referred to in paragraph (1) of this Article for a period, which it considers appropriate, but which shall neither be less than 15 days nor more than 60 days.
3. The Institute shall refuse by a decision a request for the grant of an industrial design in whole or in respect of particular designs, where a multiple application is concerned, if the applicant fails to comply with a request referred to in paragraph (1) of this Article or if he complies with it, but nevertheless the Institute considers that the industrial design application shall not be granted in whole or in relation to particular designs, where a multiple application is concerned.

**PART FOUR – OPPOSITION**

Article 35  
Publication of the Application

1. The application, which fulfills the conditions referred to in Article 30 paragraph (2) of this Law, shall be published in the official gazette of the Institute, provided that there are no grounds for refusal of the application referred to in Article 34 of this Law.
2. The data as contained in the application and are to be published shall be regulated by the implementing regulation.

Article 36  
Conversion of the Application into a Patent Application or a Consensual Patent Application

1. An application for the grant of an industrial design may be converted into an application for the grant of a patent or a consensual patent up to the publication of the application referred to in Article 35 of this Law.
2. A procedure for the conversion of the application referred to in paragraph (1) of this Article shall be regulated by the implementing regulation.

Article 37  
Opinion of an Interested Person

1. Upon the publication of the application, any interested person may, within 3 months from the publication, submit to the Institute a written opinion containing an explanation to the effect why a design contained in the published application does not fulfill the conditions laid down in Article 10 of this Law.
2. The person referred to in paragraph (1) of this Article shall not be a party to the procedure.

3. The Institute shall send to the applicant the opinion referred to in paragraph (1) of this Article, should it considers it relevant for the grant of the application, and shall invite him to give his response within a period which shall neither be less than 15 days nor more than 30 days.

4. Upon receipt of the response referred to in paragraph (3) of this Article from the applicant or upon the expiration of the time limit referred to in paragraph (3) of this Article, the Institute shall issue a decision on the grant or the refusal of the request for the grant of an industrial design.

#### Article 38 Opposition

1. Upon the publication of the application, any interested person may, within 3 months from the publication, submit to the Institute a written opposition containing an explanation to the effect why a design contained in the published application does not fulfill the conditions laid down in Article 11 of this Law.

2. The interested person referred to in paragraph (1) of this Article shall be:

- a) any person considering that the conditions laid down in Article 11 paragraph (1) items a), b), c) and f) of this Law are not fulfilled;
- b) the holder of any of the rights referred to in Article 11 paragraph (1) item d) of this Law;
- c) the person or his successors in title within the meaning of Article 11 paragraphs (2) and (3), the portrayal of whom is the subject matter of a design in the case referred to in Article 11 paragraph (1) item e) of this Law.

3. The time limit for filing the opposition referred to in paragraph (1) of this Article shall not be extended for any reason nor shall it be possible to submit, after the expiration of this time limit, any additions to the opposition, including the submission of additional evidence justifying the opposition.

4. If, on the date of publication of the application against which the opposition is filed, the procedure for the declaration of the decision on the grant of an industrial design, a trademark or any other industrial property right null and void is pending, and the opposition is based on an older industrial property right subject to any of the indicated procedures, the Institute shall, in accordance with the grounds for opposition, stay the opposition procedure until such time when the decision from the earlier initiated procedure shall become final.

5. The interested person referred to in paragraph (1) of this Article shall have the status of a party to the procedure.

#### Article 39 Content of the Opposition

1. An opposition shall contain, in particular:

- a) the name and surname or the company name of the opponent and his address, or registered office;
- b) a detailed explanation of all the grounds and evidence on which the opponent bases its opposition and by which he proves its status of the interested person referred to in Article 38 items b) and c) of this Law;

- c) all the published data relating to the application against which an opposition is filed, including the number of the application, the name, surname and address or the company name and registered office of the applicant, and a representation of a design;
- d) a duly filed power of attorney if the opposition is filed through a representative.

2. an opposition shall be filed in two copies.

#### Article 40 Opposition Procedure

1. Upon the receipt of an objection, the Institute shall examine whether the opposition complies in whole with Articles 38 and 39 of this Law.
2. If the conditions laid down in paragraph (1) of this Article are not fulfilled, the Institute shall reject the opposition by a conclusion.
3. If the conditions laid down in paragraph (1) of this Article are fulfilled, the Institute shall send the opposition to the applicant and shall invite him to submit his written observations on it within 60 days.
4. The time limit referred to in paragraph (3) of this Article shall not be extended, nor shall it be possible to submit, after the expiration thereof, any additions to his response to the opposition, including additional evidence.
5. If the applicant fails to submit his observations on the opposition within the time limit referred to in paragraph (3) of this Article, the Institute shall refuse by a decision a filed request for the grant of an industrial design, within the limits of the requests contained in the objection.
6. If the applicant submits his observations on the opposition within the time limit referred to in paragraph (3) of this Article, the Institute shall examine the justification of the allegations contained in the opposition, and may order oral proceedings.
7. If the opposition is filed on the basis of an older copyright as the ground referred to in Article 11 paragraph (1) item d) of this Law, and the applicant has submitted his observations on the objection, the Institute may, taking into consideration the circumstances of the case, instruct the parties to resolve the existence of copyright as the ground referred to in Article 11 paragraph (1) item d) of this Law, as a preliminary matter in the procedure before the competent court.
8. Following the opposition procedure as carried out, the Institute shall, on the basis of the facts as established, issue a decision on the refusal of the opposition or a decision on partial refusal of the opposition and partial grant of the application for the grant of an industrial design or a decision on the refusal of the application for the grant of an industrial design.

#### Article 41 Decision on the Grant of an Industrial Design

1. If the application fulfils the conditions for grant laid down in Articles 10 and 11 of this Law, the Institute shall issue a conclusion to that effect and shall invite the applicant to pay the administrative fee and procedural charges for the first five years of protection, for the publication of the industrial design and for the industrial design certificate, within 30 days, and to file with the Institute evidence of the payment thereof.

2. If the applicant fails to file the evidence of the payments referred to in paragraph (1) of this Article within a specified time limit, it shall be considered that he has abandoned the application, and the Institute shall issue a special conclusion on the suspension of the procedure.

3. In the case referred to in paragraph (2) of this Article, the applicant may, against payment of the administrative fee and procedural charges, file a proposal for the restoration to original condition within three months from the day of receipt of the conclusion on the suspension of the procedure.

4. If the applicant submits the evidence of payment referred to in paragraph (1) of this Article, the Institute shall issue a decision on the grant of an industrial design according to the adopted representation or, if the application contains a description, according to the representation and description, and shall publish the industrial design and issue an industrial design certificate.

