

# Registered Designs Act

(Unofficial translation)

(Act No. 221 of March 12, 1971, as last amended by Acts Nos. 802 of May 10, 1991, 578 of June 26, 1992, 1035 of November 13, 1992, 1411 of December 18, 1992, 718 of April 21, 1995, 596 of July 12, 2002, 1215 of December 20, 2002 and 685 of July 21, 2006)

## Chapter I. General Provisions

### Section 1

Anyone who has created a design or his or her successor in title may through registration obtain the exclusive right to the design (the right to a design) in accordance with this Act.

#### Section 1 a

In this Act:

- 1) 'design' means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture or materials of the product itself or its ornamentation;
- 2) 'product' means any industrial or handicraft item, including parts intended to be assembled into a complex product, and packaging, get-up, graphic symbols and typographic typefaces;
- 3) 'complex product' means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

Computer programs are not considered to be products within the meaning of subsection 1(2) above.

### Section 2

A design shall be protected by a design right if it is new and has individual character. A design shall be considered new if no identical design has been made available to the public before the date of filing of the application for registration or, if priority is claimed, the date of priority. Designs shall be deemed to be identical if their features differ only in immaterial details.

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

The design of a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

- 1) if the component part remains visible during normal use of the product; and

2) if the visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

'Normal use' within the meaning of subsection 4(1) above shall not include maintenance, servicing or repair work.

### **Section 3**

A design shall be deemed to have been made available to the public:

- 1) if it has been published in the registration procedure or otherwise; or
- 2) if it has been exhibited or used in trade or it has otherwise become known.

A design has not, however, become available to the public if the events referred to in subsection 1 could not reasonably have become known in the normal course of business to the circles specialized in the sector concerned, operating within the European Union, before the date of filing of the application for registration or, if priority is claimed, the date of priority.

The design shall not, however, be deemed to have become available to the public for the sole reason that it has been disclosed to a third person under conditions of confidentiality.

#### **Section 3 a**

A design shall not be deemed to have become available to the public in the manner referred to in Section 2 if the design for which protection is claimed has during the 12-month period before the date of filing the registration application or, if priority is claimed, the date of priority, been made available to the public:

- 1) by the designer or a third person as a result of information provided or action taken by the designer; or
- 2) as a consequence of an abuse in relation to the designer.

The provisions of subsection 1 relating to the creator of a design shall also apply to his successor in title.

### **Section 4**

A design shall not be registered:

- 1) if it is contrary to public policy or to accepted principles of morality; or
- 2) if it is identical with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority and which is protected from a date prior to the said date by a design registered for Finland or by an application for such right.

#### **Section 4 a**

A design shall not be registered, if it without the proper permission includes:

- 1) the coat of arms, flag or other emblem or the designation or abbreviation of the designation of a state, municipality or an international intergovernmental organization, or a figure, designation or abbreviation of a designation that may be confused with such emblem, sign, designation or abbreviation of a designation;

- 2) an official mark or stamp of inspection or guarantee for the same or similar articles as those for which the design is intended;
- 3) anything that may be understood to be another person's trade name or a trade symbol or trademark established for another in Finland or the surname, pseudonym or similar name or the portrait of another, unless the name or portrait manifestly refers to a person long since deceased;
- 4) anything that may be interpreted as the title of another person's protected literary or artistic work, provided such title is distinctive, or anything which infringes another's copyright to such a work or his right to a photographic illustration;
- 5) anything that does not substantially differ from a design or utility model registered in Finland in the name of another person;

#### **Section 4 b**

A design right shall not subsist in features of appearance of a product

- 1) which are solely dictated by its technical function; or
  - 2) which must be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
- Notwithstanding subsection 1(2), a design right shall subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

#### **Section 5**

The scope of the protection conferred by a design shall include any design which does not produce on the informed user a different overall impression. In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

#### **Section 5 a**

Subject to the exceptions stated below, the right to a design shall imply that no person other than the owner of the design right is entitled to use the design without his consent. The uses shall cover, among other things, the making, offering, putting on the market, using, importing, exporting or stocking for these purposes of a product which matches the design or in which the design is incorporated.

