

# REPUBLIC OF LATVIA LAW

## On Industrial Design Protection

### Chapter One

#### General provisions

#### *Article 1. Industrial design and its patentability*

(1) In this Law, the notion industrial design means the external appearance of an article created as a result of artistic design. Industrial designs may be three-dimensional (models), two-dimensional (drawings), or a combination of both.

(2) An industrial design patent shall be issued for an industrial design which is new, visually appealing and which may be utilized in industrial articles or articles of handicraft.

(3) An industrial design is new if, up to the day when the patent application has been filed with the Republic of Latvia Patent Office (hereinafter - the Patent Office) or up to the priority date, the industrial design has not been known from publications available to the public both in Latvia and beyond its borders, or from facts of its public use in Latvia. In determining the novelty of an industrial design, the patent applications previously submitted (with an earlier priority date) to the Patent Office by other persons and which will be published in the official bulletin of the Patent Office, must also be taken into account.

(4) The distinctive features of an industrial design may be expressed in the peculiarities of its form, its configuration, the structure of its surface, its ornament, and the composition of lines or the combination of colours; however, the novelty of an industrial design shall be determined by visually evaluating the product's external appearance as a whole.

(5) An industrial design shall not be deemed new if, in comparison with an already known industrial design (in accordance with the provisions of Paragraphs 3 and 4 of this Article):

- 1) it is identical;
- 2) its distinctive features do not essentially alter the complete visual impression of the external appearance of the article;
- 3) it is recognized that distinctive features are an insignificant variant or modification of an already known industrial design; or
- 4) the external appearance of the industrial design is essentially similar but is merely applicable to a different type of article.

(6) The novelty of an industrial design is not affected by a previous disclosure of its essence, if this disclosure has occurred no earlier than six months prior to the filing date of the application, and the disclosure is associated with:

- 1) an obvious malicious intent towards the applicant or his legal predecessor; or

2) the display of such an exhibit in which this industrial design was used, at an official or officially recognized international exhibition which corresponds with the requirements of the November 22, 1928 Convention on International Exhibitions.

(7) An industrial design shall be regarded a visually appealing if it has such a unity of aesthetic features which makes the external appearance of the relevant article attractive to the buyer or user.

(8) An industrial design shall be recognized as applicable in manufacturing of industrial articles or articles of handicraft if its external appearance can be reproduced industrially or through craftsmanship in relevant articles in order to be introduced into economic circulation.

## *Article 2. Objects excluded from protection*

(1) This Law shall not grant legal protection for the external appearance of an article, if:

- 1) it is predetermined only by the technical functions of the article;
- 2) it contradicts principles of ethics, humanity and morality;
- 3) the article is an object of architecture (including industrial, hydrotechnical or other stationary structures), except small forms of architecture and buildings (structures) which are industrially manufactured (outside a building-site), and their component parts; and
- 4) the article is an object of a nondescript nature, which is formed from liquid, gaseous, powdery, or similar substances.

(2) An industrial design or its elements shall also not be granted legal protection in cases when the external appearance of an article, without the owners permission, includes the following:

- 1) objects which do not essentially differ from industrial designs protected in Latvia of other persons;
- 2) objects protected by copyright;
- 3) surnames, pseudonyms and portraits of persons publicly well-known, unless these persons have died 50 years ago, or earlier; and
- 4) names of firms, indication of the place of production, names of products, as well as trademarks and service marks protected in Latvia or unprotected, but well-known in Latvia.

(3) The legal protection of a patented industrial design shall not apply to its elements which are:

- 1) predetermined merely by the functional task of the article or which are necessary in order to obtain a technical effect; or
- 2) composed of the coat of arms, flags, names and abbreviations of countries, other official symbols of countries, names of international organizations, their abbreviations and emblems, religious symbols, insignia and national decorations, official units of measure, marks of control and guarantees, as well as other official signs used in Latvia.

### *Article 3. Subjects of patent rights, patent owner*

(1) A right to an industrial design patent shall belong to the author of the industrial design (hereinafter - the designer) or his legal successor.

(2) If several persons have jointly created an industrial design, the right to the patent shall belong to all of them, jointly. The mutual relations which result if several persons are granted a joint patent shall be determined by the agreement concluded by these persons.

