

The Consolidate Designs Act¹⁾

Publication of the Designs Act, cf. Consolidate Act No. 102 of 24 January 2012 including the amendments which follow from section 3 of Act No. 1387 of 23 December 2012 and section 21 of Act No. 639 of 12 June 2013.²⁾

The amendments which follow from section 2 of Act No. 309 of 28 March 2015 to Amend the Trade Marks Act, the Designs Act, the Patents Act and the Utility Models Act (Increased efforts against counterfeiting and piracy by establishing an enforcement unit, etc.) are not included in this Consolidate Act since the date of entry into force of those amendments shall be fixed by the Minister of Business and Growth, cf. section 5(2) of Act No. 309 of 28 March 2015.

Part 1

General provisions

1.- The creator of a design (the designer), or his successor in title, may in accordance with this Act by registration obtain an exclusive right to the design (design right), cf. section 9.

2.- For the purposes of this Act

(i) “design” means the appearance of a product or part of a product resulting from the features of the product itself or its ornamentation, in particular with respect to lines, contours, colours, shape, texture or materials,

(ii) “product” means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs,

(iii) “complex product” means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

3.-(1) A design right may only be obtained if the design is new and has individual character.

(2) A design shall be considered to be new if no identical design has been made available to the public before the date of filing of the application or, if priority is claimed, the date of priority, cf. section 16. Designs shall be deemed to be identical if their features differ only in immaterial details.

(3) A design shall be considered to have individual character if the overall impression the design produces on the informed user differs from the overall impression produced on such a user by any design which has been available to the public before the date of filing of the application or, if priority is claimed, the date of priority, cf. section 16. In assessing the individual character of a design the degree of freedom of the designer in developing the design shall be taken into consideration.

¹⁾ This Act contains provisions implementing Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs (EC Official Journal 1998 No. L 289, p. 28). Moreover, Act No. 1430 of 21 December 2005 contains provisions implementing parts of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (EU Official Journal 2004 No. L 195, p. 15).

4.-(1) A design of a component part of a complex product shall only be considered to be new and to have individual character if

(i) the component part, once it has been incorporated into the complex product, remains visible during normal use of the product, and

(ii) the visible features of the component part comply with the requirements as to novelty and individual character.

(2) Normal use means use of the complex product by the end user, excluding maintenance, servicing or repair work.

5.-(1) A design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or if it has been exhibited, used in trade or otherwise disclosed.

(2) The design shall, however, not be deemed to have been made available to the public if

(i) the events referred to in subsection 1 could not reasonably have become known in the normal course of business to the circles specialised within the sector concerned, operating within the European Union, before the date of filing of the application or, if priority is claimed, the date of priority, cf. section 16, or

(ii) the design has been disclosed to a third party under explicit or implicit conditions of confidentiality.

6.- A design shall not be deemed to have been made available to the public if it has been published during the 12-month period preceding the date of filing of the application or, if priority is claimed, the date of priority, cf. section 16,

(i) by the designer, his successor in title or a third party as a result of information provided or action taken by the designer or his successor in title or

(ii) as a consequence of an abuse in relation to the designer or his successor in title.

7.-(1) A design right shall not be obtained if the design

(i) is contrary to public policy or to accepted principles of morality,

(ii) is in conflict with a prior design which has only been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority, cf. section 16, provided that the date of filing of the application for the prior design precedes the date of filing of the application for the subsequent design,

(iii) unauthorised

(a) makes use of any of the items listed in Article 6ter of the Paris Convention for the Protection of Industrial Property or of badges, emblems and escutcheons other than those which are covered by Article 6ter of the said Convention and which are of particular public interest,

(b) makes use of another person's trade mark, style or other business identifier,

(c) makes use of a work protected by copyright law or

(d) contains an earlier design.

(2) An earlier design means a design protected by

(i) an application or a registration in this country

(ii) an application for or a registration as a Community design,

(iii) a non-registered Community design, or

(iv) an international application or registration effective in this country.

8.-(1) A design right may not be obtained with respect to the features of the appearance of a product which

(i) are solely dictated by the technical function of the product or

(ii) must be reproduced in their exact form and dimensions in order to permit the product to which the design relates to be mechanically connected to or placed in, on, around or against another product so that either product may perform its function.

(2) Notwithstanding the provision of subsection 1(ii), a design right may be obtained to a design which is new and has individual character in accordance with section 3, provided that the design allows the multiple assembly or connection of products within a modular system consisting of mutually interchangeable parts.

