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Contents

WORLD INTELLECTUAL PROPERTY ORGANIZATION

- **Convention Establishing WIPO**
Ratification. Kenya 203
- **Publication**
Teaching of the Law of Intellectual Property Throughout the World 203

INTERNATIONAL UNIONS

- **Paris Convention**
Ratification of the Stockholm Act. Kenya 203

WIPO / BIRPI MEETINGS

- **ICIREPAT**
Technical Coordination Committee. Sixth Session 204

LEGISLATION

- **Austria. Design Protection Law, 1970** 205

GENERAL STUDIES

- **Transitional Provisions of the Benelux Trademark Law**
(L. J. M. van Bauwel) 209
- **Protection of Acquired Rights of Foreigners under the Benelux Trade-**
mark Law (Antoine Braun) 210

LETTERS FROM CORRESPONDENTS

- **Letter from South Africa (G. C. Webster)** 214

- CALENDAR** 219

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LEGISLATION

AUSTRIA

Design Protection Law, 1970

I. General Provisions

1. — (1) In this Law, "design" shall mean any prototype (*Vorbild*) relating to the shape of an industrial article and capable of being reproduced on such article.

(2) The provisions hereunder shall apply to both two-dimensional and three-dimensional designs.

2. — (1) Any original creator of a design or anyone who has commissioned another to create a design for him shall have the sole right to apply the design to industrial articles during the period and under the conditions prescribed in this Law.

(2) Such right may be transferred in whole or in part.

(3) The right of use provided for in this Law may never be acquired by a person who has illicitly obtained an Austrian or foreign design (Section 23(d)).

3. — (1) The exclusive right of use shall not exceed three years from the date of registration of the design. Inside that period the applicant shall be free to choose the number of years for such protection.

(2) There shall be no extension of a period applied for and approved.

II. Deposit of Designs

4. — (1) Any person desiring to secure the sole right to the use of a design shall, before putting on the market an article manufactured in accordance with it, deposit the design in duplicate with the Chamber of Industry in whose district he has his residence or place of business. Persons having neither residence nor place of business in Austria shall deposit the design with the Chamber of Industry in Vienna.

(2) A design may be deposited open or under sealed cover.

(3) The competent organ of the Chamber of Industry shall register the design or package in the Design Register, giving it the appropriate registration number.

(4) A record shall be taken of the deposit stating the name and residence of the applicant or the name of his enterprise, the day and hour of deposit and the registration number. The applicant shall take part in the preparation of the record. The design, open or sealed, shall be properly attached to the record by a thread fastened under seal and shall bear the registration number officially printed on it.

(5) The record shall be kept in the archives and an official certificate containing the same particulars shall be issued to the applicant.

(6) Where an open design has been deposited in triplicate, the particulars shall be officially entered, not on the certificate referred to, but on the third copy of the design, which shall be returned to the applicant.

(7) Regulations concerning the equipment of depositories, in particular the design registers and archives to be kept in such depositories, and regulations concerning the record of deposits and the certificate issued to the applicant shall be laid down by order.

(8) After three years from the end of the period of protection, industrial designs which have not been removed by the depositor may be used for whatever purpose the depositor sees fit or destroyed.

5. — (1) The Patent Office shall maintain central design archives, in which the second copy of every design deposited with the Chambers of Industry shall be received and kept.

(2) The member of the legal Application Section of the Patent Office (Section 60(1) of the Patent Law, 1970¹) who is responsible in accordance with the allocation of business shall administer the central design archives. Sections 58, 60(1)(a) and (d), 60(4) and (5), 61(2) to (4) and (6), 64(3), and 68 of the Patent Law, 1970, shall apply *mutatis mutandis*.

6. — (1) For the registration of every design a fee shall be payable (Section 8).

(2) The fee shall be 50 schillings for each year of protection sought.

7. — (1) Several designs may be submitted under one cover; in such a case the number of designs shall be marked on the cover and the fee shall be paid for each design.

(2) Any depositor making an incorrect statement on the cover, with the effect of reducing the amount of fee due, shall be liable to pay three times the amount of the fee evaded.

8. — (1) Where an applicant deposits, open or under sealed cover, at the same time and all together, articles of the same kind or articles which by reason of their purpose belong together, in particular as separate components of one article, a reduced registration fee shall be payable (multiple registration — *Sammelmuster*). This shall be for each year of protection sought and for each package containing:

up to 20 designs	100 schillings
up to 50 designs	150 schillings
up to 100 designs	250 schillings
for each further fraction of 100 designs	200 schillings

(2) Regulations concerning the requirements of the design deposit (Section 4) and the dimensions and weight of the

¹ Published in *Industrial Property*, 1971, p. 146.

package shall be laid down by an order to be issued by the Federal Minister of Commerce, Trade and Industry.

