

# DESIGNS ACT

Act No. 33 of May 29, 1970, as amended by Acts No. 2 of February 8, 1980,  
No. 86 of June 26, 1992, and No. 113 of November 27, 1992.

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## Chapter 1 General Provisions

### Section 1

In the present Act a design shall be defined as a model for the appearance of an article or for an ornament.

The originator of a design or anyone to whom his right is transferred may by registration in accordance with the present Act obtain an exclusive right to exploit the design commercially (the design right).

### Section 2

A design is registrable only when differing essentially from what was known prior to the filing date of the application for registration.

Everything that has become available to the public by depiction, exhibition, offer for sale or otherwise is considered as known. Furthermore, a design that is not available to the public is considered as known if it appears from an application for a patent, trademark or design registration in this country if such application has been or -pursuant to what has been provided in this respect - shall be considered as filed prior to the filing date referred to in the first paragraph, provided that the design later is made available to the public in connection with the application procedure.

### Section 3

A design may be registered notwithstanding the fact that it has become available to the public within six months immediately prior to the filing of the application

- 1) in consequence of an evident abuse in relation to the applicant or anyone from whom he derives his right, or
- 2) because the applicant or anyone from whom he derives his right has displayed the design at an official or officially recognized international exhibition.

#### Section 4

A design may not be registered

- 1) if the design or its exploitation would be contrary to decency or public order,
- 2) if the design contains without authorization
  - a) public coats of arms, flags, or other public emblems or signs, including the official domestic or foreign control or guarantee marks or seals that are established for articles of the same or similar kind as the articles for which the design is demanded to be registered, or coats of arms, flags or other emblems, abbreviations or denominations belonging to intergovernmental organizations, or any international mark, seal or symbol when unauthorized use thereof is prohibited by law. Further, the design shall not be registered if it contains anything that may be confused with such emblems or marks etc. at mentioned herein,
  - b) anything that is liable to be interpreted as the firm name or trademark of another, or that is liable to be interpreted as the name or portrait of another person and does not obviously refer to somebody deceased long ago,
  - c) anything that is liable to be interpreted as the distinctive title of a protected literary or artistic work of another, or that infringes the authorship (copyright) of another to such work, or the right of another to photographs,
  - d) anything that does not essentially differ from designs registered in this country for another.

#### Section 5

The design right implies, with the exceptions established in this Act, that nobody except the proprietor of the design right (the proprietor of the design) may without authorization exploit the design commercially by manufacturing, importing, offering for sale, transferring or leasing goods, the appearance of which does not differ essentially from the design, or goods incorporating anything that does not differ essentially from the design.

The design right only comprises articles of the same or similar kind as the article for which the design is registered.

The design right does not comprise exploitation of articles protected by design right which are brought into the marked within The European Economic Area by the right holder or with his consent.

#### Section 6

Anybody exploiting the design commercially in this country at the time of filing the application for registration of the design may, regardless of the design right, continue the exploitation while retaining the general character thereof, provided that the exploitation did not constitute evident abuse in relation to the applicant or anyone from whom he derives his right. Anybody who had made substantial preparations to exploit the design commercially in this country has also on corresponding conditions such right of exploitation.

The right referred to in the first paragraph may only be transferred together with the business in which it originated or in which the exploitation was intended to take place.

#### Section 7

The King may decree that, notwithstanding a registered design, spare parts and accessories for aircrafts may be imported into the country to be used for the repair of aircrafts belonging to a foreign country that grants similar benefits to Norwegian aircrafts.

#### Section 8

The King may decree that an application for the registration of a design for which an application for protection has been filed outside the country before the filing date, shall in relation to the provisions of

Sections 2 and 6 upon request be considered as filed simultaneously with the application outside the country.

The King specifies the conditions under which a right of priority as referred to herein may be asserted.

## Chapter 2 The Application for Registration and Its Examination

### Section 9

The registration authority is Styret for det industrielle rettsvern (the Patent Office).

### Section 10

The application for a registration of a design shall be made in writing to the Patent Office.

The application shall contain information about the article for which the design is demanded to be registered. The originator of the design shall be named in the application. If the registration is applied for by somebody other than the originator of the design, the applicant shall prove his right to the design.