9.(1) Subject to the exceptions following from sections 10 to 12, the design right shall imply that nobody may exploit the design without the consent of the holder of the right. Such exploitation shall include, in particular, the making, offering, putting on the market, importing, exporting or use of a product to which the design relates, or stocking such a product for those purposes.

(2) The design right under subsection 1 shall include any design which does not produce on the informed user a different overall impression. In assessing the scope of the design right, the degree of freedom of the designer in developing his design shall be taken into consideration.

10.- The design right shall not be exercised in respect of

(i) acts done for private purposes,

(ii) acts done for experimental purposes and

(iii) acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice normal exploitation of the design and provided that reference is made to the source.

11.- In addition, the design right shall not be exercised in respect of

(i) the equipment on ships and aircraft registered in another country when these temporarily enter the territory of this country and

(ii) the importation to this country of spare parts and accessories for the purpose of repairing and the execution of repairs on such ships and aircraft.

12.- The design right shall not extend to acts relating to a product protected by a design, when the product has been put on the market within the European Economic Area (EEA) by the holder of the right or with his consent.

Part 2

Applications for the registration of designs

13.(1) Applications for the registration of designs shall be filed with the Patent and Trademark Office.

(2) The application shall state the name or firm of the applicant and contain a reproduction of the design.

(3) The application may moreover be accompanied by a specimen. If so, the specimen shall constitute the basis for the registration of the design.

(4) If the applicant is not the creator of the design, the applicant or the creator may request that the creator of the design be stated in the Register of Designs. If the design is the result of collaboration between more than one designer, a citation of the group of designers in question may replace a citation of the individual designers.

(5) The prescribed fees shall accompany the application.

14.-(1) An application shall only have legal effect from the date on which the applicant has filed a reproduction or a specimen of the design.

(2) An application may not be amended so as to relate to a design other than the design disclosed in the application.

15.- An application may comprise more than one design, provided that the products to which the designs are intended to be applied may be referred to the same class, cf. the Agreement Establishing an International Classification for Industrial Designs signed at Locarno on 8 October 1968 (the Locarno Agreement).

16.-(1) If a design is contained in an application for the registration of the design or for the protection of a utility model in another country party to the Paris Convention of 20 March 1883 for the Protection of Industrial Property or member of the World Trade Organisation (WTO), and the registration of the design is applied for in this country within six months from the date of filing in that other country, the application shall at the request of the applicant for the purposes of sections 3 and 7(1)(ii) and (iii) be considered filed at the same time as the application in that other country.

(2) The same right of priority under subsection 1 shall apply even if the previous application for protection does not originate from a country party to the Convention or member of the WTO, provided that an equivalent priority from a Danish design application is granted in the country where the previous application was filed, and the legislation in that country is essentially in conformity with the Paris Convention.

(3) The same right of priority under subsection 1 shall also apply if the design is included in an application for the protection of a design or a utility model in this country.

(4) If an application for the registration of a design is filed in this country not later than six months after the design has been displayed for the first time at an official, or officially recognised, international exhibition, the application shall at the request of the applicant for the purposes of sections 3 and 7(1)(ii) and (iii) enjoy priority from that date. The exhibitions referred to are such exhibitions as are defined in the Convention on International Exhibitions, signed at Paris on 22 November 1928 and latest revised on 30 November 1972.

17.-(1) The Patent and Trademark Office shall ensure that the application relates to a design, cf. section 2(i), and that the provision of section 7(1)(i) does not prevent registration. Furthermore, the Office shall ensure that the application comprises only one design, cf., however, section 15.

(2) The applicant may request the Patent and Trademark Office to examine other matters of importance for the design right known to the Office. For the request the applicant shall pay the prescribed fee.

(3) The Minister of Business and Growth shall lay down the specific rules concerning the examination and its extent.

18.- If the application complies with the requirements, and no objection has been found to the registration, the design shall be registered. The registration shall be published by the Patent and Trademark Office. Publication may be deferred for up to six months from the date of filing or, if priority is claimed, the date of priority, cf. section 16, provided that the applicant so requests in the application.

19.-(1) If the applicant has not complied with the requirements laid down for the application, or if the Patent and Trademark Office has other objections to the registration, the applicant shall be notified accordingly and

be invited to file his observations or to take steps to correct the application within a specified time limit.

(2) If the applicant fails to file his observations or to take steps to correct the application within the expiry of the time limit, the application shall be shelved. The notification referred to in subsection 1 shall contain information to that effect.