(3) If several persons have created an industrial design independent of one another, the right to the patent shall belong to the person who is the first to file a patent application with the Patent Office and in the event of a dispute, the rights to the patent shall be determined by court.

(4) If an industrial design has been created in the course of performing one's employment duties, the right to the patent shall belong to the employer, provided that a respective contract has been signed between the employer and the designer. The contract determines the employer's and the designer's mutual relations associated with the patent, as well as the employer's right to use the patent and the designer's right to proper compensation for the creation and use of the industrial design. Disputes between them concerning the fulfillment of the terms of the contract shall be determined by court.

(5) If in the case mentioned in Paragraph 4 of this Article, a contract has not been signed between the employer and the designer, or if the employer who has a right to the patent refuses to file a patent application for the respective industrial design or, four months after the proposal of the designer, the employer has not filed a patent application for the created industrial design, then the right to the patent shall pass to the designer.

## Chapter Two

Patent application for the industrial design and its examination. Industrial design patent.

### *Article 4. Patent application*

(1) The designer or his legal successor, who wishes to acquire the legal protection of an industrial design, shall file the patent application (hereinafter - the application) with the Patent Office.

(2) The application shall include:

- 1) a request for grant of patent;
- 2) a complete reproduction set of the industrial design which provides a full and detailed idea of the external appearance of the article;
- 3) a description of the industrial design;

4) if it is necessary, in order to clarify the essence of the industrial design, drawings of the general view of the article, an ergonomic scheme, a confection scheme or a sample of the article; and

5) a document which certifies payment of the application fee.

(3) An application shall pertain to one industrial design. The application may include variants or different samples of the industrial designs if the respective articles create a united whole, combined unit or series, and are to be manufactured or utilized as one entity, however, not exceeding 20 variants (samples) in one application.

(4) The request of the application shall be in the Latvian language, other materials and documents may be submitted in English, French, Russian or German. If the application documents are submitted in English, French, Russian or German, then the applicant, within two months after the request of the Patent Office or, in case of a dispute, after the request of the Patent Office Board of Appeal (hereinafter the Board of Appeal), or court shall submit a translation of these materials into the Latvian language. These translations shall be considered a component part of the application. All further processing of the application (correspondence) shall be in Latvian.

(5) If the application is filed through a representative, a document certifying the representative's authorization shall be attached. A foreign applicant, a natural person or legal entity who does not have a permanent place of residence or who does not own an enterprise in the territory of the Republic of Latvia, may only file an application and maintain correspondence with the Patent Office through a patent attorney registered with the Patent Office.

(6) If necessary, the application shall include other materials and documents determined by the Patent Office. Formal requirements concerning application materials and documents shall be determined by the Patent Office.

(7) The request of the application shall be signed by the applicant or his representative.

### *Article 5. Priority of an industrial design*

(1) The filing date of an industrial design (the priority of an industrial design) shall be determined by the date when the Patent Office has received the application which conforms with the requirements of Article 4, Paragraph 2 of this Law.

(2) A right to priority (Convention priority) may also be claimed if the application for the same industrial design has been filed earlier in another country party to the Paris Convention for the Protection of Industrial Property or in any other country with which the Republic of Latvia has concluded an agreement on the recognition of the right to priority, however, with the provision that the application has been filed with the Patent Office within six months from the filing date of the first application.

(3) The application may claim priority (exhibition priority) based on the display of the industrial design in an official or officially recognized international exhibition in a

country party to the Paris Convention for the Protection of Industrial Property, however, with the provision that the application has been filed with the Patent Office within six months from the first day of the exhibition of the industrial design.

(4) An applicant who wishes to take advantage of the right to Convention priority or exhibition priority shall so indicate in the application. Documents verifying the right to priority shall be submitted simultaneously with the application or shall be attached therein no later than within three months from the filing date of the application.

#### *Article 6. Preliminary examination of an application*

(1) The Patent Office shall examine whether the filed application conforms to the requirements prescribed in Article 4 (excluding Paragraph 3) of this Law. The preliminary examination of an application shall be accomplished within three months from its filing date with the Patent Office.

(2) If the application does not conform or only partially conforms to the prescribed requirements, the Patent Office shall notify the applicant, specifying the discrepancies and setting a term for providing a reply. The term for preliminary examination is extended, accordingly.