5. The contents of the decision on the grant of an industrial design shall be regulated by the implementing regulation.

#### Article 42

##### Entry of Decision on the Grant of an Industrial Design in the Register of Industrial Designs

1. A decision on the grant of an industrial design including the prescribed data shall be entered in the Register of Industrial Designs.

2. The data contained in a decision on the grant of an industrial design to be entered in the Register of Industrial Designs shall be regulated by the implementing regulation.

3. The date of entry of a decision on the grant of an industrial design in the Register of Industrial Designs shall be the date of the decision on the grant of an industrial design.

#### Article 43

##### Publication of an Industrial Design

1. A registered industrial design including the prescribed data shall be published in the official gazette of the Institute.

2. The data on an industrial design to be published shall be regulated by the implementing regulation.

#### Article 44

##### Industrial Design Certificate

1. The Institute shall issue an industrial design certificate together with a decision on the grant of the industrial design.

2. The contents and form of an industrial design certificate shall be regulated by the implementing regulation.

## **PART FIVE – PROCEDURE FOR THE INTERNATIONAL REGISTRATION OF AN INDUSTRIAL DESIGN**

### **Article 45 General Provision**

The provisions of this Law and the implementing regulation shall apply to internationally registered industrial designs, for which the protection is also claimed for the territory of B&H under the Hague Agreement, in all the matters which are not regulated by this Agreement, unless otherwise provided by the provisions of this part of the Law.

### **Article 46 International Industrial Design Application and Request for the Entry of Change in the International Register**

1. The holder of an industrial design from B&H and the person filing the application in B&H, may file an international industrial design application, as well as a request for the entry of changes in the International Register in accordance with the Hague Agreement and international regulations for the implementation of the Hague Agreement.
2. The international application and requests referred to in paragraph (1) of this Article shall be filed, at the discretion of the applicant, directly with the International Bureau of the World Intellectual Property Organization (hereinafter: the International Bureau) or indirectly, through the Institute, in the manner as prescribed by the Hague Agreement, the Common Regulations under the Hague Agreement, the Administrative Instructions, this Law and the implementing regulation.
3. If the application and requests referred to in paragraph (1) of this Article are filed directly with the International Bureau, all the international fees and procedural charges shall be paid directly to the International Bureau.
4. If the application and requests referred to in paragraph (1) of this Article are filed through the Institute, the fees and procedural charges shall be paid to the Institute, whereas the international fees shall be paid directly to the International Bureau.

### **Article 47 Procedure for the International Registration of an Industrial Design before the Institute**

1. The procedure for the international registration of an industrial design shall be instituted by filing a request for the international registration of an industrial design.
2. A request for the international registration of an industrial design shall be accompanied by:
  - a) a representation of an industrial design;
  - b) a power of attorney, if the request is filed through a representative;
  - c) evidence of payment of the fee and procedural charges payable for the request;
  - and
  - d) optionally, a description of the industrial design
3. The content of the request referred to in paragraph (1) of this Article, as well as the contents of the attachments accompanying the request, shall be regulated by the implementing regulation.

4. If a request for the international registration of an industrial design is not correct, the Institute shall invite the applicant in writing to correct it within 30 days from the day of receipt of the invitation.
5. At a reasoned request of the applicant, the time limit referred to in paragraph (4) of this Article shall be extended for 60 days at the most.
6. If the applicant fails to comply with the invitation within the specified time limit referred to in paragraph (4) or (5) of this Article, the Institute shall reject a request for the international registration of an industrial design by a conclusion.
7. If a request for the international registration of an industrial design is correct, the Institute shall invite the applicant by a conclusion to pay, within a period of 30 days at the most, the fee for the international registration of the industrial design to the International Bureau, and to submit evidence of the payment thereof.
8. Where the applicant for the international registration of an industrial design submits evidence of payment referred to in paragraph (7) of this Article, the Institute shall transmit a request for the international registration of the industrial design to the International Bureau.
9. If the applicant for the international registration fails to submit evidence of payment referred to in paragraph (7) of this Article, the request shall be considered withdrawn, concerning which the Institute shall issue a special conclusion.

#### Article 48

##### Procedure before the Institute in Relation to the International Industrial Design Application for Which Protection has been Claimed in B&H under the Hague Agreement

1. Any international industrial design application filed under the Hague Agreement, for which protection has been claimed in B&H, and which has been published in the official gazette of the World Intellectual Property Organization, in which international industrial design applications are published, shall be considered as a formally correct application.
2. The international application referred to in paragraph (1) of this Article shall be considered published and granted in B&H, and the industrial design shall be considered registered as of the day of publication of such an application in the official gazette of the World Intellectual Property Organization.
3. The Institute shall not apply the provisions of Articles 30, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43 and 44 of this Law in the procedure carried out on the international application referred to in paragraph (1) of this Article.
4. With exception of the provisions of paragraphs 1, 2 and 3 of this Article, the provisions of this Law shall apply to the international application referred to in paragraph (1) of this Article.

#### Article 49

##### Notification Addressed to the International Bureau

The Institute shall notify the International Bureau without delay on the expiration of the internationally registered industrial design in B&H, as well as on any other changes relating to such a design that have been entered in the Register of Industrial Designs of the Institute.

## **PART SIX – ACQUISITION, CONTENT, SCOPE AND LIMITATION OF RIGHTS**

### **Article 50**

#### **Acquisition and Validity of an Industrial Design**

1. An industrial design shall be acquired by its entry in the Register of Industrial designs and shall be valid for 5 years as from the day of filing of the application, with a possibility of extension for the same period four times.
2. An industrial design shall be valid as of the day of filing the application with the Institute, provided that it is registered.
3. The contents of a request for the renewal of an industrial design shall be regulated by the implementing regulation.

### **Article 51**

#### **Exclusive Rights of the Holder of an Industrial Design**

1. The holder of an industrial design shall be entitled to prevent any third party not having his authorization from exploiting economically a registered industrial design.
2. The economic exploitation referred to in paragraph (1) of this Article shall comprise:
  - a) industrial and handicraft manufacturing of products for the market, according to the protected design;
  - b) the use of such a product in an economic activity;
  - c) the storage of such a product for the purpose of its putting on the market;
  - d) offering of such a product for the purpose of its putting on the market;
  - e) putting on the market of such a product
  - f) importation, exportation or transit of such a product.
3. The rights conferred by this Article shall have effect against third parties from the date of entry of an industrial design in the Register of Industrial Designs.

### **Article 52**

#### **Moral Rights of the Author of Design**

1. The author of a design shall have a moral right to be mentioned in the application, in the files and in the industrial design certificate.
2. The author of design may, during the procedure for the protection, as well as during the term of protection of an industrial design, withdraw his declaration to the effect that he does not wish his name to be mentioned in the application, in the registers or in other documents prescribed by this Law.

