

Amendments of Bulgarian Industrial Design Law

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As of February 12, 2011 the latest amendments to the Bulgarian Law on Industrial Design (LID) have entered into force. They are very significant as they concern the industrial design registration procedure.

The new registration system approximates the LID with the registration regime provided by Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community designs (CRCD).

Essential amendments

In contrast to the *ex officio* substantive examination according to the grounds for registration stipulated in Art. 11, the new provisions introduce a simple registration system. It could be summarized to the following stages: a formality check and an examination as to whether the design is in compliance with the criteria in Art. 3 and Art. 11, para. 2, item 1 of the LID, namely:

- if the applied for design represents a design in the meaning of the LID – the appearance of the whole or a part of a product, resulting from the specific features of the shape, lines, contours, ornamentation, colours or combination thereof; and
- whether it does not contradict to the public policy and good morality.

In other words, the Patent Office does not perform *ex officio* a novelty examination of industrial design applications anymore.

Designs in compliance with the above-specified requirements are registered and published in the Official Bulletin of the Patent Office.

For each of the stages a timeline is set out and the terms for payment of the fees for filing and examination, as well as for rectifying deficiencies and responding to official actions are lessened. Thus the registration procedure is accelerated and the exclusive right could be quickly acquired.

The term for division of the application is also limited to two months instead of the previous three-month period for filing a separate application in case the initial one does not satisfy the criteria for a multiple application.

Another important amendment, which is introduced for the first time in the Bulgarian legislation, includes the possibility for requesting a deferred publication of the registered design for up to thirty months as of the date of filing the application, respectively the priority date. That gives the applicant an opportunity to gain additional time before revealing the design to his competitors and for marketing researches.

Deferment of publication could be requested when filing the industrial design application, for which official fees are paid. In the case of multiple applications, deferred publication could be applied only to some of the designs included therein. The request for publication of the registration has to be filed within 27 months as of the application date, respectively the priority date. If within this term a request is not submitted with the Patent Office and/or the due fee is not paid, the industrial design application is considered withdrawn.

However, there are some differences between the LID and the CRCD. For example, the initial period, for which the industrial design is protected according to the LID, is 10 years and according to the CRCD - 5 years. But the maximum overall possible term of protection stays the same – 25 years.

Advantages and disadvantages of the new registration system

With the new regime Bulgarian applicants have the opportunity to obtain protection of their industrial designs under the same conditions, regardless of whether they are filing an application with the Bulgarian Patent Office or with the OHIM.

Moreover, the period necessary for registration of an industrial design is significantly reduced.

However, since industrial design applications are no longer published in the Official Bulletin of the Patent Office, objections against their registration cannot be filed. As of February 12, 2011 the only remaining possibility for objection against an industrial design is filing a cancellation request after its registration.

As with the repeal of the *ex officio* novelty examination the Patent Office is no longer in the position of “judging” whether there is a conflict between earlier and later rights. Therefore, the proactive behaviour on behalf of industrial design applicants/owners is necessary. Their responsibility will be twofold. On one hand, prior to filing an industrial design application, applicants have to search for earlier rights in order to avoid infringement of third parties’ rights. On the other hand, owners of registered designs have to follow the publications of later registrations. Thus, they could cancel a design in case there is an evidence, contesting novelty and/or individual character.

The negative aspect is that this leads to a separate procedure before the higher instance – the “Disputes” Department, which will incur additional official fees and attorney fees for collecting evidences, drafting objections, etc.

The reforms in the registration procedure led to a reduction of the official fees collected by the Patent Office for examination of industrial design applications. However, a new optional fee has also been introduced for deferred publication.

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