(3) Until completion of the preliminary examination, the applicant shall have the right, on his own initiative and by paying the appropriate fee, to make amendments in the application which do not alter the essence of the industrial design. Such amendments shall also be made upon the request of the Patent Office. In both cases, the term for preliminary examination shall be extended, accordingly.

(4) Supplementary materials which alter the design's essence may be filed by the applicant as an independent application, the priority of which shall be determined on the date the additional materials have been received by the Patent Office.

(5) If the application conforms to the prescribed requirements, the Patent Office shall send a notice to the applicant on the completion of the preliminary examination (the acceptance of the application).

(6) If the applicant does not, within the set time limits, eliminate the indicated basic deficiencies of the application, the application shall be considered abandoned and the applicant shall be notified thereof, in writing.

(7) Within three months from the receipt date of such a notice, the applicant shall have the right, upon payment of the set fee, to submit a substantiated appeal to the Board of Appeal. The Board of Appeal shall review the appeal within three months and its decision shall be final.

(8) The applicant may withdraw the entire application or a part thereof, relating to industrial designs or variants included in the application at any time during the processing of the application, however, the fees already paid shall not be returned.

## *Article 7. Application examination and grant of patent*

(1) The Patent Office shall examine whether the accepted application conforms with the requirements of Article 2, Paragraph 1 of this Law and whether the provisions of Article 4, Paragraph 3 have been observed. The Patent Office shall not examine the application in relation to the patentability of the industrial design in conformity with other provisions prescribed in this Law. A patent shall be granted without a guarantee of its validity or value.

(2) If the results of the application examination are positive, then, within four months from the acceptance date of the application, the Patent Office shall adopt a decision on the grant of patent and shall register the corresponding industrial design in the State Industrial Design Register. The Patent Office shall simultaneously prepare a notice of the grant of patent of the industrial design for publication in the official bulletin, therein including the bibliographical data of the patent and a reproduction of the industrial design.

(3) The applicant shall have the right, upon payment of a set fee, to request a delay of the publication on the grant of patent up to 18 months from the filing date of the application.

(4) The Patent Office shall issue the patent to the applicant upon payment of the patent fee. Upon the applicant's request, the payment of the fee and the issuance of the patent may be postponed.

(5) If the application does not conform to the requirements of Article 2, Paragraph 1 of this Law, the Patent Office shall notify the applicant accordingly, specifying the discrepancies and setting a three month period for providing a reply. The Patent Office is entitled to request additional materials and documents necessary for the examination of the application, thereby indicating the term for their submittal. The term for the application examination shall be extended, accordingly. The application shall be rejected if the applicant fails to eliminate the discrepancies of the application or reply to the requests of the Patent Office.

(6) If the materials of the application do not conform to the requirements of Article 4, Paragraph 3 of this Law, the Patent Office shall provide the applicant with an opportunity, within three months, to divide the application into several independent applications in accordance with the above requirements. If the applicant does not take advantage of this opportunity, the Patent Office shall examine only those industrial designs (variants) which conform with the requirements prescribed in Article 4, Paragraph 3. The Patent Office shall commence with the examination of the first industrial design (variant) mentioned in the documents of the application.

(7) Upon payment of a fee, a decision to reject the application (restrict the examination) may be appealed against to the Board of Appeal within three months. If the applicant is not satisfied with the decision of the Board of Appeal, within six months and in the procedure set by law, the applicant may make an appeal to court.

## *Article 8. Opposition to the grant of patent*

(1) Within six months from the date the notice on the grant of patent is published in the official bulletin, any person, upon payment of the corresponding fee, shall have the right to submit to the Board of Appeal a substantiated opposition against the grant of patent.

(2) An opposition may be submitted to the Board of Appeal if the requirements of Article 2, Paragraphs 1 and 2, or Article 4 of this Law have not been observed.

(3) Oppositions against the grant of patent on other requirements in this Law, shall be reviewed by court.

(4) The Board of Appeal shall notify the applicant of each submitted opposition by sending him a copy of the opposition. The applicant must submit a reply (explanations) to the Board of Appeal within three months.

(5) The Board of Appeal shall examine the opposition within three months from the receipt date of the applicant's reply. The applicant and the opponent shall be notified of the opposition procedure 30 days before the fixed date thereof. Both parties shall be entitled to participate in the opposition procedure, to submit essential materials and to provide oral explanations.