#### **Section 5 b**

The rights conferred by a design right do not cover:

- 1) private use of the design for non-commercial purposes;
- 2) use of the design for experimental purposes; nor
- 3) acts of reproduction for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

Neither do the rights conferred by a design right cover the equipment on ships and aircraft registered in another country when these temporarily enter into the country, the importation into the country of spare parts and accessories for the purpose of repairing such craft, nor the execution of repairs on such craft.

### **Section 5 c**

A design right does not give its holder the right to deny the use of a product protected by the design right if the product has been put on the market within the European Economic Area by the owner of the design right or with his consent.

### **Section 6**

Any person who, at the time the application for registration is made, has in the course of trade been using a design in this country, may notwithstanding another's right to the design continue such use while retaining its general character, provided that such use did not entail a manifest abuse with respect to the applicant for registration or to his predecessor in title. Under similar conditions, any person who has taken substantial steps to use the design in the course of trade in this country shall have the same right of use. The right defined in subsection (1) can only be transferred to other parties together with the business in which it has arisen or in which the design was to be used.

### **Section 7**

Deleted (596/02)

### **Section 8**

Any application filed in Finland shall be deemed, for the purposes of Section 2 and 6, to have been filed at the same time as the application in another country, if the design has been the subject of an application for registration of a design or for protection as a utility model which has been filed in a country party to the Paris Convention for the Protection of Industrial Property (Finnish Treaty Series 43/1975) or the Treaty Establishing the World Trade Organization (Finnish Treaty Series 5/1995).

Registration in Finland shall be applied for within a period of six months from the date of filing of the application for registration in the Contracting State referred to in subsection 1.

The provisions of subsections 1 and 2 shall also apply to an application which has been filed elsewhere and in respect of which the registering authority finds special reasons to equate it with an application filed in a Contracting State.

In order to enjoy priority in accordance with the provisions of subsection 1, the applicant shall request it in an application filed in this country, stating where and when the application referred to was made; he must also state, as soon as possible, the number of the application referred to.

## **Chapter II. The Application for Registration and Processing Thereof**

## **Section 9**

The registering authority shall be the National Board of Patents and Registration.

## **Section 10**

Applications for registration of designs shall be made in writing to the registering authority.

The application shall mention the creator of the design. Where the applicant is not the creator, he shall produce evidence of his right to the design. In addition the application shall specify the product or products to which the application relates.

A representation of the design shall be attached to the application document. Where the applicant, before the application is published in accordance with the provisions of Section 18, also deposits a specimen, the specimen shall be deemed to disclose the design.

## **Section 10 a**

An application for registration of a design shall not be deemed to have been made until the applicant has deposited a representation of the design or a specimen thereof with the registering authority and paid the filing fee.

Further provisions on payment of additional fees relating to the application shall be given by government decree.

## **Section 11**

An application may include more than one design where the products stated in the registration application according to the classification established by the Locarno Agreement Establishing an International Classification for Industrial Designs (Finnish Treaty Series 22/1972) fall in the same class.

## **Section 12**

An applicant who is not domiciled in Finland shall have an agent resident in this country who is empowered to represent him in all matters concerning the application.

## **Section 13**

An application must not be amended in a manner that does not retain the essential features of the overall impression of the design.