(3) The examination of an application may be resumed if the applicant within two months after the expiry of the prescribed time limit requests resumption and files his observations or corrects the application and within the same time limit pays the prescribed resumption fee. Resumption may be granted only once.

(4) If the Patent and Trademark Office has any objections to accept the application, and the applicant has had an opportunity to file his observations on the objections, the application shall be refused unless the Patent and Trademark Office has reason to invite the applicant once more pursuant to subsection 1.

20.-(1) If the Patent and Trademark Office pursuant to section 19 has any objections to registration, the design may be registered in amended form, provided that the design in the amended form complies with the requirements for protection and retains its identity.

(2) If the applicant disapproves of the decision of the Patent and Trademark Office pursuant to subsection 1 as to registration in the amended form, the application shall be refused.

Part 3

Publication and obligation to give information

21.-(1) As from the date on which the design is registered, the files of the application shall be available to the public.

(2) When six months have elapsed from the date of filing or, if priority is claimed, from the date of priority, cf. section 16, the files shall be available to the public even if publication under section 18 has not been effected. If a decision has been made to shelve or to refuse the application, the files shall, however, not be available unless the applicant requests resumption or appeals against the refusal.

(3) At the request of the applicant the files of the application shall be made available earlier than prescribed in subsections 1 and 2.

(4) When the files of the application are made available under subsection 2 or 3, an advertisement shall be made to that effect.

22.-(1) An applicant who invokes his application for a design registration against another person before the files of the application have been made available to the public shall on request let the said person obtain inspection of the files.

(2) Any person who, either by direct communication with another person or in advertisements or by inscription on products or their packaging or in any other way, indicates that a design is registered or its registration is applied for without indicating at the same time the number of the registration or the application, shall without undue delay give such information to any person requesting it. If it is not explicitly indicated that a design is registered or its registration applied for, but circumstances are such as to create that impression, information as to whether the design is registered or its registration is applied for shall be given on request without undue delay.

Part 4

Term of the design registration

23.-(1) A design registration shall be effective for the period or periods of five years for which the application has been filed counted from the date of filing of the application. The registration may, on request, be renewed for further periods up to a total term of 25 years. Each period shall run from the expiry of the preceding period.

(2) Notwithstanding subsection 1, the registration shall be effective for a maximum of 15 years for a design of a component which is used for the repair of a complex product so as to give the product its original appearance.

24.-(1) The request for renewal of a design registration shall be effected by payment of the prescribed renewal fee to the Patent and Trademark Office not earlier than three months before and not later than six months after the expiry of the registration period. If the renewal fee is paid only after the expiry of the registration period, an additional fee shall be paid.

(2) The Patent and Trademark Office shall collect the prescribed renewal fee from the holder of the design or his agent. The Office shall not be held responsible for any loss of rights as a consequence of failure to collect.

(3) If the prescribed renewal fee has not been paid within six months after the expiry of the registration period, the registration shall be cancelled.

(4) The renewal of the registration shall be published.

Part 5

Termination of the registration by a court decision or administrative examination, etc.

25.-(1) When a design registration has been effected, any person may file a request with

the Patent and Trademark Office for an entire or partial cancellation of the registration. The request may exclusively be filed on the ground that

(i) the registration has not been effected in accordance with sections 1 to 8,

(ii) the application has been amended in contravention of section 14(2),

(iii) the requirements of section 15 are not complied with or

(iv) the registration has been maintained for more than 15 years in contravention of section 23(2).

(2) A request pursuant to subsection 1 may only be filed concerning

(i) the right to a design by the person claiming to be rightful holder of the design,

(ii) the rights referred to in section 7(1)(ii) and (iii)(b) to (d) by the person claiming to be the rightful holder of the rights in question,

(iii) use of the rights referred to in section 7(1)(iii)(a) by the person affected by the use.

(3) If a case before the courts concerning a design remains to be finally decided upon, a request pursuant to subsection 1 may not be filed concerning the design in question. If proceedings concerning a design are instituted before the courts prior to a final decision having been made on the request pursuant to subsection 1 relating to the same design, the Patent and Trademark Office or the Patent Board of Appeal shall suspend the examination of the request until the case has been finally decided upon, unless the request has been filed by the holder of the design.

(4) For a request pursuant to subsection 1 the prescribed fee shall be paid.

26.-(1) A request pursuant to section 25(1) shall be accompanied by documentation. If the material to be used for such documentation is insufficient, the Patent and

Trademark Office may require additional material in order to consider the request.

(2) If the request has been filed by another person than the holder of the design registration, the holder shall be informed of the material filed and be invited to file his observations thereon.

