

## Design Law

Law No. 21 for the year 2001  
Issued on February 6, 2001  
for the Protection of Industrial Drawings and Designs

### **Chapter One General Provisions**

#### **Article 1**

This law regulates the rules related to the protection of industrial drawings and designs.

#### **Article 2**

The provisions of this law shall apply to every new drawing, every new formed pattern and every new industrial product which is distinguished from similar ones either as it concerns its general appearance which distinguishes it, identifies it, and makes it novel or as it concerns its outer effect or effects which add to it a special and new appearance.  
However if the same object can be considered a new industrial drawing or design and at the same time a patentable invention for having similar elements, which are novel with respect to both of them and these elements can not be separated, then the patent law is the competent law which shall be applied to protect the concerned object.

#### **Article 3**

The nullity of the filing of an industrial drawing or design shall be based on judicial ruling, if it became evident that the applicant is not the innovator of the industrial drawing or design.

The nullation lawsuit may be filed by any interested party during the protection period of the industrial drawing or design.

If a self-executing judgment for the nullation of the filing is issued, the interested party shall supply the industrial property authority with a copy of the judgment.

The judgment for the nullation of the filing of the industrial drawing or design shall have an absolute effect.

#### **Article 4**

Any innovator of an industrial drawing or design or whoever has a right thereof shall own an exclusive right with respect to the exploitation and sale of the industrial drawing or design as well as enjoying the rights which he may own according to other legal provisions specially the legislation related to literary and artistic rights.

Others shall be prohibited from the manufacture, sale, or importation of the goods containing an industrial drawing or design reproduced totally or partially from a protected industrial drawing or design without the consent of the owner of the said industrial drawing or design or the owner of a

right thereof, when such actions are carried out in the context of commercial activities.

#### **Article 5**

The provisions of this law shall apply to the industrial drawings or designs whose owners or the right holders thereof are Tunisian nationals, residents of the Republic of Tunisia, have actual serious industrial or commercial establishments in Tunisia, or those who due to their nationalities, residences, or the location of their industrial or commercial establishment belong to a country which guarantees, with respect to the protection of Tunisian industrial drawings or designs, the same rights enjoyed by its own citizens either according to a national legislation or according to the international agreements the said country is a party to.

#### **Article 6**

The priority right, stipulated in the Paris Convention for the protection of industrial property, shall include in Tunisia every industrial drawing or design which was filed in a foreign country which is a member of the Paris Union or the World Trade Organization.

Claiming priority shall be subject to the payment of fees to be determined by a ruling.

### **Chapter Two Filing Procedures**

#### **Article 7**

The industrial drawings and designs shall not enjoy protection unless filed according to the provisions of this law.

#### **Article 8**

The ownership of the industrial drawing or design shall revert to its inventor or the holder of a right thereof. The first applicant of the industrial drawing or design shall be considered its innovator unless proven otherwise.

#### **Article 9**

The industrial drawing or design shall be filed at the industrial property authority in return for payment of fees to be determined by a ruling.

The application must be accompanied by a power of attorney if the applicant is represented by an agent.

The applicant residing outside Tunisia must appoint an agent residing in Tunisia.

The power of attorney shall determine the extent of the agency and unless stating otherwise the power of attorney shall cover all actions associated with the industrial drawing or design including all the procedures stipulated in this law.

The abandoning of the industrial drawing or design requires the submission of a special power of attorney.

#### **Article 10**

The protection of the industrial drawing or design stipulated in this law shall be according to the applicant choice, five years, ten years or fifteen years at the most and in return for payment of fees to be determined according to a ruling.

The applicant or the holder of a right thereof shall have the right to extend the protection period, if the requested protection period was five or ten years, through a request, taking into consideration that the specified maximum protection period is fifteen years.

The request shall not be accepted unless it is:

- Made in the appropriate form specified by the industrial property authority and contains obligatorily the identity of the applicant of application whose extension period is sought.
- Submitted, by the interested party or his agent who should accompany the request with a power of attorney, within the six months preceding the termination of the first protection period.
- Accompanied with proof of payment of the due fees.

It may be stipulated that the extension of the protection period shall apply only to some of the protected industrial drawings and designs.