(3) The fees (Sections 6 and 8(1)) shall be paid to the Chamber of Industry. Sixty percent of these fees shall constitute income of the Chamber and forty percent shall be remitted to the Federal Administration (Austrian Patent Office).

9. — Until proved otherwise, the person in whose name a design has been registered (the depositor) shall be regarded as the true owner of the design.

10. — For a period of one year from the deposit, designs deposited under sealed cover shall be kept in that state. After the year, the seals shall be removed in the presence of two witnesses and a record shall be taken of this operation. From that time, such designs shall be open to inspection by everyone — as in the case of open designs from the moment of their deposit.

III. Right of Priority

11. — (1) The right of priority granted in Article 4 of the Paris Convention for the Protection of Industrial Property must be expressly claimed. The date of the deposit on which priority is based shall be indicated and the country in which deposit was made (declaration of priority), as well as the serial number of the deposit.

(2) The declaration of priority shall be made within two months after the deposit. Within that period, an amendment to the declaration of priority may be requested. The fee for such request shall be half the fee payable on deposit. The fee shall constitute income of the Chamber of Industry responsible for the decision. If the fee is not paid, the application for amendment shall be rejected.

(3) If the grant or maintenance of the right to protection depends on the validity of the claim to priority, the right of priority must be proved. The evidence required for such proof (evidence of priority) and the time of production shall be determined in an order.

(4) If the declaration of priority is not made in time, if evidence of priority is not submitted in time, or if the serial number of the deposit on which priority is based is not notified on official demand within the period laid down (subsections (1) to (3)), priority shall be determined in accordance with the time of deposit in Austria.

12. — (1) Designs which are displayed in an Austrian or foreign exhibition shall enjoy priority protection in accordance with Sections 13 and 14.

(2) The provisions of Sections 13 and 14 shall apply in particular to designs displayed in model or merchandise exhibitions.

13. — (1) Protection shall be accorded only if the Federal Minister of Commerce, Trade and Industry has granted the exhibition the privilege of priority for the articles exhibited there.

(2) Such privilege shall be applied for by the management of the exhibition. The application shall contain the particulars required for a decision regarding the priority claimed.

(3) The authorities shall have a discretion to grant or refuse the application, unless an international obligation to grant protection exists.

(4) The grant of the privilege of priority protection shall be notified in the *Amtsblatt zur Wiener Zeitung* and in the *Österreichisches Patentblatt* (Patent Gazette) at the exhibition management's expense.

14. — (1) The effect of such protection shall be to give the design a right of priority (subsection (2)) from the time that the article has reached the exhibition premises, provided the application for protection of the design is made in accordance with the applicable regulations within three months from the day on which the exhibition closed.

(2) Facts occurring after the article has reached the exhibition premises shall not be an obstacle to the grant of protection and the deposit shall have priority over other deposits made after such time. Action taken after such time shall not justify any claim to the right of continued use of the article.

(3) If several similar articles reach the exhibition premises at the same time, the article which is the subject of the earliest deposit shall have priority.

(4) The right of priority must be expressly claimed. The exhibition and the day when the article reached the exhibition premises shall be stated (declaration of priority). Section 11(2) shall apply *mutatis mutandis*.

(5) The right of priority shall be evidenced by an article made in accordance with the design or by an illustration (photograph) of such an article and by a certificate issued by the exhibition management stating that such an article has been exhibited and the time when the article was brought to the exhibition premises (evidence of priority).

(6) If the declaration of priority is not made in time or if evidence of priority is not submitted on official demand within the period laid down, priority shall be determined in accordance with the time of deposit.

IV. Restoration of Rights

15. — (1) Any person who is prevented by an unforeseeable or unavoidable event from observing a time limit *vis-à-vis* the Chamber of Industry, and is thus prejudiced by the application of a rule relating to the protection of designs, may apply for restoration of rights.

(2) Restoration shall not be granted:

- (i) where the time limit for the application for restoration (Section 17(1)) and the time limit for appeal in relation to such application have not been observed;
- (ii) where the time limit for lodging a claim in the ordinary courts has not been observed.

16. — (1) A decision on the application shall be taken by the Chamber of Commerce before which the action omitted should have taken place.

(2) An appeal shall lie from the decision of the Chamber of Industry to the Federal Minister of Commerce, Trade and Industry.

(3) The appeal (subsection (2)) shall be submitted to the Chamber of Industry within thirty days of the service of the decision contested. A procedural fee shall be payable, which shall be half the fee for the application for restoration (Section 18). If the fee is not paid or the appeal is filed out of time, the appeal shall be dismissed by the Chamber of Industry. Half the fee shall be refunded, if the appeal is allowed.

