

The Patent and Trademark Office
Order No. 1099 of 20 November 2008

Order on Application and Registration of Designs

Pursuant to section 17(3), section 49(1) and section 59 of the Designs Act No. 1259 of 20 December 2000, and by authority under section 1 of the Ministry of Economic and Business Affairs Order No. 39 of 17 January 2002 on reference of certain rights to the Patent and Trademark Office it is laid down that:

Part 1

Design applications

1.- Applications for the registration of designs shall be filed with the Patent and Trademark Office. Application forms shall be available from the Office.

Contents of the application

2.-(1) The application shall contain

- (i) the name or firm and postal address of the applicant,
- (ii) reproductions illustrating the design and, where applicable, a specimen of the design in accordance with section 4, cf. section 13(3) of the Designs Act,
- (iii) an indication of the product in relation to which the design is intended to be used (product specification),
- (iv) an indication of the class or classes comprising the product according to the Locarno Agreement Establishing an International Classification for Industrial Designs.

(2) The application shall, furthermore, contain

- (i) a request for priority under section 16 of the Designs Act and information in accordance with sections 5 and 7 if the applicant wishes to claim priority,

- (ii) the name or firm and postal address of the agent if the applicant is represented by an agent, as well as a power of attorney, cf. section 32,

- (iii) the name and postal address of the designer, including a designer group or firm, if a request is made for the recording of one or more designers in the Register of Designs, cf. section 13(4) of the Designs Act,

- (iv) information as to who shall be authorised to receive communications from the Patent and Trademark Office on behalf of all the applicants if design registration is applied for by several applicants jointly, and they are not represented by an agent,

- (v) a statement of the period for which publication of the registration is to be deferred if the applicant requests deferment pursuant to section 18, last sentence, of the Designs Act,

- (vi) information to the effect that the design is to be registered in colour if the protection is to comprise the design in colour.

3.-(1) The Patent and Trademark Office shall examine and process the application if the application and the accompanying documents are available in Danish, English, Swedish or Norwegian.

(2) If the application or the accompanying documents are drawn up in another language than those indicated in subsection 1, a translation shall be filed. The translation shall be certified by a translator or certified in another way if considered necessary by the Patent and Trademark Office.

(3) If the application is filed in another language than Danish, the Patent and Trademark Office may require the product specification to be drawn up in Danish.

4.-(1) Reproductions shall illustrate the design only and may be photographs or drawings. Reproductions shall be suitable for black-and-white printing, including printing in a different size.

(2) If the design is sought registered in colour, the reproductions shall illustrate the colours to be comprised by the design right.

(3) If the applicant files a specimen of the design, the specimen may not exceed 40 centimetres in any direction and may not weigh more than 4 kilograms. The specimen shall be durable and may not consist of or contain hazardous materials.

(4) If an application comprises more than one design, cf. section 15 of the Designs Act, separate reproductions shall be filed in respect of each design. Reproductions and specimens, if any, shall be marked clearly with consecutive numbers for each design. If there is more than one reproduction of the individual design, the number must be supplemented by a letter for each reproduction.

Priority

5.-(1) A claim for priority pursuant to section 16(1) to (3) of the Designs Act shall appear explicitly from the application. Priority shall not be obtainable after the filing of the application with the Patent and Trademark Office.

(2) A claim for priority shall contain information about the date from which and the country from which the priority is claimed and shall state the number of the application whose priority is claimed. The said information shall be submitted to the Office not later than one month after the date of filing. If the applicant does not submit the information referred to before the expiry of the time limit, priority shall not be obtainable.

(3) The Patent and Trademark Office may require that the priority claimed be documented by submission of a certificate from the authority which has received the original application. The certificate shall state the date of filing of the original application and the name or firm of the applicant. The Patent and Trademark Office may also require a certified copy of the application and the accompanying reproductions illustrating the design from the said authority. If the applicant does not submit the required documentation before the expiry of the prescribed time limit, priority shall not be obtainable.

(4) Withdrawal of a priority claim shall be effected in a separate letter.