## **Section 14**

When examining an application for registration of a design, the registering authority shall, to the extent decreed by the Government, establish whether the conditions for registration of the design have been satisfied. Where the applicant has not observed the prescribed requirements regarding the application, or where the authority finds that there are other

objections to acceptance of the application, the applicant shall be invited by an Office action to answer the objections or to make a correction within a prescribed period. Where the applicant fails within the prescribed period to submit a statement or to take steps to remedy a defect to which attention has been drawn, the application shall be dismissed. A warning to this effect shall be included in the Office action. However, the application shall be reinstated if, within two months from the expiration of the prescribed period, the applicant so requests and makes a reply to the Office action or takes steps to remedy the defect and within the same period pays the prescribed reinstatement fee. Reinstatement may not be granted more than once.

### **Section 15**

If there is still any objection to acceptance after the applicant's answer to the Office action and provided that the applicant has had an opportunity to answer the objection, the application shall be rejected unless there are grounds for delivering a further Office action to the applicant.

### **Section 16**

Where anyone claims before the registering authority to have a better right to the design than the applicant, and where the matter is found to be unclear, the authority may instruct him to institute legal proceedings within a certain period, failing which his claim will be disregarded when the application is further examined. Where a dispute concerning a better right to a design is pending before a court of law, the application for registration may be suspended until the case is finally settled.

### **Section 17**

Where anyone proves to the registering authority that he has a better right to the design than the applicant, the authority shall transfer the application to him if he so requests. The transferee shall pay a new application fee. Where transfer is requested, the application must not be amended, dismissed, rejected or accepted until the request for transfer has been finally decided.

### **Section 18**

Where the application documents are in the prescribed form and no objection has been found to registration, the registering authority shall publish the application in order to give the public an opportunity to enter any opposition. On the applicant's request, publication may however be deferred for a period of up to six months counted from the filing date or the date from which priority is claimed under Section 8. Requests for deferment shall be made on the application form. Subsection 3 is deleted.

### **Section 18 a**

Opposition shall be made in writing to the registering authority within two months from the date of publication of the application.

If registration has been applied for by a person not entitled to it under subsection 1, opposition may be lodged by anyone who considers himself to be entitled to the design. If a design without proper permission includes a symbol or mark referred to in Section 4 a (1) and (2), opposition may be lodged by the person whose right is infringed by the registration.

If a design is in conflict with Section 4(1)(2) or Section 4 a (3-5), the opposition may be lodged by the applicant for or the holder of the conflicting right.

In cases other than those stated in subsections 2 to 4, the opposition may be lodged by anyone.

## **Section 19**

Unless the application documents are to be kept secret following the applicant's request for deferment under Section 18, they shall be available to the public.

Where deferment of publication has been requested, the application documents shall be available to the public on the expiration of the prescribed period, not later however than six months counted from the filing date or the date from which priority is claimed under Section 8. If, during the prescribed period, the authority decides to dismiss or reject the application, the documents shall not be available to the public unless the applicant requests reinstatement of the application for examination or lodges an appeal.

## **Section 20**

After the expiration of the period for lodging an opposition prescribed in Section 18 a (1), a further examination of the application shall be carried out. Sections 14 to 17 shall be applicable to such examination.

In the case of opposition the applicant shall be informed thereof. Where the opposition is not manifestly unjustified, the applicant shall also be given an opportunity to answer the opposition.

## **Section 21**

An applicant for registration of a design may appeal against a final decision of the registering authority which has gone against him. A person who has duly lodged an opposition may appeal against a decision accepting the application. Where the opponent withdraws his appeal, the case may nevertheless be considered if there are special reasons for doing so.

An applicant may appeal against the rejection of a request for reinstatement, provided for in Section 14(3), and against the acceptance of a request for transfer, provided for in Section 17. The person making a request for transfer may appeal against the rejection of his request.

## **Section 22**

Appeals from the decisions by the registering authority under this Act shall be lodged with the Board of Appeals of the National Board of Patents and Registration. Special regulations shall apply to the appeal procedure and hearing of cases by the Board of Appeals.

### **Section 23**

Where an application for registration of a design is accepted by a decision having force of law, the design shall be entered in the Register of Designs and the registration shall be published.