17. — (1) The application for restoration shall be filed within two months from the day on which the impediment ceased to exist and in any case not later than twelve months from the expiry of the time limit concerned.

(2) The applicant shall state the facts on which his application is based and, unless they are well known to the Chamber of Industry, he shall produce evidence of them. The action omitted shall be taken at the time the application is made.

18. — (1) The following procedural fee shall be payable when the application for restoration is made:

- (a) if an action for which a special fee is payable in addition to stamp duty was omitted, the fee payable when the action omitted is taken;
- (b) in all other cases, the fee payable at the time of deposit.

(2) If the procedural fee is not paid, the application shall be rejected.

(3) Half the procedural fee shall be refunded if the application is withdrawn before a decision is taken.

(4) The procedural fee (subsection (1)) shall be paid at the rate applicable at the time when the application for restoration is made.

19. — (1) If the application for restoration or the action taken belatedly is defective, the applicant shall be asked to remedy the defects within a prescribed period before a decision is taken.

(2) The application and the manner in which it is dealt with shall be entered in the Design Register.

20. — With the acceptance of restoration the legal consequences resulting from non-observance of the time limit shall cease to have effect. The Chamber of Industry shall issue appropriate instructions to give effect to the decision.

21. — (1) Restoration of a right of protection which has lapsed shall not be binding on anyone in Austria who began to use the object of the right or made arrangements for such use (interim user) after the lapse of the right and before receipt of the application for restoration by the competent authority. An interim user may exploit the object of the right for the needs of his own business in his own or another's plant or workshops. Such right may be inherited or otherwise alienated only together with the business.

(2) Where a design which has been restored was the subject of a license contract made during its earlier period

of validity, a licensee whose right is restricted by an interim user (subsection (1)) may request an appropriate reduction of the royalties stipulated. If, owing to the above restriction, he is no longer interested in the continuation of the contract, he may rescind it.

22. — The fees prescribed in Section 18 shall constitute income of the Confederation (*Bund*) if the Federal Minister of Commerce, Trade and Industry has had to deal with the application. In all other cases the fees shall constitute income of the Chamber of Industry responsible for the decision.

V. Nullity of Registration

23. — Registration of a design shall be null and void if it is proved:

- (a) that, at the time of deposit, industrial articles manufactured in accordance with the design were already in circulation in Austria or abroad;
- (b) that the design had appeared earlier in a printed publication;
- (c) that the design had previously been registered in Austria in the name of another person, or
- (d) that the depositor had illicitly obtained the design (Section 2).

VI. Infringements, Offenses and Penalties

24. — Any infringement of the right to a design either by unauthorized reproduction or imitation of a protected design or by the sale of articles manufactured in accordance with the design shall entitle the injured person to an injunction preventing further use of the design and further sale of the articles concerned. The injured person may also request that tools and devices used solely or mainly for the imitation be made unserviceable for such purpose. Actions by an injured person for damages on account of the infringement of his right to the design shall be governed by private law.

25. — (1) There shall be reproduction or imitation within the meaning of Section 24 even where the defendant was unaware of the protected design.

(2) Imitation shall also be unlawful where only the dimensions or the colors of the design have been changed.

26. — Where infringement is committed intentionally, the person convicted shall be liable to a fine not exceeding 4,000 schillings or to detention for a term not exceeding three months. In aggravating circumstances these penalties may be imposed concurrently.

27. — Publication of the conviction may also be ordered by the authority imposing the penalties.

VII. Power of Representation

28. — (1) Anyone who, in matters relating to the protection of designs, professionally prepares written submissions

for proceedings before Austrian or foreign authorities, provides opinions in the field concerned, represents parties before Austrian authorities or offers, in word or writing, to perform such services, having no authorization to represent parties professionally in such matters, shall be guilty of an administrative offense and liable to a fine not exceeding 1,000 schillings or to detention for a term not exceeding two weeks. Punishment shall be imposed by the district administrative authority or by the Federal Police authority — in places where such authority exists.

(2) The special provisions relating to the treatment of unauthorized legal representation and opinions in the ordinary courts shall not be affected.

VIII. Authorities and Proceedings

29. — The proceedings and the decision relating to infringement of the right to a design and to administrative offenses under Section 26 shall be under the jurisdiction of the district administrative authorities. These authorities shall also take decisions regarding the nullity of a deposit. Actions for damages under Section 24 and other disputes relating to designs shall be decided by the ordinary courts.

30. — (1) Where, during the proceedings or the examination, it becomes clear that the decision depends on a preliminary question which is for the ordinary courts to decide, the administrative authority shall refer the parties to the competent court and may not take its own decision until a final decision of that court has been delivered.