The application shall be accompanied by a picture showing the design. If, before the application is made publicly available in accordance with Section 18, the applicant also files a model, this model shall be considered as showing the design. Furthermore, the application shall be accompanied by a declaration signed by the applicant to the effect that to his knowledge the design was not known prior to the date on which the application was filed or shall be regarded as filed, cf. Section 2, in any manner that according to Section 2, cf. Section 3, would prevent the registration of the design.

The applicant shall pay the prescribed application fee and additional fees, cf. Section 48.

### Section 11

An application may comprise more than one design if the articles for which the designs are demanded to be registered, are interrelated as to manufacture and use. An application for such a joint registration may comprise at most 20 designs and may not concern ornaments.

### Section 12

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

### Section 13

An application for the registration of a design shall not be considered as filed until the applicant has filed a picture or a model showing the design. An application may not be amended to concern another design or another article than stated in the application.

### Section 14

In the examination of an application for the registration of a design, the Patent Office shall, to the extent determined by the King, examine whether the conditions for registration of the design are fulfilled. If the applicant has not complied with the requirements prescribed, or if the Patent Office has other objections to the registration, the applicant shall be notified thereof in an official letter and be requested to express his views or make amendments within a specified time limit.

If, within the specified time limit the applicant fails to express his views or amend the application in order to correct a defect pointed out, the application shall be shelved. Information that this will be the consequence, shall be given in the notification from the Patent Office according to the first paragraph.

However, the prosecution of the application shall be resumed if, within two months after the expiration of the given time limit, the applicant submits a statement or effects the amendment and, within the same time limit, pays a prescribed reinstatement fee. Reinstatement may only be requested once.

### **Section 15**

If, after the receipt of the applicant's reply, the Patent Office still finds any objection to the acceptance of the application, and if the applicant has had occasion to make his comment on the objection, the application shall be rejected, unless the Patent Office finds reasons for sending the applicant a further official letter.

### **Section 16**

If anybody claims before the Patent Office that he and not the applicant is entitled to the design, the Patent Office may, if the matter is found questionable, request him to institute legal proceedings within a specified time limit to have the question tried in court, while informing him that if the request is not followed, the claim may be disregarded in the continued prosecution of the application.

If the question of the title to the design stands before the court, the prosecution of the application may be suspended pending the final decision in the legal action.

### **Section 17**

If anybody proves to the satisfaction of the Patent Office that he and not the applicant is entitled to the design, the Patent Office shall upon his request transfer the application to him. The transferee shall pay a new application fee.

If a request for a transfer of an application has been made, the application must not be amended, shelved, rejected or accepted until the request has been finally decided upon.

### **Section 18**

If the application is in the prescribed form and no objection to the registration is found to exist, the application shall be published in order to give the public an opportunity to enter oppositions. On the applicant's request the publication may, however, be postponed for a period of up to six months counted from the filing date or, if priority as referred to in Section 8 has been claimed, from the date from which priority is claimed. Request for postponement shall be made in the application form.

Oppositions against the registration shall be made in writing and must be received by the Patent Office within two months from the date of publication.

### **Section 19**

If a postponement of the publication in pursuance of Section 18 has not been requested by the applicant, all documents in the application shall be made available to the public from the filing date.

If a postponement has been requested, the documents shall be made available to the public at the end of the postponement period, even if a publication according to Section 18 will not yet be made. However, if at this time the application has been shelved or rejected, the documents shall not be made available unless the applicant requests reinstatement of the application or appeals against the decision.

Proposals, drafts, opinions and other similar working documents that the Patent Office prepares in the prosecution of an application are not available unless the Patent Office decides that they shall be available.

### **Section 20**

After the expiration of the time limit specified in Section 18, second paragraph, the examination of the application shall be continued. Sections 14 to 17 apply to this examination.

If an opposition has been lodged, it shall be communicated to the applicant. If the opposition is not evidently unfounded, the applicant shall be given the possibility to make his comments on the opposition.

### Section 21

If the decision on an application goes against the applicant, he may appeal the decision to the Board of Appeals of the Patent Office. If an application is accepted in spite of a properly raised opposition, the opponent may appeal the decision. If the opponent withdraws his appeal, it may nevertheless be tried when there are special reasons for doing so.

If a request for reinstatement in accordance with Section 14, third paragraph, is refused, or a request for transfer in accordance with Section 17 is accepted, the decision may be appealed by the applicant to the Board of Appeals of the Patent Office. If a request for transfer in accordance with Section 17 is refused, the decision may be appealed by the person who has made this request.