6.-(1) For an application to be capable of serving as a basis for priority pursuant to section 16(1) to (3) of the Designs Act, the application shall be the first in which the design is disclosed.

(2) An application may, however, serve as a basis for claiming priority even if the application is not the first in which the design is disclosed, provided that

(i) the first application has been withdrawn, shelved or refused without the design having been made available to the public when the subsequent application was filed,

(ii) the first application does not form the basis of any existing right,

(iii) the first application has not served as a basis for any priority claim and

(iv) the subsequent application has been filed with the same office as the first application and by the same applicant or his successor in title.

7.-(1) A claim for priority pursuant to section 16(4) of the Designs Act, shall appear explicitly from the application. Priority shall not be obtainable after the filing of the application with the Patent and Trademark Office.

(2) A claim for priority shall contain information about the exhibition at which

the design has been displayed and the date of the first display of the design at the exhibition. The said information shall be submitted to the Patent and Trademark Office not later than one month after the date of filing. If the applicant does not submit the information referred to before the expiry of the time limit, priority shall not be obtainable.

(3) The Patent and Trademark Office may require that the priority claimed be documented by submission of a declaration from the authority responsible for the exhibition. If the applicant does not submit the required documentation before the expiry of the prescribed time limit, priority shall not be obtainable.

(4) Withdrawal of a priority claim shall be effected in a separate letter.

8.- When an application comprises more than one design, cf. section 15 of the Designs Act, priority pursuant to section 16 of the Designs Act may be claimed for one or more designs in the application.

Part 2

Examination and other processing of the application

9.- When the applicant for the design registration has paid the prescribed fees in accordance with section 13(5) of the Designs Act, the Patent and Trademark Office shall commence the examination and other processing of the application.

10.-(1) The Patent and Trademark Office shall mark the application with an application number and the date of filing. If the application does not contain reproductions or a specimen at the filing of the application, the application shall not be accorded a date of filing until the date on which the Patent and Trademark Office receives reproductions or a specimen of the design, cf. section 14(1) of the Designs Act. If the Office does not receive either reproductions or a specimen before the expiry of

the prescribed time limit, the application shall be rejected.

(2) If the Office does not receive reproductions suitable for printing, cf. section 4, before the expiry of the prescribed time limit, the application shall be refused.

(3) If an application comprises more than one design, cf. section 15 of the Designs Act, all the designs shall be accorded the same application number and date of filing.

Supplementary search

11.-(1) A supplementary search conducted by the Patent and Trademark Office pursuant to section 17(2) of the Designs Act shall comprise a search with respect to existing Danish design registrations as well as pending design applications. The search shall also comprise Danish design registrations which have been cancelled during the five-year period prior to the date of filing of the application. If the Office knows about other matters which may be of importance to the protection of the design, those matters shall be included in the examination of the design.

(2) If an application comprises more than one design, cf. section 15 of the Designs Act, the examination by the Office shall comprise only the design or designs stated in the request for the supplementary search.

12.-(1) The Patent and Trademark Office shall draw up a report (search report) to the applicant on the basis of the supplementary search pursuant to section 11.

(2) The supplementary search shall only serve as a guidance to the applicant and may not serve as a basis for refusal of registration.

Part 3

Registration and publication Registration

13.- The Patent and Trademark Office shall register the design when the application complies with the requirements, cf. section 18, first sentence, of the Designs Act, and

shall send a registration certificate to the holder of the design or his agent. If an application comprises more than one design, cf. section 15 of the Designs Act, all the designs shall be accorded the same registration date and registration number.

14.-(1) If the Patent and Trademark Office finds nothing in the course of the supplementary search which may be of importance to the design applied for, the design shall be registered without delay unless the applicant has requested deferment of the registration. The registration may be deferred for up to two months and may under special circumstances be deferred further.

(2) If the supplementary search reveals matters which are of importance to the design applied for, the registration shall be effected two months after the date stated in the search report. If the applicant before the expiry of the time limit has requested that the design be registered, the design shall be registered without delay. Before the expiry of the time limit the applicant may withdraw the application or request deferment of the registration.