27.-(1) A design registration may be revoked entirely or partially by a court decision, if

(i) the registration has not been effected in accordance with sections 1 to 8,

(ii) the application has been amended in contravention of section 14(2),

(iii) the requirements of section 15 are not complied with or

(iv) the registration has been maintained for more than 15 years in contravention of section 23(2).

(2) Any person may institute proceedings pursuant to subsection 1. Proceedings may, however, only be instituted concerning

(i) the right to a design by the person claiming to be the rightful holder of the design,

(ii) the rights referred to in section 7(1)(ii) and (iii)(b) to (d) by the person claiming to be the rightful holder of the rights in question,

(iii) use of the rights referred to in section 7(1)(iii)(a) by the person affected by the use.

(3) Proceedings under subsection 2(i) shall be instituted within one year after the person in question has obtained knowledge of the registration and the other circumstances on which the proceedings are based. If the holder of the design was in good faith when the design was registered or when the design right was transferred to him, the proceedings may not be instituted later than three years after the registration of the design.

(4) A design registration may be revoked after the right to the design has lapsed or the design right has been surrendered.

28.-(1) A design registration may be maintained in amended form, provided that the design in the amended form complies with the requirements for protection and retains its identity.

(2) If the holder of the design disapproves of a decision to maintain the registration in amended form or fails to pay the prescribed fee for publication of the amendment, the registration shall be cancelled.

29.-(1) If any person claims to be entitled to a design applied for or registered, the Patent and Trademark Office may, if it finds the question doubtful, invite the said person to bring it before the courts within a time limit to be specified. If the invitation is not complied with, the claim may be disregarded. Information to that effect shall be given in the invitation.

(2) If legal proceedings have been instituted concerning the right to a design, the Patent and Trademarks Office shall suspend the examination of the case until a final decision has been given in the legal proceedings.

30.-(1) If any person proves to the Patent and Trademark Office that he, and not the applicant or the holder of the design, is entitled to a design comprised by a design applied for or registered, the Patent and Trademark Office shall transfer the application or the registration to him if he so requests. The transferee shall pay an application fee.

(2) If a request has been made for the transfer of an application or a registration, the application may not be amended, shelved, refused or accepted or the registration amended or cancelled, entirely or partially, until a final decision has been made concerning the transfer.

31.-(1) If a design has been registered for another person than the person entitled thereto under section 1, the court shall transfer the design right to the entitled person if he so claims. If another person is entitled to the design right, the Patent and Trademark Office shall transfer the registration to the entitled person.

(2) If the person who is deprived of a design registration in good faith has exploited the design in this country, or has made substantial preparations for such exploitation, he shall be entitled, for a reasonable compensation and on reasonable terms in other respects, to continue the exploitation already commenced or to implement the planned exploitation retaining its general character. Such a right shall also, under similar conditions, be enjoyed by holders of licences.

(3) Rights pursuant to subsection 2 may only be transferred to others together with the business in which they are exploited or in which the exploitation was intended.

32.-(1) If an objection exists to the maintenance of a design registration pursuant to a decision under section 25(1) or a court decision, the registration shall be cancelled by the Patent and Trademark Office. The Office shall also cancel the registration if the holder of the design surrenders the design right.

(2) If the Patent and Trademark Office based on a request pursuant to section 25(1) finds no grounds for an entire or partial cancellation of the registration, the request shall be rejected, and the registration shall be maintained.

33.-(1) The Patent and Trademark Office shall publish the lapse of a design registration. The Office shall also publish amendments of the design registration in consequence of a decision made by the Office or a court decision concerning an entire or partial cancellation or concerning the transfer of the design right to another party.

(2) For the publication of a registration in amended form the prescribed fee shall be paid.

Part 6

Appeals

34.- Appeals from the final decision of the Patent and Trademark Office with respect to a design application may be filed with the Patent Board of Appeal by the applicant. The same shall apply to the holder of the design if a design registration is cancelled entirely or partially. If a design registration is maintained in amended or unamended form, the decision may be appealed against by the person having filed the request for an entire or partial cancellation of the design registration. If the latter withdraws his appeal, the appeal may nevertheless be examined, provided that there are special grounds for such action.

35.-(1) Appeals pursuant to section 34 shall be filed with the Patent Board of Appeal not later than two months after the Patent and Trademark Office has notified the party concerned of the decision. The prescribed fee for appeal shall be paid within the same time limit. Failure to do so shall cause the appeal to be rejected. Filing of appeals with the Patent Board of Appeal shall have suspensive effect.

