

Designs Act*

(Act No. 33 of May 29, 1970, as last amended by Act No. 104 of December 20, 1996)

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Chapter 1 General Provisions

Sec. 1. In the present Act the term “design” is to be understood as the model for the appearance of an article or for an ornament.

The author of a design or the person to whom his right has been transferred may through registration in accordance with this Act obtain an exclusive right to use the design for the purposes of a trade or business (design right).

Sec. 2. A design shall be registered only when it differs essentially from what was known prior to the filing date of the application for registration.

Everything that has become available to the public—as a result of reproduction, exhibition, offering for sale or in any other way is deemed to be known. Furthermore, a

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design that is not available to the public is also deemed to be known if the design is evident from an application in this country for patent or for registration of a trademark or design, where such application has been—or pursuant to the relevant provisions is deemed to have been—filed prior to the date referred to in the [first paragraph](#), provided that the design is subsequently made available to the public in connection with the application procedure.

Sec. 3. A design may be registered notwithstanding the fact that during the six months immediately prior to the filing of the application it has become available to the public

- (1) in consequence of manifest abuse with respect to the applicant or the person from whom he derives title, or
- (2) due to the display of the design by the applicant or the person from whom he derives title at an official or officially recognised international exhibition.

Sec. 4. A design may not be registered

- (1) if the design or the use thereof would be contrary to decency or public order,
- (2) if, without authorisation, the design contains
 - (a) official coats of arms, flags or other official emblems or insignia, including the official national or foreign certification or hallmarks or stamps required for articles identical with or similar to those for which the design is sought registered, or coats of arms, flags or other emblems, abbreviations or designations belonging to intergovernmental organisations, or international marks, seals or signs when unauthorised use thereof is forbidden by law. Nor must the design be registered if it contains anything that is liable to be confused with such emblems or marks, etc. as referred to herein;
 - (b) anything which is liable to be understood as another person's business name or trademark, or as the name or portrait of another person unless it manifestly refers to a person long since deceased;
 - (c) anything that is liable to be understood as the distinctive title of the protected artistic, literary or musical work of another person, or that infringes another's copyright to such a work or his right to a photographic illustration;
 - (d) anything that does not differ essentially from designs registered in this country in the name of another person.

Sec. 5. Subject to the exceptions laid down in this Act, the right to a design implies that no one other than the holder of the design right (the design right holder) may without authorisation make use of the design for the purposes of a trade or business by manufacturing, importing into the country, offering for sale, transferring or leasing goods, the appearance of which does not differ essentially from the design or which includes something that does not differ essentially therefrom.

The design right relates only to articles identical with or similar to the article for which the design has been registered.

The use of design protected goods which have been put on sale within the European Economic Area by the design right holder or with his consent is excepted from the design right.

Sec. 6. Anyone using the design for the purposes of a trade or business in this country at the time the application for registration of the design was filed may, notwithstanding the design right, continue such use whilst retaining its general character, provided that such use did not entail a manifest abuse with respect to the applicant or the person from whom he derives title. Under similar conditions, any person who had made substantial preparations to use the design for the purposes of a trade or business in this country shall have the same right of use.

The right referred to in the [first paragraph](#) may only be transferred together with the business in which it has arisen or in which the use was intended to take place.

Sec. 7. The King may decree that, notwithstanding a design right, spare parts and accessories for aircraft may be imported into this country in order to be used for the repair of aircraft belonging to a foreign country which concedes similar rights with respect to Norwegian aircraft.

Sec. 8. The King may decree that an application for the registration of a design for which protection has been sought outside this country prior to the filing date shall, in relation to the provisions in [sections 2](#) and [6](#), be deemed upon request to have been filed at the same time as the application outside this country.

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

Chapter 2

The Application for Registration and the Processing thereof

Sec. 9. The registering authority is *Styret for det industrielle rettsvern* (the Patent Office).

Sec. 10. Applications for the registration of a design shall be filed in writing with the Patent Office.

The application shall contain information concerning the article for which registration of the design is sought. The author of the design shall be named in the application. If registration is sought by someone other than the author of the design, the applicant shall document his right to the design.

The application shall be accompanied by a picture showing the design. If, before the design is registered, the applicant also submits a model, this model shall be deemed to show 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 is deemed to have been filed, cf.

[section 8](#), in any manner that according to [section 2](#), cf. [section 3](#), would preclude registration of the design.

The applicant shall pay the prescribed application fee and additional fees, cf. [section 48](#).

Sec. 11. An application may include more than one design if the articles for which registration of the designs has been sought are interrelated with respect to manufacture and use. An application for such multiple registration may comprise at most 20 designs and may not relate to ornaments.

Sec. 12. Any applicant who is not resident in this country shall have a representative domiciled in this country to represent him in all matters concerning the application.

Sec. 13. An application for the registration of a design shall not be deemed to have been filed until the applicant has submitted a picture or model showing the design. An application may not be altered so as to relate to a design or an article other than the design or article disclosed in the application.

Sec. 14. When examining the application for registration of a design, the Patent Office shall, to the extent determined by the King, establish whether the conditions for registration of the design have been 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 and invited to submit his observations or make amendments within a specified time limit.