A decision to dismiss or to reject an application that has been published in the manner provided for in Section 18 shall be published after the decision has force of law.

## **Chapter III. Period of Validity of Registration of a Design and Amendment of a Registered Design**

### **Section 24**

Registration of a design shall be valid for five years, dating from the day on which the application for registration was made. Registration may, on request, be renewed for four further periods of five years, each such period running from the expiration of the preceding period.

The maximum term of protection shall nevertheless be 15 years, if the design is a component part of a complex product and is used to restore the original appearance of the complex product.

### **Section 25**

A registration may be renewed at the earliest one year before and at the latest within six months from the expiration of any current period of registration.

Applications shall be made in writing to the registering authority, if the applicant wishes to have an amendment made to the register entries. Otherwise a registration shall be deemed to have been renewed once the renewal fee has been paid.

Renewal of a registration shall be published.

### **Section 25 a**

A registered design may be amended at the written request of the holder, if the design has been registered contrary to provisions of Section 1, 1a, 2, 3, 3a, 4, 4a or 4b. In the amended form the design shall, however, comply with the requirements prescribed in this Act for registration, and the essential features of the overall impression of the design must not be changed. A fee for amendment of a design is payable in respect of the application.

Any amendment to a registration shall be published.

## **Chapter IV. Assignments, Licenses, Compulsory Licenses**



## **Section 26**

The right to a design may be transferred.

Where the registered owner of a design has given another person the right to use the design in the course of trade (license), the licensee may not assign his right in the absence of an agreement to that effect.

A license included with a business may however be assigned, when the business is assigned, in the absence of an agreement to the contrary. In such a case the assignor shall remain responsible for ensuring the fulfillment of the license agreement.

## **Section 27**

In the case of the transfer of the right to a design or a license, a note to that effect shall - on request and in return for a prescribed fee - be entered in the Register of Designs. The same shall apply to a mortgage on the right to a design. If it is proved that a license or mortgage that has been entered in the Register has ceased to be valid, the entry shall be removed.

Subsection (1) shall correspondingly apply to a compulsory license and to the right referred to in Section 32(2).

In the case of multiple registration, a transfer of the right to a design may be entered only with respect to all of the designs.

In legal proceedings or other cases regarding the right to a design, the person whose name has last been entered in the Register of Designs as registered owner of the design shall be deemed to be the registered owner thereof.

Any person requesting entry in the Register of an assignment of the right to a design or a license or a mortgage relating to such right shall, provided that he was acting in good faith at the time of such request, be unaffected by an earlier assignment of the right to a design or right relating thereto which had not previously been the object of a request for entry.

## **Section 28**

Any person who had, in the course of trade, been using a design, the subject of an application for registration, in this country when a document disclosing the design became available to the public, may - where the application leads to registration - obtain a compulsory license to use the design, provided that extraordinary reasons exist and that such person had no knowledge of the application and could not reasonably have obtained knowledge of it. In the same circumstances, any person who has taken substantial steps to use the design in the course of trade in this country shall have a right to such compulsory license. A compulsory license may also relate to a period before the design was registered.

## **Section 29**

A compulsory license may not be granted to any person who appears unable to use the design in an acceptable way and in accordance with the terms of the license.

A compulsory license shall not prevent the registered owner of the design from using the

design himself or from granting a license. A compulsory license may be transferred only together with the business in which it is used or in which it is intended to be used.

### **Section 30**

A compulsory license shall be issued by the Court, which shall also decide the extent to which the design may be used and determine the compensation and other terms of the license. When a substantial change in circumstances so demands, the Court may, if so requested by the person concerned revoke the license or stipulate new terms.

## **Chapter V. Termination of Right to a Design**

### **Section 31**

Where a design has been registered contrary to Section 1, 1 a, 2, 3, 3 a, 4, 4 a or 4 b and an obstacle to registration still remains, the Court shall, if an action is brought to that end, cancel the registration in whole or in part. However, registration may not be cancelled on the ground that the person in whose name the registration was made is only a part-owner of the design right.