#### **Article 11**

The industrial property authority shall establish a register called "the national register of industrial drawings and designs".

The manner of recording in this register shall be determined by a ruling.

Every industrial drawing or design, which was legally filed, shall be recorded by the industrial property authority without prior search of the rights of the applicant or the novelty of the filed object.

Others may not object to any text changing or assigning the rights associated with an industrial drawing or design unless this text is recorded in the national register.

Every recording in the national register shall be listed in the official publication of the industrial property authority.

The recordings in the national register shall be subject to the payment of fees to be determined by a ruling.

Any person may review the national register of the industrial drawing or designs. He may also obtain copies thereof in return for payment of fees to be determined by a ruling.

#### **Article 12**

The filing may take place at any time, and the publication about the industrial drawing or design through sale or any other manner before its filing shall not result in loss of the ownership right or the loss of the protection granted by this law.

#### **Article 13**

The application for every industrial drawing or design shall be according to procedures to be regulated by a ruling.

At every filing the industrial property authority shall verify that:

- It was submitted according to the procedures stipulated in the first paragraph of this article.

- Its publication will not violate, according to the opinion of the competent authority, the good morals or the public order.

If the application for registration does not satisfy the requirements of the second paragraph of this article, the industrial property authority shall notify the applicant by a justified notification and give him a grace period of three months starting from the notification date to amend the application or to contest the objections of the competent authority otherwise his right in the application shall lapse.

In case the amendment is not effected and no observations are submitted, which lead to the elimination of the objections, the application for registration shall be rejected. The rejection decision should be justified.

The amendment effected according to the requirements of this article can not lead to the expansion of the scope of the application.

#### **Article 14**

Any applicant who did not abide by the deadline stipulated in article 13 of this law, if he proves that he has a legitimate excuse, may be exempted from the lapse of the right which he was liable to be subjected to, by submitting a request to the legal representative of the industrial property authority.

The request shall not be accepted if:

- It is not preceded by carrying out the procedures, which have been ignored.
- It is filed after two months as of the termination of the impediment.
- It concerns deadlines, which expired more than six months ago.
- It is not accompanied by proof of payment of the due fees.

The rejection decision should be justified, should be notified to the applicant through a registered letter with a slip confirming receipt and should be recorded at once in the national register of industrial drawings and designs.

#### **Article 15**

Every filing, which has been accepted, shall be published in the official publication of the industrial property authority in a term not exceeding nine months.

The applicant may at the time of filing request the delay of the publication of copies of the industrial drawing or design for a period of twelve months starting from the day following the filing date in return for payment of fees to be determined by a ruling.

#### **Article 16**

The applicant of an industrial drawing or design may, at any time, abandon this filing in return for payment of fees to be determined by a ruling. The abandonment may concern only a part of the filing.

The abandonment of the filing is effected though a written request to be filed at the industrial property authority.

The request shall be submitted by the applicant or his agent who must submit a special power of attorney.

The request for abandonment can not include but one filing.

The request for abandonment should indicate if there has been grant of rights of exploitation or lien. In this case the request must be accompanied by the written consent from the beneficiary of this right of exploitation or from the holder of the lien.

In case of multiplicity of applicants, the abandonment can not be effected unless the abandonment request is issued by all the applicants.

The abandonment shall not prevent the publication of the filing in the official publication of the industrial property authority.

### **Chapter Three Appeals**

#### **Article 17**

The decisions issued by the legal representative of the industrial property authority regarding filing, rejecting or maintaining the protection of industrial drawings or designs may be appealed in front of the competent courts.

#### **Article 18**

The term for appealing the decisions stipulated in article 17 of this law shall be one month starting from the notification date of the disputed decision.

#### **Article 19**

The appeal is to be filed in a written memorandum to be presented to the competent court.

The memorandum shall not be accepted unless it necessarily include the following particulars:

- When the appellant is a natural person: his name, surname, profession, address, nationality and date and place of birth.
- When the appellant is a juridical person: legal form, designation, social address and the name and surname of his legal representative.
- The date and subject of the appealed decision.
- The name, surname and address of the owner of the industrial drawing or design.

The memorandum of appeal shall include a copy of the appealed decision.  
If the memorandum does not include the evidence for the case, the claimant must present this evidence in writing to the court within seven day before holding the first session.