(6) According to the results of the opposition examination, the Board of Appeal shall adopt a decision either to fully or partially satisfy the opposition or to reject the opposition.

(7) Rejection of the opposition does not prohibit the opponent from contesting the granted patent in accordance with general provisions. A decision to satisfy the opposition may be, within six months, appealed in court in the procedure set by this Law.

## *Article 9. State industrial Design Register*

(1) The Patent Office shall maintain the State Industrial Design Register (hereinafter- the Register) which contains essential information on the patent granted for the industrial design, on amendments associated with the patent owner, on industrial design licenses, as well as other information determined by the Patent Office.

(2) The Register is accessible for inspection by any person. For a set fee, the Patent Office shall issue copies of entries in the Register.

## *Article 10. Extension and renewal of the set time limits*

(1) The Patent Office may extend the time limits set in Article 6, Paragraphs 2, 3, 6 and 7, Article 7, Paragraphs 5, 6 and 7 and Article 8, Paragraph 4 of this Law, but by no more than three months if this Law does not provide otherwise, if the request for

extension of the term has been received by the Patent Office before the expiry of the corresponding term and the additional fee for term extension has been paid.

(2) The time limits mentioned in Paragraph 1 of this Article may be renewed if there has been a substantiated reason for their non-observance, provided that such a request has been received by the Patent Office no later than two months after the expiry of the corresponding term (if this Law does not provide otherwise) and the additional fee has been paid for the renewal of the term.

### *Article 11. Term of patent*

(1) An industrial design patent is issued for five years calculated from the date the application is filed with the Patent Office.

(2) Upon request of the patent owner, the term of the patent may be extended for the two following five-year periods. Each such period begins with the end of the previous period.

(3) A request for extending the term of the patent, upon payment of the corresponding fee, shall be submitted within the last year of the period of the patent validity. Upon payment of an additional fee, the patent owner shall also have the right to submit a request for extension of the term within six months after expiration of the period of validity.

### *Article 12. Lapse of patent*

The patent shall lapse:

- 1) before the end of the period of validity, provided that the patent owner request that of the Patent Office;
- 2) six months after the end of the first or second term of the patents if the fee for the extension of the term has not been paid within the time period prescribed in Article 11 of this Law; and
- 3) if the patent is recognized as null and void in accordance with Article 13 of this Law.

### *Article 13. Invalidation of a patent*

The industrial design patent, during the period of its validity, can be fully or partially declared as null and void through court proceedings, if:

- 1) the patent is issued by violating the requirements of the patentability of industrial design;
- 2) the application's initial materials do not completely disclose the industrial design's (article's) external appearance; or
- 3) the patent is granted to a person who is not entitled to such rights.

### *Article 14. Fees*



Fees shall be paid for filing an industrial design application, as well as for other legally significant actions associated with the examination of the application and the legal protection of the industrial design. Types and amounts of fees shall be determined by the Council of Ministers and their payment procedure shall be determined by the Director of the Patent Office.

### Chapter Three Rights derived from industrial patents

#### *Article 15. Content and scope of legal protection of patented industrial designs*

(1) The industrial design patent confirms authorship, priority of an industrial design and exclusive rights to its use.

(2) The scope of protection derived from the patent shall be determined by the external appearance of the industrial design, as a whole, which shall be reflected in the reproductions included in the application and, if necessary, in the sample of the article. The description of the industrial design shall serve only as an explanation of its characteristics and distinctive features.

#### *Article 16. Exclusive rights to industrial design use*

(1) Exclusive rights to industrial design use shall belong to the patent owner.

(2) Exclusive rights to industrial design use allow the patent owner to use the industrial design according to his own discretion as far as this use does not violate the rights of other patent owners, as well as to forbid the utilization of industrial design to other persons in cases which contradict this Law. No one is permitted to use the patented industrial design without the consent of the patent owner.

(3) Exclusive rights shall take effect on the date the patent is granted.

(4) If several persons have been issued a joint patent and a mutual agreement has not been concluded among them on the use of the industrial design, then each of these persons shall have the right to use the industrial design according to his own discretion, except on matters of issuing licences and transferring patent rights to other persons. A licence on the use of an industrial design may be granted to a third person only upon the agreement of all patent owners or upon a court decision.