### **Article 53**

#### **Scope of an Industrial Design**

1. The scope of an industrial design as registered shall be determined by the representation referred to in Article 19 of this Law.
2. When assessing the scope of an industrial design in the case of dispute, the court shall take into consideration the degree of freedom the author had in the creation of the industrial design, within the meaning of Article 5 paragraph (2) of this Law.

Article 54  
Right of Prior Use

1. An industrial design shall have no effect against an innocent person who has, before the date of the granted priority of the application, already commenced the use of the same design in production in the country, or has made all the necessary preparations for the commencement of such a use.
2. The person referred to in paragraph (1) of this Article shall be entitled to exploit a design protected by a registered industrial design solely for production purposes, in his enterprise or workshop, or in an enterprise or a workshop of another person for his own purposes.
3. The person referred to in paragraph (1) of this Article may not transfer his right of use of an industrial design to another person, unless he transfers, together with the right, the enterprise or the workshop, or the part thereof in which the use of such an industrial design has been prepared or has commenced.

Article 55  
Limitation of Rights

The holder of an industrial design may not prohibit any third party from:

- a) any acts done for non-commercial and experimental purposes, and
- b) acts of reproduction done for the purposes of teaching or making citations, provided that such acts are done in compliance with the practice of fair competition and that they do not unreasonably prejudice the normal exploitation of the industrial design and that mention is made of the source.

Article 56  
Limitation of Rights for the Purpose of Unhindered International Traffic

1. The exclusive rights of the holder of an industrial design shall not extend to:
  - a) the construction or equipment of vessels, aircrafts or land vehicles registered in another country, when they temporarily or accidentally enter the territory of B&H;
  - b) the importation of spare parts or accessories used for the purpose of repairing such a vessel, aircraft or land vehicle;
  - c) the execution of repairs on the board of such a vessel, aircraft or land vehicle.

Article 57  
Exhaustion of Rights

1. The holder of an industrial design who has put on the market a product incorporating a protected design, or made according to a protected design anywhere in the world, or if the holder of an industrial design has authorized a person to put such a product on the market anywhere in the world, shall not be entitled to prohibit any third person from disposing of such a product, as purchased in the legal channels of commerce.
2. Paragraph (1) of this Article shall not apply in the case of existence of the legitimate interest of the holder of an industrial design to oppose further commercialization of a product incorporating a protected design or made according to a protected design, especially where in the meantime, the product becomes defective or otherwise changed.

Article 58  
Relation to Other Industrial Property Rights

The provisions of this Law shall not limit the existing rights relating to trademarks, geographical indications, patents and consensual patents.

Article 59  
Relation to Copyright

1. A design protected by a registered industrial design in B&H, may, after the expiration of the industrial design, enjoy protection on the basis of the regulations governing copyright, provided that it fulfils the conditions laid down by such a law, but not for more than 25 years as of the day of filing the application for the grant of the industrial design.

2. The period referred to in paragraph (1) of this Article shall in no way be extended, regardless of the periods prescribed by the law governing copyright.

Article 60  
Design Created in the Course of Employment

The provisions of the law governing patents shall apply *mutatis mutandis* to the legal protection of an industrial design created in the course of employment.

**PART VII – CHANGES IN THE INDUSTRIAL DESIGN APPLICATION OR REGISTRATION**

Article 61  
Changes in the Name and Address of the Holder of a Right

1. At a request of the holder of an industrial design or the applicant, and subject to payment of the fee and procedural charges, the Institute shall issue a decision on the entry in the respective register of the changes in the name and address of the holder of an industrial design or the applicant.

2. The entry of change in the name and address of the right holder relating to several industrial designs or several applications may be applied for in a single request referred to in paragraph (1) of this Article, provided that the registration numbers or the application numbers are indicated in the request.

3. The entry of changes referred to in paragraph (2) of this Article shall be subject to payment of a special fee and procedural charges for every change as requested.

4. Every entered change referred to in paragraph (1) of this Article shall be published in the official gazette of the Institute, subject to payment of the fee and procedural charges.

5. The content of the request for the entry of change referred to in paragraph (1) of this Article shall be regulated by the implementing regulation.

6. The Institute shall issue an industrial design certificate, including the change as entered.

## Article 62 Transfer of Rights

1. The transfer of a registered industrial design or the rights conferred by an application may be made on the basis of a contract on the transfer of rights, as well as on the basis of a change in the status of the industrial design holder or the applicant, or the judicial or administrative decision.
2. The transfer of rights referred to in paragraph (1) of this Article shall be entered in the respective register of the Institute at the request of the industrial design holder or the applicant or a new right holder.
3. The entry of the transfer of rights referred to in paragraph (1) of this Article in the respective register shall have legal effects against third parties as of the date of entry.
4. The Institute shall issue a special decision on the entry referred to in paragraph (1) of this Article in the respective register.

## Article 63 Contract on the Transfer of Rights

1. The holder of an industrial design or the applicant may transfer the registered industrial design or the right conferred by the application by the contract on the transfer of rights referred to in Article 62 paragraph (1) of this Law.
2. The contract on the transfer of rights referred to in paragraph (1) of this Article shall be made in writing and shall contain: indication of the contracting parties, the number of the registered industrial design or the number of the application and the amount of remuneration, if stipulated.

## Article 64 License and Franchise

1. The holder of an industrial design or the applicant may assign the right of use of a registered industrial design or the rights conferred by the application by a licensing contract.
2. The licensing contract referred to in paragraph (1) of this Article shall be made in writing and shall contain: indications of the contracting parties, the number of the registered industrial design or the number of the application, the duration of the license, and the scope thereof.
3. The licensing contract referred to in paragraph (1) of this Article shall be entered in the respective register at the request of the industrial design holder or the applicant or the licensee.
4. The entry of the licensing contract referred to in paragraph (1) of this Article in the respective register shall have legal effect against third parties as of the date of the entry.
5. The Institute shall issue a special decision on the entry of the licensing contract referred to in paragraph (1) of this Article in the respective register.
6. The provisions of this Article relating to a licensing contract shall apply to a franchising contract accordingly.

Article 65  
Publication of the Transfer of Rights, License and Franchise

The Institute shall publish in the official gazette that the transfer of rights, the license or the franchise referred to in Articles (63) and (64) of this Law have been entered in the respective register.