If the applicant fails within the specified time limit to submit his observations or to take steps to remedy a defect to which his attention has been drawn, the application shall be shelved. Advice of this consequence shall be included in the Patent Office's notification according to the [first paragraph](#).

However, the processing of the application shall be resumed if, within two months after the expiration of the said time limit, the applicant submits a statement or takes steps to amend the application and, within the same time limit, pays a prescribed resumption fee. Resumption may be requested only once.

Sec. 15. If, after the receipt of the applicant's reply, the Patent Office still finds any objection to the registration, and the applicant has had an opportunity to comment upon the objection, the application shall be refused unless the Patent Office finds grounds for further correspondence with the applicant.

Sec. 16. If anyone claims before the Patent Office that he and not the applicant has the right to a design, the Patent Office may, if the matter is found questionable, request the person concerned to institute legal proceedings within a specified time limit to have the matter tried in a court of law, whilst informing him that if he does not comply with the request, his claim may be disregarded during the continued processing of the application.

If the question of the right to the design is under litigation, the processing of the application for registration may be suspended pending the court's final decision.

Sec. 17. If anyone proves to the satisfaction of the Patent Office that he and not the applicant is entitled to the design, the Patent Office shall transfer the application to him if he so requests. The transferee shall pay a new application fee.

If a request for transfer of an application has been made, the application must not be altered, shelved, refused or accepted until the request for transfer has been finally settled.

Sec. 18. If the application is in the prescribed form and no objection has been found to the registration, the design shall be registered. Upon the applicant's request, the registration may however be deferred for a period of up to six months from the filing date of the application, or if priority as referred to in [section 8](#) is claimed, from the date from which priority is claimed. Request for deferment shall be made on the application form.

When a design is registered, notice thereof shall be published.

Sec. 19. If the applicant has not requested deferment of the registration pursuant to [section 18](#), all the documents in the application shall be made available to the public from the filing date of the application.

If deferment has been requested, the documents shall be made available to the public at the end of the deferment period even though registration pursuant to [section 18](#) will not yet take place. However, if at this time the application is shelved or refused, the documents shall not be made available unless the applicant requests resumption of proceedings or files an appeal against the decision.

Proposals, drafts, reports and other similar working papers that the Patent Office prepares in connection with the processing of an application shall not be made available unless the Patent Office decides otherwise.

Sec. 20. Any person may file an opposition to the registration of a design. A notice of opposition shall be presented in writing, shall state the grounds for opposition and shall be filed with the Patent Office within four months from the date on which notice of registration was published. In special cases, the Patent Office may upon request grant the opponent a short additional time limit in which to provide further documentation in support of the opposition.

An opposition founded on the claim that the design has been registered for someone other than the person who according to [section 1](#) is entitled to obtain registration, may only be put forward by the person claiming to have the right to the design. The opposition may include a request to have the registration transferred to the opponent.

The Patent Office shall dismiss an opposition which does not fulfil the conditions in the [first](#) and [second paragraphs](#).

The Patent Office shall notify the design right holder of any oppositions and shall give him an opportunity to submit his observations thereon. [Section 12](#) applies correspondingly to the design right holder during the opposition proceedings.

If an opposition to the registration of a design is filed, this shall be entered in the Register of Designs and notice thereof published.

Even if the opposition is withdrawn, the opposition proceedings may continue if special circumstances so indicate.

Sec. 21. Following an opposition the Patent Office shall cancel the registration of a design wholly or partly if the design has been registered in contravention of [sections 1 to 4](#), and the obstacle to registration subsists.

If the opponent claims he is entitled to a design registration and in the opposition has requested that the registration be transferred to him, the Patent Office shall transfer the registration to the opponent instead of cancelling the registration if it finds that it is the opponent who pursuant to [section 1](#) is entitled to obtain registration. The [second](#) and [third paragraphs of section 32](#) apply correspondingly.

The Patent Office shall reject an opposition if there is no obstacle as referred in the [first paragraph](#) to sustaining the design registration.

When the Patent Office's decision in respect of an opposition is final, notice of the decision shall be entered in the Register of Designs and published.

Sec. 22. The final first instance decision with respect to an application for registration may be appealed to the second instance department of the Patent Office, the Board of Appeals, if the decision is not in the applicant's favour.

The final first instance decision with respect to an opposition may be appealed to the Board of Appeals by the design right holder or the opponent if the decision is not in favour of the party concerned.

If a request for resumption in accordance with [section 14, third paragraph](#), is refused, or a request for transfer in accordance with [section 17](#) is accepted, the applicant may file an appeal against the decision with the Board of Appeals. If a request for transfer in accordance with [section 17](#) is refused, the person requesting the transfer may appeal against the decision.

Sec. 23. An appeal must be filed with the Patent Office within two months from the date on which notification of the decision was sent to the party concerned. The stipulated fee shall be paid within the same time limit. Failing this, the appeal will not be considered.

Even if the appeal is withdrawn, it may be examined if special circumstances so indicate.