(2) The decisions of the Patent Board of Appeal may not be brought before another administrative authority.

(3) Decisions made by the Patent and Trademark Office which may be brought before the Patent Board of Appeal, may not be brought before the courts until the decision of the Board of Appeal has been given. If a party wants to bring a decision made by the Patent Board of Appeal before the courts, proceedings shall be instituted not later than two months after the date on which the party concerned was notified of the decision of the

Board of Appeal. The proceedings shall have suspensive effect.

Part 7

Liability to punishment, liability for damages, etc.

36.-(1) Any person who intentionally or grossly negligently infringes a design right (design infringement) shall be punished with a fine. That shall also apply to infringement of design rights established pursuant to the Council Regulation on Community designs.

(2) If the infringement has been committed intentionally and under aggravating circumstances, the penalty may increase to imprisonment of up to 18 months, unless a heavier penalty is provided for by section 299b of the Penal Code. Aggravating circumstances shall in particular be considered to exist if a significant and obviously unlawful profit is intended by the infringement.

(3) Companies etc. (legal entities) may be held liable to punishment under the rules of Part 5 of the Penal Code.

(4) In the case of infringements comprised by subsection 1 proceedings shall be instituted by the injured party. In the case of infringements comprised by subsection 2 proceedings shall be instituted only at the request of the injured party unless the institution of proceedings is required in the interests of the public.

37.-(1) Any person who intentionally or negligently commits design infringement shall pay

- (i) a reasonable compensation to the injured party for the exploitation and
- (ii) damages to the injured party for the further injury which the infringement has caused.

(2) In fixing the damages according to subsection 1(ii) *inter alia* the loss of profit suffered by the injured party and the illicit profit obtained by the infringer shall be taken into consideration.

(3) In cases comprised by subsection 1 an additional compensation may be fixed to the injured party for non-financial injury.

38.-(1) For the purpose of preventing further design infringements the court may, when so claimed, *inter alia* decide that a product constituting a design infringement shall be

- (i) withdrawn from the market,
- (ii) removed definitively from the market,
- (iii) destroyed,
- (iv) surrendered to the injured party or
- (v) altered in a specified manner.

(2) Subsection 1 shall apply *mutatis mutandis* to materials, tools or the like which have primarily been used for illegal production of the infringing products.

(3) The measures under subsection 1 shall be implemented without compensation to the infringer and shall not affect any damages to the injured party. The measures shall be implemented at the expense of the infringer unless special circumstances tell against it.

(4) In giving a court decision on measures under subsection 1 the court shall take into consideration the proportion between the extent of the infringement, the prescribed measures and the interests of any third party.

(5) The court may, when so claimed, grant permission to the infringer to have the products, materials, tools or the like referred to in subsections 1 and 2 at his disposal during the term of protection of the design or part thereof against a reasonable compensation. However, this shall only apply if

- (i) the infringer has neither acted intentionally nor negligently,

- (ii) the measures under subsection 1 would cause the infringer disproportionate harm and
- (iii) a reasonable compensation is sufficient.

39.-(1) If any person without permission exploits a design in respect of which registration is applied for after the files of the application have been made available to the public, and the application results in a registration, the provisions concerning design infringement shall apply *mutatis mutandis*. That shall, however, not apply to the provision of section 38. Any person who has committed design infringement before the files have been made available to the public and who has obtained a profit thereby shall pay damages pursuant to section 37 to the extent found reasonable, but not exceeding the profit he is supposed to have obtained by the design infringement.

(2) Claims for damages under subsection 1 shall not be statute-barred earlier than 1 year after the registration of the design.

39a.-(1) In a court decision by which a person is held liable under section 37 or 38 the court may, if so requested, decide that the court decision in full or extracts thereof shall be published.

(2) The obligation to publish shall rest with the infringer. The publication shall be made at the expense of the infringer and in such a prominent manner as may reasonably be required.

40.- In proceedings concerning design infringement the invalidity of the design right may only be put in issue if a claim for cancellation of the registration is set up against the holder of the design, possibly after the latter has been summoned pursuant to the rules laid down in section 45. If the registration is cancelled, the provisions of sections 36 to 39 shall not apply.

41.-(1) Any person who, in the cases referred to in section 22, fails to comply with his obligations or gives false information shall be punished with a fine, in so far as a severer punishment is not provided for by other legislation, and shall compensate the injury caused thereby to the extent found reasonable.