Article 66  
Pledge

1. A registered industrial design or the right conferred by the application may be the subject of a contract of pledge.
2. The contract of pledge referred to in paragraph (1) of this Article shall be made in writing and shall contain: the date of its conclusion, the name and surname or the trade name, domicile or residence, or the registered offices of the contracting parties, as well as of the debtors if different persons are concerned, the registration number of an industrial design or the number of the application, and information on the debt claim secured by the right of pledge.
3. A creditor shall acquire a right of pledge by the entry thereof in the respective register of the Institute.
4. The contract of pledge referred to in paragraph (1) of this Article shall be entered in the respective register at the request of the industrial design holder or the applicant or the pledgor, and subject to payment of the fee and procedural charges.
5. The Institute shall issue a special decision on the entry of the contract of pledge referred to in paragraph (1) of this Article in the respective register.

Article 67  
Procedure for the Entry of Changes of the Name and Address of the Right Holder, Transfer of Rights, License, Franchise or Pledge

1. A procedure for the entry of change of the name and address of the right holder, the transfer of rights, a license, a franchise or pledge in the respective register of the Institute shall be initiated by a written request.
2. The request referred to in paragraph (1) of this Article shall be accompanied by:
  - a) evidence of the legal basis of the change or transfer the entry of which is requested;
  - b) a power of attorney if the procedure for the entry of change or the transfer of rights, a license, a franchise or pledge is initiated through a representative;
  - c) evidence of payment of the fee and procedural charges for the decision on the entry of change or the transfer of rights, a license, a franchise or pledge.
3. The entry of change or the transfer of rights relating to several industrial designs or several applications may be requested in a single request referred to in paragraph (1) of this Article, provided that the former right holder and the new right holder are the same in every registered industrial design or application, and that the registration numbers of industrial designs, or the numbers of applications are indicated in the request.

4. The entry of a license, a franchise or a pledge relating to several registered industrial designs or several applications may be requested by a single request referred to in paragraph (1) of this Article, provided that the right holder and the holder of a license, the holder of a franchise, or the holder of a pledge are the same in the registered industrial design or application, and that the registration numbers of industrial designs or the numbers of applications are indicated in the request.

5. The requests referred to in paragraphs (3) and (4) of this Article shall be subject to the payment of the fees and procedural charges for every registered industrial design or application indicated in the request.

6. The content of the request referred to in paragraph (1) of this Article, as well as the contents of the attachments accompanying the request shall be regulated by the implementing regulation.

#### Article 68

##### Correctness of Request for the Entry of Change of Name or Address, Transfer of Rights, License, Franchise or Pledge

1. A request for the entry of change of name or address of the right holder, transfer of rights, a license, a franchise or a pledge shall be correct if it contains the indications referred to in Article 67 paragraph (2) of this Law and other prescribed indications.

2. If a request for the entry of the transfer of rights, a license, a franchise or a pledge is not correct, the Institute shall invite the applicant to correct it within a period of 30 days from the day of receipt of the invitation.

3. At a reasoned request of the applicant and subject to payment of the fee and procedural charges, the Institute shall extend the time limit referred to in paragraph (2) of this Article for a period which it considers to be appropriate, but which shall neither be less than 15 days nor more than 60 days.

4. If the applicant fails to comply with the invitation within the time limit referred to in paragraph (2) of this Article, the Institute shall reject the request by a conclusion.

## **PART VIII – TERMINATION OF RIGHT**

#### Article 69

##### Termination of an Industrial Design

1. An industrial design shall be terminated at the expiration of the five-year period for which the fee and procedural charges have been paid, unless renewed.

2. An industrial design shall be terminated even before the expiration of the time limit referred to in paragraph (1) of this Article:

- a) if the holder of an industrial design surrenders his right – on the day following the day on which the holder has submitted the declaration of surrender to the Institute;
- b) on the basis of a judicial decision or a decision of the Institute, in the cases provided by this Law – on the day specified by the decision;

c) if a legal entity ceased to exist or if a natural person who is the holder of an industrial design died – on the day the legal entity ceased to exist or the natural person died, unless the industrial design has been transferred to the legal successors of such persons, at the request of an interested person;

3. The Institute shall issue a special decision in the cases referred to in paragraph (2) items a) and c) of this Article.

#### Article 70 Right of a Third Party

1. If a particular right on behalf of a third party has been entered in the Register of Industrial Designs, the holder of industrial design may not surrender such an industrial design without a written consent of the person on behalf of whom such right has been entered in the register.

2. If the industrial design holder fails to pay the prescribed fee within the specified time limit, and a right on behalf of a third party is entered in the Register of Industrial Designs, the Institute shall notify such person that the fee and procedural charges have not been paid, and that he can pay them within a period of six months from the day of receipt of the notification and maintain thereby validity of industrial design.

### **PART IX – PROCEDURE FOR THE DECLARATION OF A DECISION ON THE GRANT OF AN INDUSTRIAL DESIGN NULL AND VOID**

#### Article 71 Conditions for the Declaration of a Decision on the Grant of an Industrial Design Null and Void

A decision on the grant of an industrial design may be declared null and void in whole or in respect of a particular design if an industrial design containing several designs is granted, provided that it is established that the conditions for the grant of an industrial design provided by this Law were not met at the time of registration of the industrial design.

#### Article 72 Proposal for the Declaration of the Decision on the Grant of an Industrial Design Null and Void

1. A decision on the grant of an industrial design may be declared null and void *ex officio* or at the request filed by an interested person or the State Attorney of B&H or Ombudsman of B&H, for the whole duration of the term of protection of an industrial design.

2. If an opposition to a filed industrial design application is filed on the grounds prescribed in Article 11 paragraph (1), and the decision on the refusal of the opposition is final, the same person may not file a proposal for the declaration of a decision on the grant of an industrial design null and void on the same grounds as indicated in the opposition as refused, unless the person filing the proposal submits new evidence which would by itself, or in combination with the already used evidence, result in different decision in the opposition procedure.

3. A proposal for the declaration of a decision on the grant of an industrial design shall be accompanied by the appropriate evidence.