Where registration has been granted to a person who is not the rightful owner of the design as defined in Section 1, an action to cancel the registration may be brought by the person who claims to be entitled to the design.

Where registration has been granted contrary to provisions of Section 4 a (1) or (2), an action to cancel the registration may be brought by the person whose right is infringed by the registration.

Where registration has been granted contrary to provisions of Section 4(2) or Section 4 a (3 to 5), an action to cancel the registration may be brought by the applicant for or the holder of the conflicting right.

An action for cancellation of registration may also be brought the Public Prosecutor if the action is based on a provision of Section 4(1) or Section 4 a (1) or (2).

In cases other than those stated in subsections 2 to 5, an action may be brought by anyone who sustains damage as a result of the registration.

#### **Section 31 a**

An action must be brought within one year after the plaintiff has had knowledge of the registration and of the other circumstances on which the action is based.

Where the registered owner of the design right acted in good faith when the design was registered or when the right to the design was transferred to him, the action may not be instituted later than three years after the registration.

#### **Section 31 b**

The registration of a design may be cancelled in part only if the design after the cancellation still complies with the requirements for registration prescribed in this Act and the essential features of the overall impression of the design do not change.

In any matter concerning partial cancellation of a design, the Court must obtain a statement from the registering authority.

### **Section 31 c**

The registration of a design may be declared invalid even after it has lapsed or has been surrendered.

### **Section 32**

Where a design has been registered in the name of a person who is not the rightful owner as defined in Section 1, the Court shall, when an action is brought by the rightful owner, transfer the registration to him. The action shall be instituted within the periods stated in Section 31 a.

Where a person who has been refused registration of a design has begun in good faith to use the design in the course of trade in this country or has taken substantial steps for that purpose, he may, on payment of reasonable compensation and on the fulfillment of other reasonable terms, continue such use or start the intended use, keeping its general character. In similar circumstances, the holder of a license entered in the Register shall have the same right.

The right defined in subsection (2) may be transferred only together with the business in which the design is or was intended to be used.

### **Section 33**

Where the registered owner of a design declares in a written statement that he renounces his right to a design, the registering authority shall remove the design from the Register. Where the right to a design is the subject of attachment or a mortgage relating thereto has been recorded in the Register or where a dispute concerning transfer of registration is pending before a court, the design may not be removed from the Register at the request of the registered owner so long as the attachment or mortgage continues or the dispute has not been finally settled.

## **Chapter V a. Community Design**

### **Section 33 a**

‘Community design’ means an unregistered design in accordance with the Council Regulation (EC) No 6/2002 on Community designs and a design registered by the Office for Harmonization in the Internal Market (Trademarks and Designs) functioning in the internal market of the European Community.

### **Section 33 b**

An application for the registration of a Community design may be filed with the National Board of Patents and Registration, which forwards it to the Office for Harmonization in

the Internal Market (Trademarks and Designs), as provided in the Council Regulation on Community designs.

A forwarding fee is payable to the National Board of Patents and Registration on filing an application for a Community design.

## **Chapter VI. Obligation to Provide Information**

### **Section 34**

Where a person who has applied for registration of a design invokes his application when making a claim against another person, before the application documents have become available to the public, he shall on request allow such other person to be given access to the documents.

Any person who by direct representation to another person, in an advertisement or by an inscription or label on an article or its packaging or otherwise, states that registration of a design has been applied for or granted, without at the same time giving information about the number of the application or of the registration, shall, if so requested, give such information without delay. Where it is not expressly stated that registration has been applied for or granted, but the circumstances are such as to bring about the belief that this is the case, the person concerned shall, if requested, without delay inform whether registration has been applied for or granted.

## **Chapter VII. Responsibility and Obligation to Provide Compensation**

### **Section 35**

Anyone who infringes the right to a design may be restrained by the Court from continuing or repeating such act.