#### **Article 20**

The claimant must direct to the industrial property authority a copy of the memorandum of appeal through an executing judicial clerk.

The industrial property authority shall forward the file of the appealed decision to the court clerk within one month from the notification of the copy of the memorandum.

#### **Article 21**

If the appeal is filed by a person other than the owner of the industrial drawing or design, this appellant must bring this owner into the lawsuit and summon him through an executing judicial clerk.

**Article 22**

The appellant may appoint an agent to represent him in front of the court.

**Article 23**

The more interested party shall notify the rest of the parties of the ruling of the court, which shall at once be recorded in the national register of industrial drawings and designs.

**Chapter Four  
Counterfeit and Penalties****Article 24**

Every infringement of the rights of the owner of an industrial drawing or design as regulated by article 4 of this law shall be considered as counterfeit making its perpetrator liable for both civil and criminal responsibility.

Any person who willfully infringes these rights shall be penalized by a fine between five thousand and fifty thousand Dinars.

The court may allow the posting of the text of the judgment for the penalty at the places it specifies and may also allow its publication fully or partially in the newspapers it specifies at the expense of the convicted.

Every person who places a sign on his commercial documents, advertisements or products to deceive others that an industrial drawing or design has been filed according to this law while such filing did not take place, was cancelled, or has its protection period terminated will be penalized by a fine from one to five thousand Dinars.

The public prosecution shall not follow up any subject unless based on a complain by a damaged party.

**Article 25**

In case of recidivism the fine shall be doubled with the possibility of imposing a jail sentence from one to six months.

**Article 26**

The court may, in the case of issuing a judgment of conviction, allow the seizure of the instruments, which were specially used to make the objects subject of the dispute.

**Article 27**

The actions carried out before the filing can not be used as basis for filing any lawsuit based on this law.

No civil or criminal lawsuit may be filed according to this law unless the publication about the filing has taken place.

The actions committed after the filing but before the publication about the right may not be the basis of a lawsuit according to article 24 of this law, even if a civil lawsuit unless the damaged party proves the bad faith of the defendant.

Any person who commits actions subsequent to the publication of the filing may plead good faith. However he will be asked to prove his good faith.

#### **Article 28**

The damaged party may obtain an accurate description through an executing judicial clerk with or without the seizure of objects and means subject of the dispute through a permission from the president of the competent court obtained in response to a request in a memorandum accompanied by proof of filing.

The president of the court may obligate the requester to place a collateral before granting the permission to affect the procedure referred to in the first paragraph of this article.

The executing judicial clerk must, before effecting the seizure, hand over a copy of the permission and the seizure report to the holders of the seized objects and when applicable a copy of the receipt of payment of the collateral, otherwise the procedure shall be null and void and the executing judicial clerk shall be fined.

The seizure or the description shall be legally nullified if the requester did not file a lawsuit within fifteen days regardless of the damages.

The fifteen days term shall be calculated as from the day of effecting the seizure or description.

#### **Article 29**

The counterfeit lawsuit stipulated in this law shall prescribe after the lapse of three years as from the occurrence of the counterfeit acts subject of the lawsuit.

#### **Article 30**

The provisions stipulated in this chapter shall not prevent the resortion to arbitration according to the conditions stipulated in the arbitration regulations.

### **Chapter five Border Arrangements**

#### **Article 31**

The owner of a protected industrial drawing or design or any holder of right thereof once in possession of serious proofs of an activity of supplying counterfeit products of his drawing or design may submit a written request to the government authorities requesting the halting of the government procedures related to the supply of the said products.

The requester shall inform the government authorities if his rights are not legally registered or if they have lapsed.

#### **Article 32**

The written request stipulated in article 31 of this law shall include:

- The name, surname or known name of the requester and his address or his place of business.
- Proof that the requester has a right with respect to the products subject of the dispute.
- An accurate description of the goods to enable the authorities to identify them.

The requester should provide all relevant advice to enable the authorities to make an enlightened decision, without the provision of this advice being a condition of accepting the request

This advice shall specially include:

- The location where the products are present or to which they will be sent.
- Particulars which make it possible to identify the shipped products or the packages.
- The specified date for arrival of the products or the shipping date.
- The means of transportation.
- The particulars which make it possible to identify the supplier, source, or holder of the goods.