### Article 73

#### Procedure for the Declaration of a Decision on the Grant of an Industrial Design Null and Void

1. A procedure for the declaration of a decision on the grant of an industrial design null and void shall be initiated by a written proposal for the declaration of a decision on the grant of an industrial design null and void.
2. The contents of the proposal referred to in paragraph (1) of this Article, as well as the attachments to accompany the proposal shall be regulated by the implementing regulation.
3. A proposal for the declaration of a decision on the grant of an industrial design null and void shall be correct if it contains the prescribed indications.
4. If a proposal for the declaration of a decision on the grant of an industrial design null and void is not correct, the Institute shall invite the person filing a proposal to correct it within a period of 30 days from the day of receipt of the invitation.
5. At a reasoned request of the person filing the request, and subject to payment of the fee and procedural charges, the Institute shall extend the time limit referred to in paragraph (4) of this Article for a period which it considers it to be appropriate, but which shall neither be less than 15 days nor more than 60 days.
6. If the person filing the proposal fails to comply with the invitation within the time limit referred to in paragraph (4) of this Article, the Institute shall reject the proposal by a conclusion.
7. The Institute shall send a correct proposal to the holder of an industrial design, and shall invite him to submit his response within a period of 30 days from the day of receipt of the invitation.
8. At a reasoned request of the holder of an industrial design, the Institute shall extend the time limit referred to in paragraph (7) of this Article for a period which it considers to be appropriate, but which shall neither be less than 15 days nor more than 60 days.
9. If it considers it to be necessary, the Institute may order oral proceedings concerning a proposal for the declaration of a decision on the grant of an industrial design null and void.
10. After the procedure as carried out concerning a proposal for the declaration of a decision on the grant of an industrial design null and void on the basis of the proposal referred to in Article 72 paragraph (1) of this Law, the Institute may issue, at any time, a decision on the declaration of the decision on the grant of an industrial design null and void in whole or in respect of a particular design, where multiple application is concerned, or a decision on the refusal of the proposal.
11. The Institute shall publish in the official gazette a decision on the declaration of a decision on the grant of an industrial design null and void, which has become final in the administrative procedure. Where an administrative dispute has been initiated, the court may issue, at the request of the plaintiff, a decision to the effect that final decision shall not be published before a decision is made in the administrative dispute.

Article 74  
Affecting the Final Court Decision

A decision on the declaration of a decision on the grant of an industrial design null and void shall not affect court decisions relating to the establishment of the infringement of right, which are final at the time of issue of such a decision, as well as the contracts of the transfer of rights, or licensing contracts, as concluded if and to extent to which such contracts have been executed, provided that the plaintiff or the holder of an industrial design acted in good faith.

**PART TEN – APPELLATE PROCEDURE**

Article 75  
Right of Appeal

1. A party, entirely or partially adversely affected by the decisions of the Institute issued in the first instance, shall have the right to appeal within a period of 15 days from the day of receipt of the decision.
2. Other parties to the procedure completed by the decision appealed shall be considered parties to the appellate procedure.

Article 76  
Content of an Appeal

In addition to the indications, which shall be contained in any submission, an appeal shall contain:

- a) an indication of the administrative decision appealed,
- b) a statement to the effect whether the administrative decision is contested in whole or in part,
- c) the grounds for appeal,
- d) a statement of reasons for appeal, and evidence supporting the appellant's allegations contained in the appeal,
- e) the signature of the appellant,
- f) a power of attorney if the appeal is filed through a representative.

Article 77  
Board of Appeal

1. The Board of Appeal shall be established as an independent body, responsible to decide on appeals in accordance with the provisions of this Law.
2. The Board of Appeal shall be composed of three members, one of whom shall be the Chairman, and three alternate members, one of whom shall be Deputy Chairman.
3. The members of the Board of Appeal shall be appointed by the Council of Ministers of Bosnia and Herzegovina from among the independent experts in the field of industrial property law, and civil servants from the Institute, in the manner as regulated by the Decision of the Council of Ministers.
4. The seat of the Board of Appeal shall be at the Institute.

5. The Institute shall provide the Board of Appeal with necessary premises and equipment, and shall perform the clerical and administrative tasks for it.
6. The Board of Appeal shall have its own seal.
7. The Chairman of the Board of Appeal shall administer the work thereof.
8. In the case of absence, the Chairman of the Board of Appeal shall be replaced by Deputy Chairman, and a member shall be replaced by an alternate member of the Board of Appeal.
9. The Chairman and members of the Board of Appeal shall be independent in their work, not bound by any instructions of the Director of the Institute, and they shall perform their tasks impartially, in accordance with the law and professional standards.
10. The Chairman and the members of the Board of Appeal shall enjoy the status of independent experts, and shall receive compensation for their service on the Board in accordance with the implementing regulation on compensations for the service on the Board of Appeal.
11. The members of the Board of Appeal and alternate members who participated in decision making in the first instance procedure, or if other reasons for their exclusion exist, shall not participate in the appellate procedure concerning the same case.
12. The Board of Appeal shall enact the Rules of Procedure.

Article 78  
Deciding on an Appeal

1. The Board of Appeal shall decide in sessions, by a majority vote.
2. The Board of Appeal shall decide on the basis of appeals as filed, and if it considers it necessary, it may order oral proceedings.
3. The provisions of Articles 30, 40 and 73 of this Law shall apply *mutatis mutandis* to deciding on an appeal.

## **CHAPTER ELEVEN – CIVIL PROTECTION**

Article 79  
Civil Claims

1. In the case of infringement of a registered industrial design or the rights conferred by an industrial design application, where the industrial design is granted, the plaintiff may claim in an action:
  - a) establishment of the infringement;
  - b) prohibition of the continuation of infringement as committed, and of future similar infringements by means of cessation or omission of acts infringing such right;
  - c) remedy of the situation caused by the infringement;
  - d) recall of the objects of infringement from the channels of commerce, respecting the interests of innocent third parties;
  - e) complete removal of the objects of infringement from the channels of commerce;
  - f) destruction of infringing objects;
  - g) destruction of the means which are exclusively or predominantly intended or used for infringing acts and which are owned by the infringer;

- h) surrender of the objects of infringement to the right holder on reimbursement of the production costs;
- i) pecuniary damages and reimbursement of reasonable expenses of the proceedings;
- j) compensation for moral damage suffered by the author;
- k) the publication of the court's judgment at the expense of the defendant.

2. When deciding on claims referred to in paragraph (1) items c), d), e), f), g) and h) of this Article, the court shall take into account all the circumstances of the case, in particular, the proportionality between the weight of the infringement and the claim, as well as the interest of the right holder for ensuring the effective protection of his rights.

3. In the proceedings against persons whose services are used for the infringement of rights, when the infringement has already been established in the proceedings against a third party, the infringement shall be presumed to exist.

4. The procedure concerning the action referred to in paragraph (1) of this Article shall be expeditious.

#### Article 80 Infringement of a Registered Industrial Design

1. Any unauthorized use of a protected design within the meaning of Article 51 of this Law shall be considered as infringement of an industrial design or the rights conferred by the application, if the industrial design is subsequently granted.

2. Imitation of a registered industrial design shall also be considered as the infringement of the industrial design.

3. When assessing whether the infringement of a registered industrial design exists, the court shall take into consideration, in particular, the degree of freedom of the designer.

#### Article 81 Indemnification

1. The general rules governing indemnification and liability for damage shall apply to all infringements of rights under this Law, unless otherwise provided by this Law.

2. A person who has infringed a registered industrial design shall pay the right holder the indemnification in the amount determined pursuant to the general rules governing the indemnification or in the amount equivalent to the stipulated or customary remuneration for the lawful use of a registered industrial design.

