Industrial Designs. International Registration

- The importance of international registration of industrial designs [1]
  In the event of business expansion abroad, it is important to protect our industrial design rights in other countries to benefit from the exclusive right to use and prohibit use thereof by third parties without the holder`s consent.

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- Registration methods [1]
  Registration of industrial designs on the territory of the Republic of Moldova has no effect on the territories of other states. To obtain protection in one or more foreign countries, industrial designs should be recorded in each country separately. This may be done by submitting separate applications in each country concerned or by submitting a single application through the Hague Agreement Concerning the International Registration of Industrial Designs. According to the Hague Agreement, applications for an international registration shall be filed with the World Intellectual Property Organization personally or through the AGEPI.

  The Hague System

  The Hague System for the International Registration of Industrial Designs is a centralized registration system, through which you may e-file up to 100 designs and seek protection in 64 territories through filing one single application that would serve for claiming priority in further filings.

  The Republic of Moldova is Member to the (1960) Hague Act and the (1999) Geneva Act of the (1925) Hague Agreement. Any natural or legal person may file an international application under the Hague System. For more information on filing an international application, geographical coverage and fees, please visit web page www.wipo.int/hague/en [2].

  Representation before the International Bureau

  An application for the international registration of an industrial design may be filed personally by the applicant or through a patent attorney. **Designation of a patent attorney is not compulsory**.

  Where the applicant designates a patent attorney, the latter may be any person chosen by the applicant. For the selection of a patent attorney, the Hague Agreement does not provide for any restrictions in respect of professional conditions (qualification) or territorial conditions (nationality or residence).

  The applicant may be represented by a single patent attorney. Where more patent attorneys are indicated in the application, only the first mentioned may be considered to be a patent attorney and may be registered as such. If a company or a partnership of attorneys or patent or trademark attorneys was indicated as patent attorney before the International Bureau, it shall be regarded as one patent attorney.

  Effects of the patent attorney designation

  The designation of a patent attorney before the International Bureau has the effect of substitution of the applicant/ holder with the patent attorney. Thus, “the signature of the patent attorney substitutes the signature of the applicant or the holder, unless the Regulations expressly provide otherwise”. According to the same rule, any communication of the International Bureau (except the ones in relation of which the Regulations expressly

provide that a communication shall be addressed both to the applicant / holder and the patent attorney) shall have the same effect as if it has been addressed to the applicant or the holder and vice versa: any communication addressed to the International Bureau by a patent attorney shall have the same effect as if it has been addressed to the Bureau by the applicant or the holder.

Cancellation of Recording of patent attorney designation.

Cancellation of Recording may be requested both by the applicant/holder (“revocation”, and the patent attorney (“renunciation”).

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- International application for registration [1]
  The international application may be in either English or French, at the applicant’s option. Consequently, if the international application is filed under the 1960 Act or 1999 Act, exclusively or partly, the applicant may choose one of the two languages to file the international application.

  Sanctions for non-compliance with linguistic requirements. It is important to file the application in one of the languages prescribed, for the following reasons:

  - such negligence constitutes an irregularity which is required to be removed within 3 months from the date of notification of the applicant by the International Bureau, otherwise the application will be considered abandoned, and the International Bureau will return any fees referred to that application after deduction of certain value from the basic fee;
  - if the application was not filed in one of the prescribed languages, it will be an irregularity which will influence (will impose a delay) the filing date of the international application.

  Filing the international application to the International Bureau

  Who may (or is authorized to) file an international application with the International Bureau?

  The international application shall be filed with the International Bureau directly by the applicant. However, the Hague Agreement allows the Contracting States to provide in their national legislation filing of the application through the National Office (for Moldova – AGEPI).

  How will the application be filed with the International Bureau?

  The application may be filed directly with WIPO, it is also possible to file the application by mail, facsimile (except international applications containing coloured representations) and by electronic means.

  The filing mode is very important in so far as it may have an effect on the filing date.

  All documents submitted to the International Bureau shall have the date of the day on which they were actually received by the Bureau. If that receipt occurs after working hours or on the day the International Bureau is closed for official business, the documents mentioned will be considered to be received the next day the Bureau will be open for official business.

  When an international application containing reproductions in black and white is submitted to the International Bureau by facsimile, that application will be effective only when it is submitted on the official form, and the filing date shall be considered the date of submission by facsimile provided that within 20 days from the date of submission by facsimile the original application is sent to the International Bureau. If neglecting these requirements, the filing date will be the date of receipt of the original application and not of the facsimile.