(5) The manufacture, use, offering for sale of the articles in which the patented industrial design is used, or their storage, import or export from Latvia for the abovementioned purposes, as well as other actions of introducing such articles into economic circulation without the consent of the patent owner shall be considered as an infringement of the rights of the patent owner.

(6) The industrial design patent owners and the owners of the right to use the industrial design shall be entitled to mark articles in which the patented industrial design is used, with a warning sign consisting of the encircled letter D or specific

wording intended to warn of the industrial design protection. Persons deceiving the public by using this type of warning sign in relation to articles which are not protected by industrial design patents shall be held responsible in accordance with law.

### *Article 17. Activities not considered as an infringement of exclusive rights*

The following shall not be considered as an infringement of exclusive rights to industrial design use:

1) the use of a patented industrial design in the construction of or in the course of the operation of any foreign means of transport which temporarily or accidentally enters the territory, waters or airspace of the Republic of Latvia, provided that the industrial design is only used if it is necessary for the means of transport;

2) conducting scientific research or experiments with the aid of articles which use patented industrial designs and the testing of such articles;

3) the use of articles in which patented industrial designs are used for personal needs without a commercial purpose; or

4) the use of articles which use patented industrial designs if these articles are introduced into economic circulation with permission from the patent owner or through any other legal channels.

### *Article 18. Rights of prior use*

(1) Natural persons and legal entities who, before the priority date of a patented industrial design and independently from the patented industrial design author (designer), have, in the territory of Latvia, created and in good faith used the design of an article essentially similar to patented industrial design, or have completed all the preparatory work necessary for this use, retain the right for the further use (rights of prior use) of the design of this article without compensating the patent owner and without expanding the scope of use.

(2) Rights of prior use may be transferred to another person only together with the works in which this design has been applied or in which all the preparatory work necessary for its use have been completed.

### *Article 19. Transfer of patent rights and rights derived from them to other persons*

(1) The right to a patent, and the right to use the industrial design derived from the patent, may be transferred to another natural person or legal entity in accordance with a contract. Upon payment of a fee, the Patent Office shall register the contract. The contract shall not be valid if it is not registered.

(2) The right to file an application and be granted a patent, the exclusive right to use an industrial design, as well as the rights for compensation and income from the use of an industrial design, shall be inherited in the procedure set by civil legislation.

### *Article 20. Personal rights of a designer*

(1) A person, as a result of whose creative work an industrial design has been created, shall be recognized as the designer. If the industrial design has been created as a result of the joint creative work of several persons, all of them shall be recognized as designers.

(2) Persons, who have rendered assistance in creating the industrial design or in acquiring rights to the industrial design, but have not contributed to the creation of the design with their personal creative work, shall not be recognized as designers.

(3) The designer, irrespective of who the patent owner is, shall have personal rights which cannot be transferred to another person and cannot be inherited. Those rights are the following:

- 1) the right to authorship;
- 2) the right to be mentioned as the designer in the industrial design patent and in any other official publication concerning this industrial design and patent; and
- 3) if the designer so desires, the right to request that he not be mentioned as the designer in the patent or in any other publication concerning the patent.

(4) In the event that the rights prescribed in Paragraph 3 of this Article are infringed, they may be protected in court in the same procedure as copyrights.

(5) The designer, the author of the employee industrial design, shall have the right to prove that his industrial design is used by the patent owner, its licensee or the patent infringer. The designer shall also retain this right if the employer has purposely avoided filing an application for the industrial design which the employee has created.

## **Chapter Four**

### **Industrial design use**

#### *Article 21. Industrial design use*

(1) Industrial design use is the introduction into economic circulation of an article which has been manufactured in accordance with a patented industrial design.

(2) An article is acknowledged manufactured according to a patented industrial design if, on the whole, it reproduces the external appearance of the patented industrial design. The fact that separate elements of the article differ from the patented industrial design, does not free the industrial design user, the patent owner, from payment of compensation to the designer or the licensee from obligations provided for in the license contract and does not free other persons from responsibility for the possible infringement of exclusive rights, if the article, on the whole, is essentially similar to the industrial design.