(2) The provisions of section 36(3) and (4) shall apply *mutatis mutandis*.

41a.- If the customs and taxation authorities become suspicious of infringements comprised by section 36, information to that effect may be passed on to the holder of the right.

Part 8

Provisions as to administration of justice

42.- The Maritime and Commercial Court shall be the Community design court of first instance, and the Supreme Court shall be the Community design court of second instance pursuant to the Regulation on Community designs.

43.³⁾-(1) Provisional decisions on injunctions under the Regulation on Community designs shall be given by the City Court or the Maritime and Commercial Court, cf. Part 40 of the Administration of Justice Act.

(2) Provisional decisions on injunctions under the Regulation on Community designs which are to have effect within the territory of any Member State shall be given by the Maritime and Commercial Court.

(3) Provisional decisions on injunctions pertaining to a Community design as well as other designs protected under this Act shall be given by the Maritime and Commercial Court if the provisional decision pertaining to the

Community design is to have effect within the territory of any Member State.

(4) The provisions of Parts 40 and 57 of the Administration of Justice Act shall apply *mutatis mutandis*.

(5) The decisions of the Maritime and Commercial Court pursuant to subsections 1 to 3 may be appealed against to the Eastern High Court.

44.-(1) Any person who institutes proceedings for the entire or partial cancellation of a design registration or for the transfer of the registration shall notify the Patent and Trademark Office thereof for entry in the Register of Designs and by registered letter notify any licensee who is entered in the Register with an address of the proceedings. Any licensee who wishes to institute proceedings for infringement of the design right shall in a similar way notify the holder of the design thereof.

(2) If the plaintiff does not prove in the summons that the notifications referred to in subsection 1 have been given, the court may fix a time limit for compliance with the requirements. If the said time limit is not observed, the case shall be dismissed.

45.-(1) In proceedings for infringement of the design right instituted by the holder of the design, the defendant shall notify the Patent and Trademark Office and registered licensees in accordance with the rules laid down in section 44(1) if the defendant intends to claim cancellation of the registration. The provision of section 44(2) shall apply *mutatis mutandis* so that the claim for cancellation of the registration shall be dismissed if the fixed time limit is not observed.

(2) In proceedings for design infringement instituted by a licensee, the defendant may summon the holder of the design to attend without regard to his venue and file a claim against him for cancellation of the registration. The provisions of Part 34 of the

Administration of Justice Act shall apply *mutatis mutandis*.

46.- Office copies of court decisions in the proceedings referred to in sections 27 to 29, 31, 32 and 36 to 39 shall be sent to the Patent and Trademark Office on the initiative of the court.

Part 9

Miscellaneous provisions

47.- The Patent and Trademark Office may invite an applicant for a design and a holder of a registered design to appoint an agent residing in the European Economic Area (EEA) to represent him with respect to the application or the registration. The name and address of the agent shall be entered in the Register of Designs.

48.-(1) If the non-observance of a time limit vis-à-vis the Patent and Trademark Office prescribed by or provided for in this Act causes a loss of rights to an applicant for a design who has taken all due care reasonably required, the Patent and Trademark Office shall on request re-establish his rights. The request shall be filed with the Patent and Trademark Office within two months from the removal of the obstacle causing non-observance of the time limit though not later than one year after the expiry of the time limit. The omitted act shall be completed and the fee prescribed for re-establishment of rights shall be paid within the same time limits.

(2) The provision of subsection 1 shall apply *mutatis mutandis* if a holder of a design has failed to pay the renewal fee within the time limit prescribed in section 24(1), provided that the request for re-establishment of rights is filed and the renewal fee paid not later than six months after the expiry of the time limit.

(3) The provision of subsections 1 and 2 shall apply *mutatis mutandis* to time limits vis-à-vis the Patent Board of Appeal. Re-establishment of rights shall be effected by the Patent Board of Appeal.

(4) The provisions of subsection 1 shall not apply to the time limits referred to in section 16.

49.-(1) The Minister of Business and Growth shall lay down specific provisions concerning design applications and their examination and other processing, priority, division of design applications and registrations, renewal or surrender of as well as requests for the entire or partial cancellation of design registrations, the keeping of the Register of Designs, exchange of electronic data with the Patent and Trademark Office and the Patent Board of Appeal, the publication and contents of the Danish Design Gazette (Dansk Designtidende) and the procedures of the Patent and Trademark Office. It may thus be prescribed that the records of the Patent and Trademark Office relating to applications filed shall be available to the public. The Minister of Business and Growth may lay down specific rules concerning the days on which the Patent and Trademark Office shall be closed.