Publication

15.- The publication of a design registration in pursuance of section 18, second sentence, of the Designs Act shall contain

- (i) the name or firm and postal address of the holder of the design,
- (ii) the name or firm and postal address of the agent if the applicant is represented by an agent,
- (iii) reproductions illustrating the design,
- (iv) a product specification,
- (v) the class or classes comprising the product according to the Locarno Agreement Establishing an International Classification for Industrial Designs,
- (vi) the application number and the date of filing,
- (vii) the registration number,
- (viii) the priority date and information about

the country in which the original application was filed and its application number if priority has been obtained pursuant to section 16(1) to (3) of the Designs Act,

- (ix) the priority date and information about the exhibition at which the design has been displayed if priority has been obtained pursuant to section 16(4) of the Designs Act,
- (x) the name and postal address of the designer, including a designer group or firm, if the recording of one or more designers in the Register of Designs has been requested pursuant to section 13(4) of the Designs Act,
- (xi) information about any specimen of the design which may have been filed and
- (xii) information to the effect that the design is registered in colour if that is the case.

16.-(1) Publications pursuant to section 18, second sentence, section 24(4) and section 33(1) of the Designs Act shall be effected in the Danish Design Gazette (Dansk Designtidende) issued by the Patent and Trademark Office.

(2) Publication of a renewal of a design registration, cf. section 24(4) of the Designs Act, shall contain information about the registration number and the date of the expiry of the renewal or registration period.

(3) The Patent and Trademark Office shall also publish other matters of importance to the design right, including information about licensing, pledging, insolvency, etc., cf. section 51(1) of the Designs Act.

Part 4

The Register of Designs

17.- The Patent and Trademark Office shall keep a Register of Designs applied for and registered in this country.

18.-(1) The Register of Designs shall contain

- (i) the name or firm and postal address of the applicant,
- (ii) the name or firm and postal address of the holder of the registration,
- (iii) reproductions illustrating the design,

- (iv) a product specification,
 - (v) the class or classes comprising the product according to the Locarno Agreement Establishing an International Classification for Industrial Designs,
 - (vi) the application number and the date of filing,
 - (vii) the registration number and the date of registration and
 - (viii) the date of the expiry of the renewal or registration period.
- (2) The Register of Designs shall, furthermore, contain
- (i) the priority date and information about the country in which the application serving as a basis for the priority claim was filed and its application number if priority is claimed pursuant to section 16(1) to (3) of the Designs Act,
 - (ii) the priority date and information about the exhibition at which the design has been displayed if priority is claimed pursuant to section 16(4) of the Designs Act,
 - (iii) the name or firm and postal address of the agent if the applicant is represented by an agent,
 - (iv) the name and postal address of the designer, including a designer group or firm, if the recording of one or more designers in the Register of Designs is requested pursuant to section 13(4) of the Designs Act,
 - (v) information as to who shall be authorised to receive communications on behalf of all the applicants or holders if design registration is applied for or held by several applicants or holders jointly, and they are not represented by an agent,
 - (vi) information about the deferment of the publication of the registration and the date of the publication if the applicant has requested deferment, cf. section 18, third sentence, of the Designs Act,
 - (vii) the number of the divisional application or applications, if the application has been divided, cf. section 22,
 - (viii) the number of the divisional registration or registrations, if the registration has been divided, cf. section 23,

- (ix) the number of the original application, if the application is resulting from a division, cf. section 22,
 - (x) the number of the original registration, if the registration is resulting from of a division, cf. section 23,
 - (xi) information about the material received in connection with the case, including letters, communications, accompanying documents, specimens, etc., and fees paid,
 - (xii) information about registration of the design in colour, if the applicant has so requested,
 - (xiii) notifications of final decisions in proceedings, cf. section 27(1) and section 31(1) of the Designs Act,
 - (xiv) information about transfer, licensing, pledging, insolvency, etc., cf. section 51(1) of the Designs Act,
 - (xv) other information of importance to the design right.
- (3) When the Patent and Trademark Office receives notification of any change with respect to matters comprised by subsections 1 and 2, such change shall be entered in the Register of Designs.