#### *Article 22. License and license contract*

(1) A patent owner (licensor) may transfer his right to use the industrial design to another person (licensee) on the grounds of a license contract. In accordance with the type of license (an exclusive or non-exclusive license) and with the contract, the licensor and licensee shall undertake the prescribed rights and obligations.

(2) In case of an exclusive license, the licensee acquires exclusive rights to use the industrial design in accordance with the stipulations set in the contract and the licensor shall maintain the right to utilize the industrial design in so far as these rights have not passed to the licensee.

(3) In case of a non-exclusive license, the licensor, in granting the right to use the industrial design to another person, shall maintain the right to personally use this industrial design, as well as to grant the license concerning the same industrial design to a third party.

(4) For the purpose of official publication of the Patent Office, the patent owner shall have the right to inform the Patent Office of his readiness to grant the right to use an industrial design to any interested party (license of right). This notification may also be submitted by the industrial design applicant simultaneously with the filing of the application or during the period of its examination. From the moment this notification is submitted to the Patent Office, the prescribed fees for the corresponding actions shall be reduced by 50 percent. If the license of right is revoked, the mentioned fees must be paid in full. If the interested parties do not come to an agreement on the terms of the license of right, these terms shall be determined by court.

(5) The license contract shall take effect after it has been registered with the Patent Office. A fee shall be paid for the registration of a license.

## **Chapter Five**

### **Protection of the rights of designers and patent owners**

#### *Article 23. Review of disputes associated with industrial designs*

(1) Disputes associated with industrial designs are reviewed by court in the procedure set by civil legislation. Labour disputes between the designer and the employer shall be reviewed in accordance with the procedure set by labour legislation.

(2) The following disputes shall be under the jurisdiction of the courts of the Republic of Latvia:

- 1) industrial design authorship and other personal rights of designers;
- 2) right to a patent;
- 3) infringement of the exclusive and property rights of patent owners;
- 4) conclusion and execution of the contracts on industrial design use, including contracts on the use of the industrial design by the employer in cases when the patent owner is the employee;
- 5) compensation associated with the creation and use of the industrial design;
- 6) the distribution of compensation among designers;
- 7) rights of prior use; and

8) invalidation of a patent.

(3) Only the regional court shall be entitled to review the following disputes mentioned in Paragraph 2 of this Article:

- 1) right to a patent (restoration of patent rights);
- 2) invalidation of a patent.

(4) Only the regional court as the Court of First Instance shall be entitled to review the following disputes:

- 1) authorship of industrial designs;
- 2) ascertainment of a patent infringement, liability associated with a patent infringement protective measures against a patent infringement;
- 3) rights of prior use; and
- 4) the fulfillment of license contracts.

(5) The jurisdiction of other disputes shall be determined by the general regulations on the jurisdiction of courts in reviewing disputes, if not otherwise set by law.

#### *Article 24. Liability for infringement of the rights of designers*

Criminal responsibility shall be applicable in accordance with law for the misappropriation of authorship, non-voluntary renunciation of authorship, compulsion to co-authorship and the disclosure of the essence of the industrial design without the designer's consent, before the designer or his legal successor, or the Patent Office, has published the application materials.

#### *Article 25. Liability for infringement of the rights of patent owners*

(1) Any use of an industrial design which contradicts this Law shall be considered a patent infringement.

(2) At the patent owner's request, a patent infringement must be discontinued, thereby compensating the owner for any losses that have arisen thereof.

(3) Depending on the nature and effects of the infringement, the court may simultaneously, together with having the infringer compensate for losses, impose a fine on the infringer, as well as may order the confiscation, destruction, or detainment of the illegal articles and the equipment used in their manufacture, and demand that they be sold at cost to the patent owner or that they be transferred to use for charitable purposes.

#### *Article 26. An official person's responsibility for the violation of revisions of industrial design legislation*

Official persons, as well as Patent Office employees, in accordance with the procedure prescribed in the Code of Administrative Minor Offences shall be held administratively responsible for unfair or careless performance of their duties during

the execution of an industrial design application, its examination and the validity period of the patent.

## **Chapter Six**

### **International agreements**

#### *Article 27. International agreements*

If international agreement, to which the Republic of Latvia is a party provide for provisions which differ from those in this Law, the provisions of the international agreements shall apply.