(2) The Minister of Business and Growth shall lay down the provisions necessary for the application of the Regulation on Community designs.

(3) For the examination and other processing of cases concerning Community designs a fee shall be paid.

(4) The Minister of Business and Growth may lay down rules concerning the payment for special transactions, publications, transcripts, courses, etc.

50.- A registered design may also be protected by the Copyright Act from the date on which the design was created or established in a given shape.

51.-(1) The transfer of a design, the grant of a licence, the pledging of a design, the levying of execution on the design or the commencement of insolvency proceedings against the holder of the design shall on request be entered in the Register of Designs. The same shall apply to the entry of the name of the creator of a design and of rights under section 31(2).

(2) The request for the entry, amendment or deletion of information in the Register of Designs pursuant to subsection 1 shall be accompanied by the necessary documentation.

(3) In the case of a registration comprising more than one design, cf. section 15, the transfer of the design right to another person may only be entered in the Register provided that the transfer comprises all the designs.

(4) Proceedings concerning a design may always be instituted against the person entered in the Register as holder of the design, and notifications from the Patent and Trademark Office may be sent to the holder.

52.-(1) The Patent and Trademark Office may on request undertake the performance of special tasks concerning designs and design rights.

(2)⁴⁾ The Access to Public Administration Files Act shall, except for section 8, not apply to the tasks referred to in subsection 1.

(3) The Minister of Business and Growth shall lay down rules governing that service and the payment therefor and governing the payment of fees for reminders in the case of late payment.

Part 10

International design registration

53.- An international design registration means a registration under the amendment of the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva on 2 July 1999 (the Geneva Act).

54.- An international design registration with validity in Denmark shall have the same legal effect as if the design had been registered in this country.

55.- An international design application shall be filed with the Patent and Trademark Office or with the International Bureau. The international design application may be filed with the Patent and Trademark Office by Danish nationals and by natural persons or legal entities having their residence in Denmark or being owners of a real and effective industrial or commercial establishment in Denmark.

56.- At the filing of an international design application priority may be claimed from a country party to the Paris Convention or member of the World Trade Organisation (WTO).

57.- If the design does not comply with the conditions of registration under this Act, the Patent and Trademark Office may, within the time limit laid down in the Geneva Act, notify the International Bureau of the entire or partial refusal of the validity of the design in Denmark.

58.- The rules laid down in the Geneva Act shall apply to the renewal of an international design registration.

59.-(1) The Minister of Business and Growth shall lay down specific rules for the implementation of the provisions of this part of the Act. Special rules may thus be laid

down concerning the publication of the internationally registered designs.

(2) For the examination and other processing of cases concerning international design registration a fee shall be paid.

Part 10 A

Fees

59a.-(1) For an application for the registration of a design a fee of 1,200 DKK shall be paid, cf. section 13(5). With respect to an application comprising more than one design, cf. section 15, an additional fee of 700 DKK shall, furthermore, be paid for each design in excess of one. For the publication of a design an additional fee of 400 DKK shall be paid for each reproduction in excess of one.

(2) For an examination pursuant to section 17(2) a fee of 1,500 DKK shall be paid. With respect to an application which pursuant to section 15 comprises more than one design an additional fee of 900 DKK shall be paid for each design in excess of one.

(3) The fee for the designation of Denmark in an international design registration shall be fixed pursuant to Article 7(1) of the Geneva Act of 2 July 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs (the Geneva Act).

59b.-(1) For the renewal of a design registration, cf. section 24(1), a fee of 2,200 DKK shall be paid, for each period, cf. section 23. With respect to a registration which pursuant to section 15 comprises more than one design an additional fee of 1,100 DKK shall, furthermore, be paid for each design in excess of one.

(2) The provision of subsection 1 shall apply *mutatis mutandis* to the renewal of registrations under section 25(1) of the previous Designs Act.

(3) Fees pursuant to subsection 1 or 2 paid after the expiry of the registration period and up to six months thereafter shall be increased by 20 per cent.

(4) The fee for the renewal of the designation of Denmark in an international design registration shall be fixed pursuant to Article 17(2), cf. Article 7(1), of the Geneva Act.

59c.-(1) For a request for administrative examination, including examination of designs included in a registration comprising more than one design, cf. section 15 and section 25(4) a fee of 3,000 DKK shall be paid for each design.

(2) For the publication of a registration in amended form a basic fee of 400 DKK shall be paid, cf. section 33(2). Furthermore, an additional fee of 400 DKK shall be paid for each reproduction in excess of one.