### Section 22

Appeals shall be lodged with the Patent Office within two months from the day on which a notification concerning the decisions was sent to the party concerned. The prescribed fee shall be paid within the same time limit. If this is not done, the appeal will not be taken up for consideration.

A decision whereby the Board of Appeals of the Patent Office rejects an application may not be brought before the courts later than two months after the applicant is notified of the rejection. Information about the time limit for bringing the matter before the courts shall be given in the notification.

There is no redress against a failure to comply with the time limits given in the first and second paragraphs.

The rules in Section 19, third paragraph, correspondingly apply to documents prepared by the Board of Appeals of the Patent Office.

### Section 23

When a final decision has been made to effect registration, the design shall be entered in the Register and the registration shall be published.

If an application, published in accordance with Section 18, is definitely shelved or rejected, notice thereof shall be published.

## Chapter 3 Period of Validity of the Design Registration

### Section 24

The design registration is in force for up to five years from the day on which the application for registration was filed and may upon request be renewed for two further periods of five years each. Each such five years period runs from the expiration of the preceding period.

### Section 25

Application for renewal of the registration shall be made in writing to the Patent Office not earlier than one year before and not later than six months after the expiration of the current registration period. Within the same interval the applicant shall pay the prescribed renewal fee and additional fees, see Section 48. In the opposite case, the application will be rejected.

A renewal of the registration shall be published.

## Chapter 4 Licenses, Assignments, Etc.

### Section 26

If the proprietor of the design has granted another person a right to exploit the design commercially (licence), the licensee may not assign his right to others unless otherwise agreed upon.

If the licence forms a part of an enterprise, it may, however, be assigned together with the enterprise when nothing else is agreed upon. In such a case the assignor is still responsible for the fulfilment of the licence agreement.

### Section 27<sup>1</sup>

If a design right has been transferred to another person, or a licence has been granted or has been assigned to another person, entry thereof shall be made in the Designs Register upon request by one of the parties and payment of a prescribed fee. If a licence entered in the Register is terminated, an entry of this fact shall also, upon request by one of the parties, be made in the Register.

The provisions in the first paragraph shall apply correspondingly to a distraint and to a transfer and a termination of compulsory licences and to rights as dealt with under Section 32, second paragraph.

Registration of restraints is regulated by the Claims Enforcement Act Section 7-20 eighth paragraph.

In the case of a joint registration the transfer of the design right may only be entered in the Register if it comprises all the designs.

Legal actions concerning a design may always be brought against the person registered as proprietor, and notices from the Patent Office may be sent to said person.

The voluntary assignment of the right to a design or the grant of a licence filed for registration, shall in case of interference have priority over a voluntary assignment or a grant of a licence which has not or only later been filed for registration, provided the proprietor of the right when filing, was in good faith.

### Section 28

Anybody who at the time when an application was made available to the public, exploited the design commercially in this country, may, if the application results in a registration, obtain a compulsory licence for the exploitation of the design if special reasons therefor exist, and if he had no knowledge of the application when starting the exploitation and had not reasonably been able to acquire such knowledge. Under the same conditions, anybody who has made substantial preparations for commercial exploitation of the design in this country, is entitled to a compulsory licence. A compulsory licence may also cover the period prior to the registration of the design.

### Section 29

A compulsory licence may only be granted to a person considered able to exploit the design in a manner that is reasonable and in accordance with the terms of the licence.

A compulsory licence does not prevent the proprietor himself from exploiting the design or from granting licences to others. A compulsory licence may only be transferred together with the business in which the exploitation was intended to take place.

### Section 30

A compulsory licence is granted by a court, which shall also decide the extent to which the design may be exploited and establish the remuneration to be paid and other conditions for the licence. If the circumstances

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<sup>1</sup> Amended by Act No. 2 of February 8, 1980. In force on January 1, 1981.

change considerably, the court may on request by each of the parties revoke the licence or lay down new conditions therefor.

## Chapter 5 Termination of the Registration, Etc.

### Section 31

If a design has been registered contrary to the provisions of Section 1 to 4, and if the objection is still valid, the registration may be declared invalid by court decision. However, a registration may not be declared invalid for the reason that the proprietor was only in part entitled to the design.