Part 5

Administrative examination

- 19.**-(1) A request for administrative examination pursuant to section 25 of the Designs Act shall state the grounds on which it is based, and the prescribed fee shall be paid.
- (2) The request and subsequent letters from the parties to the case shall be submitted to the Patent and Trademark Office in duplicate.
- (3) If a request for administrative examination is submitted with respect to a registration comprising more than one design, cf. section 15 of the Designs Act, it shall be indicated in the request how many designs are to be examined by the Patent and Trademark Office.
- 20.**-(1) If the Patent and Trademark Office receives more than one request for ad-

ministrative examination in respect of the same design registration, the Office shall notify the parties thereof.

(2) The Patent and Trademark Office may examine several requests for administrative examination in respect of the same design registration together. The Office may suspend the examination of one or more requests in view of the examination of another request for administrative examination.

(3) If a registration is cancelled in its entirety, suspended requests for administrative examination shall be deemed to have lapsed.

21.- The decision of the Patent and Trademark Office based on a request for administrative examination shall be communicated to all parties to the case.

Part 6

Division of applications and registrations

22-(1) If an application comprises more than one design, cf. section 15 of the Designs Act, the applicant may request the Patent and Trademark Office to divide the application into two or more applications. A request for division shall contain information about the number of the original application and indicate which designs are to be comprised by the individual application after the division.

(2) When the examination of a request for division has been finished, the divisional application shall be accorded an independent application number.

(3) A divisional application shall have the same date of filing and date of priority as the original application.

23-(1) If a registration comprises more than one design, cf. section 15 of the Designs Act, the holder of the design may request the Patent and Trademark Office to divide the registration into two or more registrations. A request for division shall contain information about the registration number of

the original registration and indicate which designs are to be comprised by the individual registration after the division.

(2) When the examination of a request for division has been finished, the divisional registration shall be accorded an independent registration number.

(3) A divisional registration shall be accorded the same date of filing, date of priority and registration date as the original registration.

Part 7

International design applications filed with the Patent and Trademark Office

24-(1) Applications for the international registration of designs under the Geneva Act may be filed with the Patent and Trademark Office, cf. section 55 of the Designs Act.

(2) The application shall be filed on an official form and be drawn up in English.

(3) The Patent and Trademark Office shall mark the application with the date of the receipt by the Office and the file number of the Office.

(4) The prescribed fee for the handling of the application by the Patent and Trademark Office shall be paid at the filing of the application.

25-(1) An application for the international registration of a design shall contain

(i) the name and address of the applicant,
(ii) reproductions or specimens illustrating the design,

(iii) an indication of the product or products constituting the industrial design or in relation to which the design is intended to be used,

(iv) an indication of the states or organisations which are designated.

(2) The application shall, moreover, contain
(i) a request for priority if the applicant wants to claim priority,

(ii) the name and address of the agent if the applicant wishes to be represented by an agent before the International Bureau.

(3) The application shall also contain the necessary information required by the state or states or organisation or organisations which are designated in the application, cf. Article 5(2) of the Geneva Act.

(4) The application shall, moreover, be drawn up in accordance with Articles 5, 6 and 7 of the Geneva Act and the rules connected therewith in the Regulations under the Geneva Act.

26.-(1) If the handling fee has been received by the Patent and Trademark Office, the international application shall be forwarded to the International Bureau.

(2) If the Patent and Trademark Office finds anything to prevent the forwarding of the application to the International Bureau, and the application has not been remedied within the time limit of one month referred to in Rule 13(3) of the Regulations under the Geneva Act, the Office shall decide whether the application shall be rejected or forwarded as it is. The applicant shall be notified of the decision of the Office.