Where the international application is indirectly filed, through the National Bureau, the filing date will be the date on which the National Office received the application provided that the application is filed with the International Bureau within a month, otherwise the filing date will be the date on which the Bureau received the application.

The international application consists in general terms of a standard form to be completed and representations of industrial designs for which protection is sought.

Application Form

The international application shall be submitted on an official form of the International Bureau http://www.wipo.int/hague/en/forms/ [3] .

Besides the classical indications for all applications (name and address of the applicant and, if appropriate, of the patent attorney, number of industrial designs submitted, claimed priority etc.), however, some indications are specific to international application and deserve particular explanation.

Indication of the country or countries in connection with the applicant (through an effective and real industrial or commercial establishment, residence or nationality). Such indications are necessary to demonstrate the applicant`s entitlement to perform the international registration and to determine the territorial extent on which protection could be obtained.

Title of the industrial designs or the objects filed. The number of industrial designs in the international application shall not be higher than 100, this would constitute the “multiple” deposit.

The application for registration shall indicate precisely the title of each industrial design submitted. The title shall be different whether it is for a design (bi-dimensional) or a model (three-dimensional).

As a consequence: in the case of a design, ie a decorative motive such as a character or a landscape, the applicant shall indicate in words the object or objects on which such design will be applied; in the case of a model, the applicant shall identify it, showing in a precise and concise manner the nature thereof (a chair, spectacles, a clock, etc.).

All the objects representing industrial designs included in an international application must belong to the same class of the International Classification of Locarno (the “monoclass” deposit), except for ornamental products.

Designation of States in which the applicant may seek protection. Protection of industrial designs, objects of an international application may be obtained exclusively in the territory of the Member States of the Hague Union.

It is important for the applicant to designate, upon the filing of the application, all the countries in which he wishes to obtain protection. Unlike the system of the Madrid Agreement concerning the international registration of trademarks, the Hague Agreement does not provide for additional designation of a State after the deposit.

Limits on protection in the applicant`s country of origin. Unlike the system of the Madrid Agreement concerning the international registration of trademarks, the Hague Agreement does not impose the obligation to file an international application after the national application has been filed in the country of origin. Thus, the Republic of Moldova may be designated in an international application if it is a State of origin.

Description. There is the option to include in the application a description of the industrial designs (Rule 7(5)(a) of the implementing Regulations). The description may exclusively refer to the ornamental characteristics of the industrial design that are visible in reproduction,

except the technical features relating to the functioning of the object filed or its application possibilities.

Presentation of Reproductions. The reproductions should be submitted and fall within a right-angled quadrilateral containing no other reproduction, or part of another reproduction. Photographs or other graphical representations should not be folded, stapled or marked in any way. This provision may be explained by the fact that the reproduction of industrial designs in the Bulletin published electronically is performed by a numerical process. The term “right angled quadrilateral” mentioned in these Instructions may be any quadrilateral with right angles (a square or a rectangle).

Where the same design is intended to be applied to more articles that form a whole (e.g. a dinner service), the deposit may comprise only one of the articles forming the whole (e.g. a plate) that will be shown in the photographs or other graphic representations accompanying the application.

Numbering of reproductions. Each industrial design of a multiple deposit shall be identified by an individual number, appearing in the margin of each reproduction.

When the same article is represented from different angles, the numbering shall consist of two separate figures, separated by a dot: 1.1, 1.2, 1.3... for the first design; 2.1, 2.2, 2.3... for the second article etc.

Dimensions of the reproductions. The representation of each industrial design on the reproductions attached to the application should have the dimensions in which the applicant wishes them to be published. Maximum and minimum dimensions: these reproductions may not exceed 16 x 16 centimeters, and one of those dimensions must be at least 3 centimeters.

Content of reproductions. Graphical or photographical reproductions represent the main component of the application.

Actually, the protection of industrial designs submitted is a visual protection which covers only the features visible on reproduction. On the contrary, a feature not appearing on the reproduction shall not be protected even if it actually exists, so, it is important to submit representations for the same design from different angles (e.g., a garment represented both from front and back).

A reproduction may be a design only if the so-called abstraction represents the object on which it is applied.

The graphical representations shall represent the deposited design or article alone in relation to which the industrial design is to be used, excluding any other objects, accessories, persons or animals. A product shall be represented at least once in the position in which it is usually used.

This provision shall be considered as mandatory by the International Bureau of WIPO. Thus, for example, a library shall be reproduced without books, a garment – without the person wearing it, a frame – without the photograph, a vase – without flowers etc. This requirement is provided to prevent that , under an application for a single product (and paying a single series of fees), the applicant actually benefits from protection for several different designs or models.