Where the infringement of a design was intentional he shall, unless the act is punishable as a crime against an industrial property right under Section 2 of Chapter 49 of the Criminal Code, be liable to a fine for violation of the right to a design.

Prosecution for the violation of the right to a design may be instituted by the Public Prosecutor only if the aggrieved person brings a legal action based on the violation.

### **Section 35 a**

When hearing an action referred to in section 35(1) the court may at the design right holder's request prohibit the keeper of a transmitter, server or other similar device or other provider of a service acting as a transmitter, under penalty of a fine, from continuing the use alleged to infringe the registered design (injunction order) unless it can be considered disproportionate in view of the rights of the alleged infringer, or in view of the rights of the intermediary and the holder of the design rights.

Before the bringing of an action referred to in Section 35(1) the court referred to in that section may issue an injunction at the request of the design right holder, if the preconditions stated in subsection 1 for that exist and if it is obvious that the realisation of the rights of the design right holder otherwise would be seriously endangered. The court

must provide both for the party for whom the injunction is sought and for the party who is claimed to infringe the right to the design an opportunity to be heard. Communications to the parties against whom the injunctions have been sought may be delivered by mail or by facsimile or e-mail. Otherwise the provisions of the Code of Judicial Procedure apply to the processing of the case.

The court may, on request, issue the injunction referred to in subsection 2 as an interlocutory injunction without hearing the alleged infringer, if the urgency of the case of necessity requires that. The injunction remains in force until ordered otherwise. After the injunction is issued, the alleged infringer must without delay be provided an opportunity to be heard. When the alleged infringer has been heard, the court must decide without delay whether to keep the order in force or withdraw it.

An injunction issued under this section must not endanger the right of a third party to send and receive messages. Subject to the provisions of Chapter 7, section 7, of the Code of Judicial Procedure, the injunction comes into force when the plaintiff gives the bailiff the security referred to in Chapter 7, section 16, of the Execution Act (37/1895). An injunction issued under subsection 2 or 3 of this section lapses if the action referred to in section 35(1) is not brought within a month from the issuance of the order.

The party who has demanded the injunction must compensate the party against whom the injunction is issued as well as the alleged infringer for the damage caused by the implementation of the injunction and for any other cost resulting from the case if the action referred to in subsection 35(1) is rejected or ruled inadmissible, or if the processing of the case is removed from the cause list because the plaintiff has abandoned his/her action or failed to arrive to the court. The same applies if the injunction is withdrawn under subsection 3 or lapses under subsection 4. When an action is brought for compensation for damage and costs, the provisions of Chapter 7, section 12, of the Code of Judicial Procedure apply.

## **Section 36**

Anyone who intentionally or through negligence infringes the right to a design shall pay reasonable compensation for the use of the design, as well as compensation for the further damage caused by the infringement. If the negligence was minimal, the amount of compensation may be reduced.

Anyone who infringes the right to a design without intention or negligence shall pay compensation for the use of the design, in so far as such compensation may be found reasonable.

Proceedings for compensation on the grounds of infringement of the right to a design shall be instituted within five years from the time when the damage was caused, failing which the right to compensation will be forfeited.

### **Section 36 a**

In a dispute that concerns an infringement of a design right the court may, at the plaintiff's demand, order that the defendant must compensate the plaintiff for the cost occurred to him/her for publishing, by suitable measures, information concerning the final decision in which the defendant is found to have infringed the design right. Such an

order may not be given if the dissemination of the information is limited elsewhere in the law. In considering the issuance and contents of the order, the court must pay attention to the general significance of the publication of the issue, the kind and scope of the infringement, the costs involved in the publishing process and other corresponding facts. The court lays down a maximum amount for the reasonable publishing cost to be paid by the defendant. The plaintiff is not entitled to the compensation if information about the decision has not been published within a period laid down by the court counted from the date when the final decision was issued.