59d.-(1) For a request for resumption of an application for a design a fee of 400 DKK shall be paid, cf. section 19(3).

(2) For a request for re-establishment of a design application or registration a fee of 3,000 DKK shall be paid, cf. section 48.

59e.-(1) For the handling by the Patent and Trademark Office of cases concerning applications for Community designs a fee of 200 DKK shall be paid, cf. section 49(3).

(2) For the handling by the Patent and Trademark Office of cases concerning applications for international registration of designs a fee of 200 DKK shall be paid, cf. section 59(2).

59f.-(1) Fees paid pursuant to sections 59a to 59e shall not be refunded when the payment has been effected in due time.

(2) Fees not paid in due time or paid in insufficient amounts at the expiry of the time

limit resulting in non-acceptance of the payment shall be refunded.

(3) If the Patent and Trademark Office rejects the examination and other processing paid for, fees paid in connection with the examination and other processing shall be refunded.

59g.-(1) The fees referred to in sections 59a to 59e are stated at the 2011-level.

(2) The Patent and Trademark Office may adjust the amounts stated in sections 59a to 59e in accordance with the general price and wage development used for the purposes of the Government Budget. The Patent and Trademark Office shall publish the current fees in a price list.

Part 11

Provisions as to entry into force and transitional provisions

60.⁵⁾-(1) This Act shall enter into force on 1 October 2001. The Minister of Business and Growth shall, however, determine the date for the entry into force of Part 10.

(2) The Designs Act, cf. Consolidate Act No. 251 of 17 April 1989, shall be repealed, cf., however, subsection 3.

(3) This Act shall apply to designs registered and design applications filed after the entry into force of this Act. With respect to designs registered and design applications filed prior to the entry into force of this Act, the previous rules shall continue to apply.

(4) Any person who prior to the entry into force of this Act pursuant to section 6 of the Designs Act, cf. Consolidate Act No. 251 of 17 April 1989, was exploiting a design commercially in this country, or had made substantial preparations for such exploitation, may continue the exploitation of the design.

61.⁶⁾ This Act shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for the Faeroe Islands and Greenland with such deviations as the special Faeroese and Greenland circumstances may require.

Act No. 1387 of 23 December 2012 (Provisional decisions on injunctions) contains the following provision as to entry into force and transitional provision:

Section 7

(1) This Act shall enter into force on 1 July 2013.

(2) This Act shall apply in relation to requests for the issue of injunctions which are filed with the court after the entry into force of this Act.

Act No. 639 of 12 June 2013 (Consequential amendments in view of the Access to Public Administration Files Act and of amendments of the Public Administration Act and the Administration of Justice Act) contains the following provision as to entry into force:

Section 31

This Act shall enter into force on 1 January 2014.

The Ministry of Business and Growth, 1 March 2016

TROELS LUND POULSEN

/Jesper Kongstad

²⁾ This Consolidate Act contains information about provisions as to entry into force and transitional provisions adopted during the sessional year 2012/2013 of the Danish Parliament (the Folketing). Provisions as to entry into force and transitional provisions for previously adopted amendments of the Designs Act are laid down in Consolidate Act No. 102 of 24 January 2012. The amendments indicated below in consequence of Act No. 1387 of 23 December 2012 to Amend the Administration of Justice Act, the Court Fees Act, the Designs Act, the Trade Marks Act, the Marketing Act and the Injunctions for the Protection of Consumers' Interests Act and Act No. 639 of 12 June 2013 to Amend various Provisions on Access to Files, etc. shall not apply to the Faeroe Islands and Greenland, but may by Royal Ordinance be put into force for the Faeroe Islands and Greenland with such deviations as the circumstances of the Faeroe Islands and Greenland may require.

³⁾ Section 43 in the wording of this Act entered into force on 1 July 2013, cf. Act No. 1387 of 23 December 2012.

⁴⁾ Section 52(2) in the wording of this Act entered into force on 1 January 2014, cf. Act No. 639 of 12 June 2013.

⁵⁾ Part 10 entered into force on 9 December 2008 by Order No. 1079 of 17 November 2008.

⁶⁾ This Act was put into force for Greenland on 1 July 2010 by Royal Ordinance No 656 of 11 June 2010. Part 10 of this Act was put into force for Greenland on 11 January 2011 by Order No. 1327 of 3 December 2010. This Act was put into force for the Faeroe Islands on 2 May 2015 by Royal Ordinance No. 485 of 21 April 2015.