Designations of Denmark received from the International Bureau

27.-(1) If the Patent and Trademark Office receives a notification from the International Bureau to the effect that Denmark is designated in an international design registration, the Office shall examine whether there are any grounds for refusal of the validity of the international registration in Denmark. Section 17 as well as section 47 of the Designs Act shall apply *mutatis mutandis*.

(2) If no grounds have been found for refusal of the validity of the international registration in Denmark, the holder shall be notified thereof.

28.-(1) If the Patent and Trademark Office finds that the international registration as it is cannot obtain validity in Denmark, a notification of an entire or partial refusal

shall be communicated to the International Bureau, cf. section 57 of the Designs Act. At the same time a time limit shall be fixed for the holder to file his observations with the Office.

(2) After the expiry of the time limit referred to in subsection 1 the Patent and Trademark Office shall decide whether the communicated refusal shall be maintained. If the Patent and Trademark Office decides on an entire or partial refusal, a notification to that effect shall be communicated to the International Bureau.

29.-(1) An international registration having validity with respect to Denmark shall be subject to the same rules as a Danish registration, cf. section 54 of the Designs Act.

(2) When an international registration obtains validity with respect to Denmark, the registration shall be published in the Danish Design Gazette, cf. section 18 of the Designs Act and Article 14 of the Geneva Act.

(3) If the registration is subsequently invalidated entirely or partially, the Patent and Trademark Office shall notify the International Bureau thereof.

Entries concerning international registrations in the Register of the Patent and Trademark Office

30.-(1) In the Register of the Patent and Trademark Office the information received from the International Bureau shall be entered.

(2) Notwithstanding the provisions of subsection 1 the International Register shall prevail in the event of disagreement between the information about the international registration in the Register of the Office and the International Register.

(3) In addition to the information referred to in subsection 1 other entries concerning an international registration, including entries

concerning agent, pledging, execution and attachment, may also be made on request.

Part 8

Other provisions

Time limits

31.- A time limit prescribed by the Patent and Trademark Office shall run from the date indicated on the letter from the Office. The time limit shall be two months unless otherwise provided in this Order or resulting from special circumstances which may justify a longer time limit.

Power of attorney

32.- If an applicant, a holder or a party to a case before the Patent and Trademark Office is represented by an agent, a power of attorney shall be filed. The Patent and Trademark Office may exempt from the requirement of a power of attorney.

Languages

33.-(1) The Patent and Trademark Office shall examine and process a case in English if the applicant so requests or if the parties to a case before the Patent and Trademark Office so agree. The Patent and Trademark Office may at any time decide that the examination and processing of a case shall be performed in Danish.

(2) Documents received in connection with a case before the Patent and Trademark Office shall be drawn up in Danish, English, Norwegian or Swedish. If the documents are drawn up in another language, a translation shall be filed. The translation shall be certified by a translator or certified in another way if the Patent and Trademark Office finds it necessary.

(3) If a design registration is to be maintained in amended form, cf. section 28 of the Designs Act, and that results in an amendment of the product specification, the Patent and Trademark Office may require that the specification be submitted in Danish.

Documentation

34.- In connection with the examination and processing of applications, etc. the Patent and Trademark Office may, when deemed necessary, request further documentation with respect to the case.

Storage of specimens

35.- The Patent and Trademark Office shall store any specimen submitted, cf. section 13(3) of the Designs Act, for a period of up to five years after the termination of the registration. If the holder of the specimen has not within that period requested that the specimen be returned, the Office may destroy the specimen.

Part 9

Provisions as to entry into force

36.-(1) This Order shall enter into force on 9 December 2008.

(2) At the same time, Order No. 819 of 18 September 2001 on application and registration of designs shall be repealed.

(3) Order No. 377 of 19 June 1998 on application and registration of designs shall, however, continue to apply in respect of registered designs and in respect of the examination and processing of design applications filed with the Patent and Trademark Office before 1 October 2001, cf. section 60 (3) of the Designs Act.

The Patent and Trademark Office, 20 November 2008

JESPER KONGSTAD

/ Randi Stanbury