### **Section 37**

If so requested by a person whose right to a design has been infringed, the Court may order, on the basis of what is reasonable for preventing continued infringement, an article that has been made in or imported into this country in conflict with another person's right to a design, or an article whose use would constitute infringement of the right to a design, to be altered in a certain way or to be deposited in safe custody for the remainder of the period of protection, or to be destroyed or, where the article has been illegally manufactured or imported, to be surrendered, against remuneration, to the person whose right has been infringed. This provision shall not apply to a person who has acquired the goods or a special right to them in good faith and who has not himself infringed the right to the design.

The goods defined in subsection (1) may be confiscated if it appears that an offense under Section 2 of Chapter 49 of the Criminal Code or Section 35 of this Act has been committed. The provisions of the Coercive Criminal Investigation Means Act (450/1987) shall be applicable in such cases.

Notwithstanding the provisions of subsection (1), the Court may, where special reasons exist and if so requested, make an order giving the owner of the goods referred to in subsection (1) the right of disposal over the goods during the remainder of the period of protection or during part thereof in return for reasonable compensation and under other reasonable terms.

### **Section 38**

If anyone contrary to the provisions of Section 5 a uses a design that is the subject of an application for registration after the application documents have become available to the public, the provisions of this Act with respect to infringement of the right to a design shall apply correspondingly in so far as the application leads to registration. However, no penalty may be inflicted.

Compensation for damage caused by use made before the application has been published in accordance with Section 18 shall in this case be determined in accordance with Section 36(2).

The provisions of Section 36(3) shall not apply where the proceedings for compensation are instituted within one year after the registration of the design.

### **Section 39**

Where registration of a design has been cancelled as the result of a judgment having force of law, the penalties, compensation or protective measures provided for in Section 2 of Chapter 49 of the Criminal Code or Sections 35 to 38 of this Act shall not be ordered. Where the defendant in an action for infringement of the right to a design claims that the registration of the design is invalid, the Court shall, if the defendant so requests, adjourn the case pending a final examination of the question of cancellation of the registration. If no action to that effect has been instituted, the Court shall at the time of adjournment prescribe a fixed period for the institution of such action.

#### **Section 40**

A fine shall be imposed upon anyone who deliberately or through negligence, where such negligence is not minimal, fails to fulfill his obligations under Section 34.

A fine shall be imposed on anyone who, in any case referred to in Section 34, gives wrong information, if punishment for the act is not provided for in the Criminal Code. Any person who is guilty of an offense referred to in this Section shall provide compensation for the damage caused. Where the negligence is minimal, the amount of compensation may be reduced.

Proceedings based on the offense defined in this Section may be instituted by the Public Prosecutor only if the aggrieved person brings a legal action based on the offense.

### **Chapter VIII. Rules Concerning Legal Proceedings**

#### **Section 41**

The registered owner of a design, or any person who may use the design by virtue of a license or a compulsory license, may bring an action to determine whether he is protected by the registration against another person, where there is, to his detriment, any uncertainty as to the relationship.

Under the same conditions, any person who carries on or intends to carry on a business activity may bring an action against the registered owner of a design to determine whether any obstacle to the activity is presented by the particular registration.

Where it is claimed, in a case referred to in subsection (1), that the registration of a design is invalid, Section 39(2) shall apply correspondingly.

#### **Section 42**

Any person wishing to bring an action for cancellation of the registration of a design, for transfer of registration, or for the granting of a compulsory license shall notify the registering authority accordingly and inform everyone who according to the Register of Designs holds a license to use the design or a mortgage thereon. A licensee wishing to bring an action for infringement of the right to a design or for a determination referred to in Section 41(1) shall inform the registered owner of the design accordingly.

The obligation to give notification in accordance with subsection (1) shall be deemed to have been fulfilled when notification by means of a registered postal communication has been sent to the address recorded in the Register.