#### Article 82 Penalty

1. If a registered industrial design is infringed intentionally or by gross negligence, the industrial design holder may claim compensation against the person having infringed a registered industrial design up to the treble amount of the stipulated remuneration, and if the remuneration is not stipulated, of the usual license royalty that would be obtained for the use of a registered industrial design.

2. When deciding the claim for the payment of penalty, the court shall take into account all the circumstances of the case, in particular the extent of the damage incurred, the degree of guilt of the infringer, the amount of the stipulated or usual license royalty, and preventive purpose of the penalty.

3. If the incurred damage is in excess of the amount of penalty referred to in paragraph (1) of this Article, the right holder shall be entitled to claim the difference up to the amount of full indemnification.

#### Article 83 Right of Action

1. An action for the infringement of a registered industrial design, or the rights conferred by the application referred to in Article 79 of this Law, may be brought by the holder of the industrial design, the applicant and the holder of the exclusive license.

2. An action for the moral damage as suffered may also be brought by the author of design, provided that he is not the holder of an industrial design or the applicant.

3. The court shall stay the proceedings concerning an action for the infringement of rights conferred by the application up to the final decision concerning the application as filed issued by the Institute.

4. If the procedure referred to in Article 73 of this Law has been initiated before the Institute, the court dealing with the action referred to in Article 79 of this Law shall stay the proceedings up to the final decision issued by the Institute.

#### Article 84 Time Limit for Bringing an Action

An action for the infringement of a registered industrial design or the infringement of the rights conferred by the application may be brought within a period of three years from the day on which the plaintiff learned about the infringement and the infringer, and within five years from the day on which the infringement has been committed for the first time at the latest.

#### Article 85 Provisional Measures

1. The court shall order a provisional measure to secure claims under the provisions of this Law if the applicant demonstrates as probable:

- a) that he is the right holder under this Law, and
- b) that his right has been infringed or that there is an actual threat of infringement.

2. The right holder shall also demonstrate as probable one of the following assumptions:

- a) danger that the enforcement of claim will be made impossible or considerably more difficult;
- b) that a provisional measure is necessary in order to prevent a damage which will be difficult to repair later, or
- c) that the adoption of a provisional measure, which would later in the course of the proceedings prove to be unfounded, would not have more detrimental consequences for the alleged infringer than would have the non-adoption of such provisional measure for the right holder.

3. The right holder who applies for a provisional measure without prior notification and hearing of the opposite party shall demonstrate as probable, in addition to the requirements under paragraphs (1) and (2) of this Article that any delay in ordering of a provisional measure would cause to the right holder damage difficult to repair.

4. In case of ordering of a provisional measure under the provisions of paragraph (3) of this Article, the court shall serve the decision on the order of a provisional measure to the opposite party immediately after the execution thereof.

5. The right holder shall not have to prove the existence of a danger that the enforcement of claim will be made impossible, or considerably difficult, if he shows probable grounds for belief that the proposed provisional measure will cause to the alleged infringer only insignificant damage.

6. The danger shall be deemed to exist when the claims are to be enforced abroad.

7. To secure claims under paragraph (1) of this Article, the court may order any provisional measure with which the purpose of security can be achieved, but it may in particular:

- a) prohibit the alleged infringer to proceed with actions which infringe the right under this Law;
- b) to seize, remove from circulation and take into custody the objects of infringement and the means of infringement, which are exclusively or predominantly intended or used for the commission of infringements.

8. If the measure was ordered before the filing of the claim, the court shall in its order specify a time limit within which the claimant must bring an action for the justification of this measure.

9. The time limit referred to in paragraph (8) of this Article shall not be longer than 20 working days or 31 calendar days, from the day of delivery of the decision to the applicant, whichever expires later.

10. The court shall decide on the opposition against the order of a provisional measure within 30 days following the filing of the answer to the opposition, or the expiry of the time limit for the filing of the answer to the opposition.

11. The procedure concerning the ordering of a provisional measure shall be expeditious.

#### Article 86 Preservation of Evidence

1. The court shall issue an order to preserve evidence, if the applicant provides to the Court reasonable evidence that:

- a) he is the right holder under this Law;
- b) his right has been infringed or that there is an actual threat of infringement;
- c) the evidence of infringement shall be destroyed or that it shall be impossible to present it later.

2. The right holder who applies for the order to preserve evidence without prior notification and hearing of the opposite party shall, in addition to the requirements under paragraph (1) of this Article, demonstrate as probable that there is a danger that the evidence of infringement shall be destroyed, or impossible to collect later, due to the acts of the opposite party.

3. In the case of ordering the preservation of evidence pursuant to the provisions of paragraph (2) of this Article, the court shall serve its order for the preservation to the opposite party immediately after the evidence is collected.

4. The court may order, by the decision referred to in paragraph (1) of this Article, the collection of any evidence, and in particular:

- a) the inspection of premises, business records, inventory, databases, computer memory units, or other material objects;
- b) the seizure of samples of the objects of infringement;
- c) the examination and surrender of documents;
- d) the appointment and examination of experts;
- e) the hearing of witnesses.

5. The preservation of evidence may also be sought after the completion of proceedings by a final decision, if it is necessary for the institution of proceedings on the grounds of extraordinary remedies, or during such proceedings.

6. In the proceedings for the preservation of evidence, according to the provisions of this Article, the respective provisions of the law governing civil procedure pertaining to provisional measures shall be applied, unless otherwise stipulated by this Law.

7. The proceedings for the preservation of evidence shall be expeditious.

8. Where subsequently found that the claim for the preservation of evidence is unjustified, or if the right holder does not justify such claim, the opposite party may request:

- a) the return of the seized objects;
- b) the prohibition of the use of information obtained;
- c) indemnification.

9. The court shall insure the protection of confidential information pertaining to the parties in the proceedings for the preservation of evidence under the provisions of this Article, and take care that the court proceedings are not abused solely for the purpose of obtaining confidential information of the opposite party.

#### Article 87 Obligation to Furnish Information

1. During the lawsuit in the matter of the infringement of a right under this Law, and on the basis of a justified claim of one of the parties, the court may order the infringer of a right to provide information on the source and distribution channels of the goods or services infringing the right under this Law.

2. The court may order that the information referred to in paragraph (1) of this Article be provided to the court also by persons who, within the scope of commercial activity:

- a) possess the goods presumed to infringe the right under this Law;
- b) use the services presumed to infringe the right under this Law; or
- c) render the services presumed to infringe the right under this Law.

3. It shall be considered that an act has been carried out on a commercial scale, if carried out for direct or indirect economic benefit.