(2) A final decision of the administrative authority convicting a person of infringement of the right to a design may be used by the injured party to substantiate claims to compensation in the ordinary courts.

31. — In all disputes, both the administrative authority and the court shall have the right to request the Chamber of Industry to produce, against receipt, the design deposited. Should it be necessary to uncover the design, the depositor shall be summoned. If he does not appear, two impartial

witnesses shall be present. A record shall be taken of the removal of the seal.

32. — The injured party may, even before a decision is taken on his complaint, request seizure or other safekeeping of articles designated by him as having been manufactured in violation of his right to a design and of tools and devices used for this purpose (Section 24). The administrative authority shall, on production of the official certificate issued under Section 4 or of the third copy, immediately arrange for such seizure or safekeeping. The authority may, if it sees fit, first require security to be deposited against damage to the defendant's reputation or material interests. When ordering seizure or other safekeeping, the authority shall require production, under Section 31, of the design deposited with the Chamber of Industry.

33. — When the right to a design is found to be infringed, the articles in question shall remain under official seal until the expiry of the period of protection. Arrangements shall be made for their storage at the cost and risk of the defendant, unless other arrangements have been agreed between the parties or the necessary transformation has been made under official supervision.

IX. Final Provisions

34. — Where a submission comprises several rights to a design, separate applications may be asked for in respect of each or some of the rights in question, a time limit being set for this purpose. Separate applications submitted in time shall be deemed to have been submitted on the day when the original submission reached the authority.

35. — The following shall be responsible for the implementation of this Law:

- (i) in the case of Section 6 to 8, the Federal Minister of Commerce, Trade and Industry and the Federal Minister of Finance,
- (ii) in the case of all other provisions of this Law, the Federal Minister of Commerce, Trade and Industry.



GENERAL STUDIES

Transitional Provisions of the Benelux Trademark Law

**Acquired Rights in Marks which have been the object
of an International Registration**

By L. J. M. van BAUWEL
Director of the Benelux Trademark Office *

**Protection of Acquired Rights of Foreigners
under the Benelux Trademark Law**

By Antoine BRAUN, Attorney-at-Law, Brussels Court of Appeal

LETTERS FROM CORRESPONDENTS

Letter from South Africa

By G. C. WEBSTER

- November 22 to 26, 1971 (Geneva) — Committee of Experts for the International Classification of the Figurative Elements of Marks
Invitations: Member countries of the Nice Union — *Observers:* Member countries of the Paris Union and international organizations concerned
- November 24 to 27, 1971 (Bogotá) — Bogotá Symposium on Patents, Trademarks and Copyright
Object: Discussion of questions of special interest to the countries invited — *Invitations:* Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela — *Observers:* Intergovernmental and international non-governmental organizations concerned —
Note: Meeting convened in agreement with the Colombian Government
- December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT
- December 8 to 10, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil
- December 13 to 15, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee
- December 13 to 18, 1971 (Cairo) — Arab Seminar on Treaties Concerning Industrial Property
Object: Discussion on the principal multilateral treaties on industrial property and the WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the Industrial Development Centre for Arab States (IDCAS)

UPOV Meetings

- September 22 and 23, 1971 (Geneva) — Working Group on Cross-Fertilized Plants
 October 14 and 15, 1971 (Geneva) — Council

Meetings of Other International Organizations Concerned with Intellectual Property

- August 24 to September 17, 1971 (Geneva) — United Nations Conference on Trade and Development — Trade and Development Board
- August 30 to September 4, 1971 (Geneva) — Industrial Development Centre for Arab States — Committee of Experts to Draft a Model Law on Patents for Arab States
- September 9 and 10, 1971 (West Berlin) — International League Against Unfair Competition — Study Mission on German Restrictive Trade Practices Law
- September 12 and 13, 1971 (Paris) — Union des fabricants — Study meetings
- September 14 to 17, 1971 (Nice) — Union of European Patent Agents — General Assembly
- September 20 to 22, 1971 (The Hague) — International Patent Institute — Administrative Council
- October 4 to 9, 1971 (Paris) — Unesco — Conference on Scientific Information Systems
- October 10 to 17, 1971 (Kuwait) — Industrial Development Centre for Arab States — Arab Symposium on Industrial Development
- November 3 to 6, 1971 (Geneva) — Unesco — Intergovernmental Copyright Committee
- December 13 to 16, 1971 (Brussels) — International Association for the Protection of Industrial Property — Council of Presidents
- International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):
- September 13 to 17, 1971 — Working Party I
 October 11 to 22, 1971 — Working Party I
 November 15 to 19, 1971 — Working Party I
 November 29 to December 3, 1971 — Working Party II