Actions based on the allegation that the design is registered for somebody other than the person who is entitled to obtain registration according to Section 1, may only be brought by the person who claims to be entitled to the design. Such action must be brought by the person within one year after acquiring knowledge of the registration and the other facts on which the action is based. If the proprietor of the design was in good faith when the design was registered or the design right transferred to him, an action can in no case be brought later than three years after the registration of the design.

With the exceptions stated in the second paragraph anybody may bring an action in pursuance of the present Section.

There is no redress against the failure to comply with the time limits in the second paragraph.

### Section 32

If a design has been granted to a person other than the one entitled thereto according to the provisions of Section 1, the rightful person may claim a court decision for the transfer of the design to him. The time limits in Section 31, second paragraph, shall apply to actions as referred to herein.

If the person who is deprived of the design registration has in good faith in this country commenced to exploit the design commercially or has made substantial preparations herefor, said person shall against reasonable remuneration and on reasonable other conditions, be entitled to continue the exploitation already commenced or start the prepared exploitation, while retaining the general character thereof. On the same conditions, holders of licences entered in the Register shall have the same right.

A right as stated in the second paragraph may only be transferred to others together with the business in which the right originated or in which the exploitation was intended to take place.

### Section 33

The design shall be cancelled from the Register when requested in writing by the proprietor.

If a legal action concerning the transfer of the registration has been brought, or if a seizure for debt is effected in the design right, the design may not be cancelled from the Register upon request of the proprietor until a final decision has been taken in the action or the seizure is dropped.

## Chapter 6 Obligation to Give Information

### Section 34

An applicant invoking his design application against a third party before the application has become available to the public, is on request obliged to let the party concerned inspect the documents of the application.

Anybody who either by direct communication to a third party or in advertisements, or by the marking of goods or their packaging, or in any other way indicates that a design has been applied for or is registered, without at the same time stating the number of the design application or of the registration, is obliged without undue delay to give such information to anybody requesting it. If it is not explicitly indicated that a

design has been applied for or is registered, but if the circumstances are such that an impression to that effect is created, information as to whether or not a design has been applied for or is registered, shall on request be given without undue delay.

## Chapter 7 Regulations Regarding Legal Protection, Etc.

### Section 35

Anybody who deliberately infringes a design right (design infringement) or contributes thereto, shall be punished by a fine or by imprisonment of up to three months.

Public prosecution only take place at request of the plaintiff.

### Section 36

Anybody who deliberately or by negligence commits design infringement, is liable to pay compensation for the exploitation of the design and for any further damage caused by the infringement. If there is only minor negligence, the compensation may be modified.

If the infringement is committed in non-negligent good faith, the court may order the infringer to pay damages to the extent deemed reasonable, but not exceeding the profit presumably acquired as a result of the infringement.

### Section 37

In case of design infringement the court may, to the extent deemed reasonable for preventing continued infringement, on a motion by the injured party, order that goods that without authorization have been produced in or imported into this country, or objects, the use of which would constitute design infringement, shall be altered in a prescribed manner, be destroyed or be taken into custody for the remainder of the period of the protection, or in the case of goods that without authorization have been produced or imported, be surrendered to the injured party against compensation. This does not apply to a third party who in good faith has acquired the goods or objects in question or rights thereto and who has not himself committed infringement.

In case of very special reasons, the court may on request, irrespective of the provisions of the first paragraph, grant permission during the remainder of the period of the protection of the design or part thereof against reasonable compensation and on otherwise reasonable conditions to dispose of goods that without authorization have been produced or imported.

### Section 38

If anybody without authorization commercially exploits a design the registration of which has been demanded, and if the exploitation takes place after the documents have become available to the public in accordance with Section 19, Sections 36 and 37 shall apply correspondingly, provided the application results in a registration. However, damages for injury due to exploitation prior to the publication in accordance with Section 18 shall always be limited as stipulated in Section 36, second paragraph.

The statutory period of limitation for claims in accordance with this provision does not commence until the design has been registered.

### Section 39

In civil cases relating to design infringement, an acquittal cannot be based on the fact that the registration is invalid or that its transfer may be claimed (see Section 31 and 32), unless a judgment declaring the registration invalid or ordering its transfer has first been passed.