4. The notion of the activity on a commercial scale does not include the acts of innocent ultimate consumers.

5. The court may order that the information referred to in paragraph (1) of this Article is provided to the court also by a person indicated by any person referred to in paragraph (2) of this Article as involved in manufacturing, making and distribution of goods, or rendering of services presumed to infringe the right under this Law.

6. The information requested on the grounds of paragraph (1) of this Article may include, in particular:

a) name, address, or company name and registered office of the manufacturer, maker, distributor, supplier and other former possessors of goods, or service providers, as well as the intended wholesalers and retailers;

b) information on the quantities of manufactured, made, delivered, received, or ordered goods or services, as well as the prices obtained for the goods and services concerned.

#### Article 88 Presentation of Evidence

1. Where the court decides to allow the proposed evidence held by the opposite party to be presented, that party shall surrender such evidence at the request of the court.

2. Paragraph (1) of this Article pertains also to banking, financial and business documents controlled by the opposite party, if the infringement was committed on a commercial scale.

3. The respective provisions of the law regulating civil procedure shall apply in the procedure for the presentation of evidence, unless otherwise stipulated by this Law.

4. Following the presentation of evidence, the court shall, according to paragraph (1) of this Article, ensure the protection of confidential information pertaining to the parties, and take care that judicial proceedings are not abused solely with the intention to obtain confidential information of the opposite party.

#### Article 89 Security Instrument for the Opposing Party

At the request of the person against whom a procedure for ordering a provisional measure or preservation of evidence has been initiated, the court may order that an adequate amount of money be deposited by the applicant as a security instrument in the case of an unfounded claim.

#### Article 90 Challenge of an Industrial Design

1. The author of a design or his legal successor may claim in an action from the court to establish that he is entitled to file an application instead of or together with a person having filed the application.

2. The author of a design or his legal successor may claim in an action from the court to establish that he is the holder of a registered industrial design instead of or together with a person in whose name the industrial design has been registered.

3. The action referred to in paragraph (1) of this Article may be brought by the completion of the procedure for the grant of an industrial design, whereas the action referred to in paragraph (2) of this Article may be brought by the expiration of the term protection of a registered industrial design.

4. If the claim referred to in paragraph (1) or (2) of this Article is upheld in a court decision, the Institute shall, after the receipt of the court decision or at the request of the plaintiff, enter the plaintiff in the respective register of the Institute as the applicant or the holder of an industrial design, and shall publish the data concerning that in the official gazette.

#### Article 91

##### Right to a Challenged Industrial Design Acquired by Third Party

The right acquired by a third party from the former applicant or the holder of a registered industrial design, referred to in Article 90 of this Law, shall be terminated on the day of entry of the new applicant or the new holder of a registered industrial design in the respective register of the Institute, provided that the former applicant or the former holder of the industrial design has been deleted from the respective register of the Institute, on the basis of the court decision referred to in Article 90 paragraph (4) of this Law.

#### Article 92

##### Dispute Concerning the Recognition of Authorship

1. A person considering himself the author of a design or his legal successor may claim in an action from the court to establish that he is the author of the design that is the subject matter of an application or a registered industrial design, and to be indicated as the author in the application and all other documents, as well as in the respective registers.

2. The plaintiff referred to in paragraph (1) of this Article may also claim the publication of the judgment at the expense of the defendant, compensation for moral damage and pecuniary damages and reimbursement of the expenses of the proceedings.

3. The time period for bringing the action referred to in paragraph (1) of this Article shall not be limited.

## CHAPTER TWELVE – CUSTOMS MEASURES

#### Article 93

##### Request Filed by the Right Holder

1. The holder of the exclusive rights under this Law, who reasonably believes that the importation, transit or exportation of the goods manufactured in contravention of the provisions of this Law shall take place, may apply for the protection of his rights with the competent customs authority (hereinafter: the customs authority) by means of customs measures of temporary impounding of the goods.

2. The application for the protection of rights under paragraph (1) of this Article must contain:

- a) details of the applicant and the holder of the exclusive right under this Law, if they are not the same persons;
- b) a detailed description of goods enabling their identification;
- c) proof that the applicant or a person authorized by him is the holder of the exclusive right under this Law in connection with such goods;

- d) proof that the exclusive right is likely to have been infringed;
- e) other details held by the applicant relevant for deciding on the application, such as details of the location of goods and the destination thereof, the expected date of arrival or dispatch of the package, means of transportation, details of the importer, exporter or recipient, and the like.
- f) time period within which the customs authorities shall act on such application, which may not be longer than two years from the date of its filing.

3. The customs authority may, before issuing its decision by which the application referred to in paragraph (1) of this Article is granted, request the right holder to deposit a security instrument for the costs of the storage and transportation of the goods, as well as for the compensation for damage, which may be incurred by the customs authority in connection with the goods and by the party against which the application referred to in paragraph (1) of this Article is granted.

4. If the customs authority grants the application under paragraph (1) of this Article, it shall inform all customs outposts, and the right holder about it.

#### Article 94

##### Procedure Following the Temporary Impounding of Goods

1. Where in the course of the customs procedure a customs unit finds the goods matching the description of the goods indicated in the decision of the competent customs authority, it shall temporarily impound such goods.

2. The decision on the temporary impounding of the goods shall be delivered to its importer.

3. It shall be specified in the decision on impounding referred to in paragraph (2) that the owner of the goods, or a person entitled to keep the goods in his possession, may declare, within ten working days from the date of temporary impounding, whether the goods are counterfeit or whether another infringement of right under this Law is concerned.

4. Where the customs authority does not receive a written declaration of the owner or a person entitled to keep the goods in his possession, within the period referred to in paragraph (3) of this Article, it may seize and destroy the goods at the request of the right holder, and at his expense.

5. Where the owner of the goods or a person entitled to keep the goods in his possession declares, within the period referred to in paragraph (3) of this Article, that the goods are not counterfeit or that there is no other infringement of a right under this Law, the right holder may, within ten working days from the receipt of the notification of such declaration, bring an action for the infringement of rights.

6. Where particular circumstances of the case justify it, the customs authority may allow, at the request of the right holder, additional time for bringing an action referred to in paragraph (5) of this Article which may not be longer than ten working days.

7. During the temporary impounding of the goods, the right holder or a person entitled by him, may carry out the inspection and control of the goods and accompanying documents to the extent necessary for establishing his claims and for the realization of judicial protection of his rights, ensuring at the same time the protection of confidential information.

8. The importer shall also be entitled to carry out the inspection and control of the goods.

9. If the right holder fails to bring an action referred to in paragraph (5) of this Article, the temporarily impounded goods shall be released to the requested customs approved use or circulation.

10. If the right holder initiates judicial proceedings, the customs authority shall issue a decision on the confiscation of goods until the issue of the final judicial decision.