The requester must also enclose with the request a pledge regarding fulfilling his possible responsibility towards the supplier if it is proven without a doubt that the goods subject to detention by the authorities do not represent an infringement of a protected industrial drawing or design.

### **Article 33**

The authorities shall examine the request submitted according to the provisions of article 32 of this law and shall notify the requester immediately and in writing of its decision. This decision must be justified.

If the authorities accept the request or take action to intervene according to the provisions of article 34 of law, the authorities may obligate the requester to submit a financial collateral to be assigned to cover the expenses, which may be incurred due to keeping the goods under the supervision of the authorities.

### **Article 34**

The authorities shall detain the goods if it becomes evident after inspection that they are identical to what is included in the request and, where necessary after interviewing the requester.

The authorities shall advise the requester and the supplier immediately of the detention and shall permit them to examine the detained goods and to take samples thereof to carry out the needed tests and analysis to establish whether the products are counterfeit in accordance with the government regulations and without prejudice to the principle of the secrecy of information.

In order to enable the requester to file a lawsuit, the authorities may advise him of the names, surnames and addresses of the exporter, the supplier and the recipient if known to them as well as the quantity of the products subject of the request. The permission shall be granted as a response to a memorandum.

### **Article 35**

The detention of the goods shall be legally lifted, provided that all the government procedures are completed, if the requester does not submit proof to the authorities within ten days starting from the notification date of the detention that he has filed a civil or a criminal lawsuit at the competent court, has requested and obtained permission for effecting the legal precautionary procedures and has submitted sufficient collateral to cover his responsibilities towards the concerned persons.

The amount of the collateral shall be determined by the court.

The ten days term may be extended for at most ten other days in the cases, which may require much extension.

The owner, the supplier, or the recipient may obtain permission to lift the detention on the products subject of the dispute in return for the payment of a financial collateral whose amount shall be determined by the court and which shall be sufficient to cover the interests of the requester provided that all the government procedures are completed. The authorities shall at once notify the owner, the supplier, the recipient and the requester of the lift of the detention of the products.

#### **Article 36**

If in virtue of a self-executing judgment the products are proven to be counterfeit, the judicial authorities shall decide the fate of the products by:

- Either destroying them under the supervision of the authorities.
- Or by excluding them from commercial circulation provided that this does not damage the interests of the owner of the industrial drawing or design.

#### **Article 37**

The authorities may under their own initiative suspend the governmental procedures regarding the supply of products supposed to be counterfeit industrial drawing or design.

In this case:

- The authorities shall at once advise the owner of the industrial drawing or design or any one who obtains a right thereof, who has to submit the request referred to in article 31 of this law within three days as from his notification date by the authorities. The provisions of the articles of this chapter shall be obligatorily applied.
- The detention of the goods shall obligatorily be lifted according to the provisions of this article if the owner of the industrial drawing or design or any one who obtains a right thereof did not file the request referred to in article 31 of this law within three days as from the date of the notification by the authorities.

#### **Article 38**

The authorities shall under no circumstances be held responsible if they could not identify the products supposed to be counterfeit.

#### **Article 39**

The provisions of the articles of this chapter shall not apply to the products which do not have a commercial nature and which are found among the personal luggage of the passengers provided that they are within the quantities defined by the applicable regulations and arrangements.

#### **Article 40**

The executive regulations of this chapter shall be issued by a decree from the minister of finance.

### **Chapter Six**



**Miscellaneous provisions**

**Article 41**

As from the date this law takes effect all preceding provision regarding the protection of industrial drawings and designs especially the decree dated February 25, 1911 concerning photography and drawings of patterns and its complementing and amending provisions shall be cancelled.

**Article 42**

The industrial drawings and designs protected under the decree dated February 25, 1911 concerning photography and drawings of patterns and its complementing and amending provisions shall remain valid regardless of the cancellation of the said decree and they shall be considered as if filed according to the provisions of this law.

This law shall be published in the official gazette of the Republic of Tunisia and shall be enforced as a law of the Republic.

Tunisia in February 6, 2001.  
Zin El Abeeden Bin Ali.