#### Section 40

Anybody who deliberately or by negligence violates the provisions of Section 34, shall be punished by a fine and is liable to pay compensation for the damage caused to the extent deemed reasonable.

Prosecution by the public prosecutor takes place only upon request by the injured party.

### Chapter 8 Provision on Legal Procedure

#### Section 41

The following legal actions shall be brought before the City Court of Oslo:

- 1) actions relating to the title to a design that has been claimed registered in pursuance of the present Act,
- 2) actions relating to reconsideration of the decision by which the Board of Appeals of the Patent Office rejects an application for registration of a design, see Section 22, second paragraph,
- 3) actions relating to the invalidation or transfer of a registered design, see Sections 31 and 32.

The City Court of Oslo is the venue of applicants and design proprietors who are not resident in this country.

#### Section 42

Anybody bringing a legal action for invalidation or transfer of a registration to himself or regarding a compulsory licence, shall at the same time notify the Patent Office thereof and give notice of the action by registered mail to any licensee entered in and having his address in the Register. A licensee who wants to bring an action for design infringement, shall in the same way notify the proprietor of the design, provided the address of the latter is recorded in the Register.

If the plaintiff does not prove that notification as stated in the first paragraph has been given, the Court may fix a time limit for giving the notification. If the time limit is exceeded, the action shall be dismissed.

#### Section 43

Copies of judgments in legal actions brought in pursuance of this Act shall be sent to the Patent Office by the Court.

### Chapter 9 Miscellaneous Provisions

#### Section 44

Anybody is entitled to inspect the Designs Register and against a fee obtain certified copies thereof and certified copies of an application with enclosures after it has been made available to the public in pursuance of Section 19.

#### Section 45

A design proprietor who is not resident in this country, shall have an agent, who is domiciled in this country and who is entered in the Designs Register, and on his behalf can receive writs and other procedural communications concerning the design.

If the proprietor of the design does not have such an agent, writs may be served by sending the document concerned by registered mail to the address recorded in the Designs Register. In such cases the provisions of Section 178 of the Law Relating to the Courts of Justice shall apply.

If there is no complete address recorded in the register, a document in which a legal action is brought or else when the Court sees reasons therefor, may be served by publication of the document concerned or an extract thereof in Norsk Lysingsblad (the Norwegian Official Gazette) and in the publication issued by the Patent Office, stating that the document may be collected at the office of the Court. In such cases, the provisions of Section 181, fourth paragraph, of the Law Relating to the Courts of Justice shall apply, with the modification that the time of the notification in the publication issued by the Patent Office shall replace the time of posting a notice in the Court.

#### **Section 46**

Subject to reciprocity, the King may decree that the provisions of Section 12 or Section 45 shall not apply to applicants or design proprietors domiciled in a specific foreign country or having an agent domiciled therein and who is named to the registering authorities in this country, and empowered according to the said provisions. The writ or the communication shall then be served in accordance with the general provisions of Chapter 9 of the Law Relating to the Courts of Justice.

#### **Section 47**

Further provisions regarding applications for registration and renewal and the handling thereof, the Design Register, the publication issued by the Patent Office and the practising of this Act in general shall be established by the King. In this connection it may be decided that the journals of the Patent Office for applications filed and the handling thereof, shall be available to the public.

#### **Section 48**

When applying for a registration of a design or a renewal of a design registration, application or renewal fee and possibly the following additional fees shall be paid: a class fee for each class more than one, a joint registration fee for each design more than one, a storage fee for storing a model and a publication fee for the publication of each picture more than one. An increased renewal fee is paid after the expiration of the current registration period.

The King determines the fees referred to in this Act as well as detailed rules for the payment of the fees. When altering the renewal fees he may decide that the new fees shall apply also to prior registrations. The King also determines fees for an entry in the Designs Register and for copies and certifications given by the Patent Office.

### **Chapter 10**

## **Provisions for Entry into Force and Transitional Provisions**

#### **Section 49**

This Act comes into force on October 1, 1970. Simultaneously, the Designs Act of July 2, 1910, with subsequent amendments is repealed. However, the prior Act shall apply to applications for registrations filed on or before September 30, 1970, and to designs which are or will be registered in pursuance of such applications. Nevertheless, the provision of Section 1, third paragraph, of the previous Act shall not apply to literary or artistic works if the design protection therefor expires after September 30, 1971.