11. If the right holder brings an action referred to in paragraph (5) of this Article, and the competent court fails to order a temporary measure of impounding the goods within the time limit referred to in paragraph (5) of this Article, the owner of the temporarily impounded goods or a person authorized to dispose of it shall be entitled to claim the release of such goods if he deposits a security instrument in the amount sufficient to cover possible compensation for damages incurred by the right holder, provided that all other conditions for the release of such goods are fulfilled

#### Article 95 Ex-Officio Procedure

1. Where a customs outpost reasonably believes, during the customs procedure in connection with the importation, transit or exportation of the goods, that the rights under this law are infringed by certain goods, it shall temporarily impound such goods and inform the customs authority about it.

2. The customs authority shall inform the right holder in writing about the impoundment, the suspicion that his rights are infringed and the possibility of filing the application under Article 93 of this Law, within five working days from the date of impoundment.

3. Where the right holder files the application in accordance with paragraph (2) of this Article, the goods shall be impounded until the decision of the customs authority.

4. If the customs authority grants the application referred to in Article 93 of this Law, the goods shall be temporarily impounded for another ten working days.

5. The right holder must carry out the actions specified in Article 94 paragraph (7) of this Law, within the time limit referred to in paragraph (4) of this Article.

6. The provisions of Articles 94 and 95 of this Law shall not apply to importation, transit or exportation of small quantities of goods intended for private and non-commercial use, which are brought into or taken out of the country as part of traveler's personal luggage or sent in small consignments.

#### Article 96 Application of Other Customs Regulations

1. Other customs regulations shall apply *mutatis mutandis* to the customs procedure in connection with the goods infringing the rights under this Law.

2. The regulations governing more specifically the implementation of customs measures referred to in this part of the Law shall be enacted by the Council of Ministers, upon the motion of the Indirect Taxation Authority of B&H.

3. The customs procedure in connection with the goods infringing the rights under this Law shall be expeditious.

## **PART THIRTEEN – MISDEMEANOUR PROVISIONS**

### **Article 97 Misdemeanors**

1. A legal person and an entrepreneur who infringe a registered industrial design or the right conferred by the application in the manner referred to in Article 80 of this Law shall be punished by fine in the amount of KM 5.000 to KM 200.000.
2. A responsible person in a legal entity shall also be punished for the misdemeanor referred to in paragraph (1) of this Article of the Law by fine in the amount of KM 3.000 to KM 20.000.
3. A natural person shall be punished for the misdemeanor referred to in paragraph (1) of this Article by fine in the amount of KM 3.000 to KM 10.000.
4. The objects resulting from the commitment of the misdemeanor referred to in paragraph (1) of this Article shall be seized and destroyed, whereas the objects or devices intended for or used for the commitment of such misdemeanors shall be seized.
5. The misdemeanor procedure based on the provisions of this Article shall be expeditious.

### **Article 98 Protective Measure**

1. A legal entity, who commits the misdemeanor referred to in paragraph (1) of Article 97 of this Law in the course of carrying out its business activities, may be imposed a protective measure involving the prohibition of business activities or the part thereof infringing a registered industrial design for a period of one year, if the misdemeanor committed is exceptionally serious regarding the manner in which it was committed, the consequences of the act or other circumstances of the misdemeanor as committed.
2. A legal entity who repeats the commission of the misdemeanor referred to in Article 97 paragraph (1) of this Law shall be imposed a protective measure involving the prohibition of business activities or the part thereof, infringing a registered industrial design, for a period of at least one year.

### **Article 99 Inspection Control in Relation to Misdemeanors**

1. Inspection control in relation to the misdemeanors sanctioned under Article 97 of this Law shall be carried out by the inspection office in charge of the market control in the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina.
2. The inspection procedure shall be expeditious.

## **PART FOURTEEN – TRANSITIONAL AND FINAL PROVISIONS**

### **Article 100**

#### **Rights Granted Before the Application of this Law and Implementing Regulations for the Implementation of this Law**

1. Registered industrial designs that are valid on the day on which this Law enters into force shall remain valid and the provisions of this Law shall apply to them.
2. The Director of the Institute shall enact implementing regulations for the implementation of this Law within six months from the date of entry of this Law into force, with the exception of the regulations under Article 16 and paragraph (2) of Article 96 of this Law.
3. The implementing regulations within the meaning of paragraph (2) of this Article shall be: The Regulations Concerning the Procedure for the Grant of Industrial Designs, The Decision on Special Procedural Charges for the Acquisition and Maintenance of Industrial Property Rights, The Decision on the Conditions for an Entry in the Registers of Representatives for Industrial Property Protection, The Regulations Concerning Professional Examination for the Representatives for Industrial Property Protection and the Decision Concerning Compensation for the Service on the Board of Appeal.

### **Article 101**

#### **End of Validity of other Regulations and Pending Procedures for the Grant of Industrial Design**

1. The provisions of CHAPTER II: TYPES OF INDUSTRIAL PROPERTY RIGHTS Section 3. INDUSTRIAL DESIGN (Articles 97 to 115) of the Law on Industrial Property in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina volumes 3/02 and 29/02) relating to the industrial design, as well as the provisions which may be applied to industrial designs accordingly shall cease to have effect on the date of the commencement of application of this Law.
2. By way of derogation from the provision of paragraph (1) of this Article, the Law on Industrial Property in Bosnia and Herzegovina shall continue to apply to all administrative procedures relating to industrial designs, which are not completed by the day of the commencement of application of this Law.

### **Article 102**

#### **Application of International Treaties**

The provisions of international treaties pertaining to the industrial design, acceded to by B&H, shall apply to the subject-matters regulated by this Law, and in the case of conflict with the provisions of this Law, the provisions of international treaties shall apply.

### **Article 103**

#### **Unified Application of the Provisions on the Board of Appeal Contained in the Patent Law, the Law on the Protection of Indications of Geographical Origin and the Trademark Law**

The provisions of Articles 77 and 78 of this Law and the respective provisions of the Patent Law, The Law on the Protection of Indications of Geographical Origin and the Trademark Law, governing the Board of Appeal of the Institute, shall apply in the manner that one board of appeal shall be established.

Article 104  
Entering into Force and Application of the Law

This Law shall enter into force on the eight day following the day of its publication in the "Official Gazette of B&H" and shall apply as of January 1, 2011.

PARLIAMENTARY ASSEMBLY OF B&H, number 520/10  
May 28, 2010  
Sarajevo

Speaker  
House of Representatives  
Parliamentary Assembly of Bosnia and Herzegovina  
**Dr Milorad Živković**, signed

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Speaker  
House of Peoples  
Parliamentary Assembly of Bosnia and Herzegovina  
**Sulejman Tihić**, signed