The photographs submitted must be clear. Photographs retouched with ink or correcting fluid are not allowed .Reproductions of photographs that meet the conditions set above and have been produced by means of electronic processes shall also be allowed.

Photographs or reproductions shall have all the edges cut at right angles.

The articles represented should preferably be in perspective (axonometry); they may

comprise shading and hatching to provide relief. Moreover, technical drawings representing an object in section or in plan with axes of symmetry and sides as well as with explanatory texts or legends represented on or next to the articles.

Representations of an article at different angles, at the choice of the applicant, may appear on the same reproduction or on independent reproductions. The same article may be represented from a different angle and these views are shown on separate graphic reproductions.

Quality of the reproductions. Reproductions should be of the highest possible quality, since, they are fundamental to the scope of protection. Moreover, reproductions must be of a quality permitting all the details of the industrial design to be clearly distinguished and permitting publication. For this reason the industrial designs must be shown against a neutral (blank) background.

Close [1]

- Specific procedural aspects [1]
  As already mentioned, since the receipt of the international application, the International Bureau of WIPO shall verify whether it meets the formal requirements. Since it is a formal examination, the International Bureau makes no assessment of the novelty of the industrial design filed and may not, therefore, reject an application by such reason.

  Processing of regular applications. If the application meets the prescribed requirements, the International Bureau shall record it in the International Register, publish it in the Bulletin of International Industrial Designs which is placed on the WIPO site. At the same time the International Bureau shall send the holder of the international application a certificate containing the reproduction of entries made in the International Register.

  Processing of non-regular applications. If the International Bureau finds that the application or the parts accompanying it do not fulfill the applicable requirements, it shall invite the applicant to make the required corrections within three months from the date of notification.

  If the international application was performed through an office, the International Bureau shall send this office a copy of the letter addressed to the applicant regarding the detected irregularities.

  Where the irregularities are not remedied within three months, the International Bureau shall consider the international application abandoned and shall notify the applicant about it.

  Publication of the international application

  Any application conforming to the prescribed requirements shall be the object of publication in the Bulletin of International Industrial Designs.
  This publication is carried out weekly and electronically.

  The principle of direct publication. Any application fulfilling the prescribed requirements shall be published in the Bulletin of International industrial Designs. This publication shall be substituted by the one required by the national legislation.
  On the other hand, publication of the international application in the Bulletin of International Industrial Designs (addressed to all national offices) takes place of the national publication and, therefore, any other publication may not be required by the contractual States.

  Exception: deferment of publication. The prescribed period for deferment of publication in respect of an international application governed exclusively by the 1999 Act shall be 30 months from the filing date.

  The maximum period for deferment of publication in respect of an international application governed exclusively by the 1960 Act or by both the 1999 Act and the 1960 Act shall be 12

months from the filing date or, where priority is claimed, from the priority date of the application concerned.

Term of validity of the international registration

According to Article 17 of the 1999 Act, the international registration shall be effective for an initial term of 5 years from the date of international registration. The international registration may be renewed for two additional terms of 5 years each, in accordance with the prescribed procedure and payment of appropriate fees. If there are Contracting States where the term of protection exceeds the term of 15 years, the international registration may be extended for such states for additional periods of 5 years until the expiration of the entire term of protection according to the national legislation.

Pursuant to Article 11 of the 1960 Act, the international registration shall be established for the first period of 5 years and may be renewed for an additional period of 5 years, the minimal term of protection being 10 years.

Moreover, where the national legislation of a Contracting State admits protection of the national filing for a period of more than 10 years, the international filing may be renewed, for that State, for additional periods of 5 years until the expiration of the entire term of protection admitted for the national filing.

It should also be noted that Article 11(3) of the 1960 Act enables all Contracting States, within the framework of the national legislation, to restrict to up to10 years the term of protection of industrial designs, objects of the international registration.

It falls within the competence of the holder who, on expiry of the second 5-year period of protection, wishes to renew the international filing for a certain country, be aware of the maximum term of protection under national law in order to ensure the validity of the renewal concerned (information on www.wipo.int [4]).

Any renewal sought shall, consequently, be registered in the International Register with no need for the International Bureau to rule on its opportunity. Such situation may be explained mainly by the fact that the Hague Agreement does not provide for an obligation in relation of the contracting States to notify the International Bureau on the maximum term of the industrial design protection by national legislation; the International Bureau is unable to re-issue the renewals sought.
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