If it is not shown, when the action is brought, that the notification has been made or information given in accordance with subsection (1), the plaintiff shall be given time by the court for this to be done. If he fails to make use of this time, his action may not be taken up for examination.

### **Section 43**

The District Court of Helsinki shall have jurisdiction in actions concerning a better right to a design, for cancellation of a registration, for transfer of an application or registration, for design infringement, for a compulsory license or the right referred to in Section 32(2), in criminal proceedings and claims for compensation under Section 40, and in actions for a determination in accordance with the provisions of Section 41.

The District Court of Helsinki shall function as the court having jurisdiction in matters concerning Community designs as provided for in the Council Regulation on Community designs.

### **Section 44**

A copy of the final decision in a case referred to in Section 2 of Chapter 49 of the Criminal Code or in Section 16, 30, 31, 32, 35, 36, 37, 38 or 41 shall be sent to the registering authority.

## **Chapter IX. Special Provisions**

### **Section 45**

The registered owner of a design who is not domiciled in Finland shall have an agent resident in Finland who shall be empowered to receive on the registered owner's behalf service of a writ, summons and other documents in cases and matters concerning the right to a design, except a summons for a criminal offense and a subpoena. Such agent shall be notified to the person responsible for the Register of Designs and shall be noted therein. Subsection 2 is deleted.

### **Section 46**

The Government may, provided that reciprocity exists, decree that the rules set out in Section 12 or 45 shall not be applicable with respect to an applicant or registered owner of a design who is resident in a foreign country or who has in that country an agent entered in the Finnish Register having the powers referred to in those Sections.

### **Section 46 a**

If the registering authority has failed to notify the applicant, the opponent or the owner of a design right of its decision at the address he has given to the registering authority, the decision may be notified by publishing it in the Design Gazette published by the National Board of Patents and Registration.



## **Section 47**

In connection with an application for registration of a design or the renewal or amendment of the registration of a design or the filing of an application for the registration of a Community design, the applicant shall pay an application fee, a renewal fee, a fee for amendment of a design or a forwarding fee for a Community design application and, where applicable, the following additional fees: a class fee for each class of articles beyond the first, a multiple registration fee for each design beyond the first, a storage fee for the storage of a specimen, and a publication fee for publication of each representation beyond the first and a separate fee for other entries in the Register of Designs. An increased renewal fee shall be payable if the fee is paid after the expiration of a current period of registration.

The Government shall determine the fees payable under this Act.

## **Section 48**

Further regulations for the implementation of this Act shall be notified in a decree by the Government.

## **Section 49**

This Act shall enter into force on April 1, 1971.

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Provision on the entry into force of the Act amending (596/12.7.2002) the Registered Designs Act.

This Act shall enter into force on August 1, 2002.

This Act shall also apply to designs registered before its entry into force and to designs to be registered on the basis of an application filed before the entry into force of this Act. The provisions that were applicable on the entry into force of this Act shall however apply to the cancellation of a design registered on the basis of a registration application filed before the entry into force of this Act.

A registration application filed before the entry into force of this Act shall be processed and decided on in accordance with the provisions applicable on the entry into force of this Act.

If anyone on the entry into force of this Act used a design in this country in a manner that according to the provisions applicable on the entry into force of this Act did not require the consent of the owner of the design right, he may continue the use of the design, even if the consent is required under this Act. The same right shall be enjoyed by anyone who has taken substantial steps to use the design.

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Provision on the entry into force of the Act amending (1215/20.12.2002) the Registered Designs Act

This Act shall enter into force on January 1, 2003

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Provision on the entry into force of the Act amending (685/21.07.2006) the Registered Designs Act

Section 35 a of this Act also applies to disputes that have been pending before the entry into force of this Act.

The provisions applicable at the entry into force of this Act apply to disputes that have been pending before the entry into force of this Act, instead of the provisions of section 36 a.

This Act comes into force on 1 September 2006.