A decision whereby the Board of Appeals refuses an application for the registration of a design, cancels a registration or upholds a first instance decision to cancel a registration, cannot be brought before the courts later than two months after the applicant or design right holder has been notified of the refusal. Information with respect to the time limit for taking legal action shall be included in the notification.

Re-establishment of rights cannot be granted in cases of non-observance of the time limits stipulated in this section.

[Section 19, third paragraph](#), applies correspondingly to documents which are drawn up by the Board of Appeals.

Chapter 3

Period of Validity of the Design Registration

Sec. 24. The design registration is valid for up to five years from the date 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-year period is effective from the expiration of the preceding period.

Sec. 25. Applications for renewal of the registration shall be made in writing to the Patent Office no earlier than one year before and no later than six months after the expiration of a current period of registration. Within the same period the applicant shall pay the prescribed renewal fee and additional fees, cf. [section 48](#). Failing this, the application shall be refused.

When a registration is renewed, notice thereof shall be published.

Chapter 4

Licences, Assignments, etc.

Sec. 26. If the design right holder has granted another person the right to use the design for the purposes of a trade or business (licence), the licensee may not assign his right to others unless otherwise agreed.

If the licence is a part of a business, it may however be assigned together with the business in the absence of an agreement to the contrary. In such a case, the assignor shall remain responsible for the fulfilment of the licence agreement.

*Sec. 27.*¹ If a design right has been transferred to another person, or a licence has been granted or has been assigned to another person, an entry to this effect shall be made in the Register of Designs upon request by one of the parties and subject to payment of the prescribed fee. If a licence entered in the Register has ceased to be valid, this fact shall also, upon request by one of the parties, be recorded in the Register.

The provisions in the [first paragraph](#) shall apply correspondingly to the transfer and termination of compulsory licences and to the right referred to in [section 32, second paragraph](#). With respect to the registration of attachments, [section 7-20, eighth paragraph](#), of the Enforcement Act applies.

In the case of a multiple registration, the transfer of the design right may only be registered when it relates to all the designs.

Legal actions concerning a design right may always be brought against the person registered as the design right holder, and notifications from the Patent Office will be sent to that person.

The voluntary assignment of a design right or the grant of licence filed for registration shall in the case of dispute have priority over a voluntary assignment or grant

¹ Amended by Act No. 2 of February 8, 1980. In force from January 1, 1981.

of licence for which entry has not been requested or was requested later, provided that the holder of the right was acting in good faith at the time he filed for registration.

Sec. 28. Any person who, at the time an application for registration was made available to the public, was using the design in this country for the purposes of a trade or business, may, if the application results in registration, obtain a compulsory licence for the use of the design, if special reasons therefor exist, and if he had no knowledge of the application when he started to use the design, and could not reasonably have obtained knowledge thereof. Under the same conditions, any person who has made substantial preparations to use the design for the purposes of a trade or business in this country shall be entitled to a compulsory licence. A compulsory licence may also cover the period prior to the registration of the design.

Sec. 29. A compulsory licence may only be granted to a person considered capable of using the design in a manner that is proper and in accordance with the terms of the licence.

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

Sec. 30. A compulsory licence is issued by the court, which also decides the extent to which the design may be used, and determines the compensation to be paid and other terms of the licence. When a substantial change in circumstance so demands, the court may upon request by each of the parties revoke the licence or lay down new conditions therefor.

Chapter 5

Termination of the Registration, etc.

Sec. 31. If a design has been registered contrary to [sections 1 to 4](#), and if an obstacle to registration subsists, the registration may be found invalid by the court. However, the registration may not be found invalid on the grounds that the design right holder was only in part entitled to the design.

Legal actions based on allegations that the design is registered for someone 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 within one year after acquiring knowledge of the registration and the other facts on which the action is based. If the design right holder was acting in good faith when the design was registered or the design right was transferred to him, an action may not under any circumstances be instituted later than three years after the registration of the design.

Subject to the exceptions stated in the [second paragraph](#), anyone may bring an action in pursuance of this section.

In the event of non-observance of the time limit referred to in the [second paragraph](#) re establishment of rights cannot be granted.

Sec. 32. If a design has been registered in the name of a person other than the person entitled thereto according to [section 1](#), the rightful holder may request a court

decision ordering that the registration be transferred to him. The time limits in [section 31, second paragraph](#) shall apply to legal actions as referred.

If the person dispossessed of the design registration has begun in good faith to use the registration for the purposes of a trade or business or has made substantial preparations for that purpose, he shall be entitled, on payment of reasonable compensation and on other reasonable conditions, to continue such use or start the intended use whilst retaining its general character. Under the same conditions, holders of registered licences shall have the same right.

A right pursuant to the [second paragraph](#) may only be transferred to others together with the business in which the right has arisen or in which the use was intended to take place.

Sec. 33. The design shall be expunged from the Register at the written request of the design right holder.

If a legal action concerning transfer of the registration has been brought or if the design right is the subject of an attachment, the design may not be expunged from the Register upon request of the right holder until a final decision has been taken in the action or the attachment has been dropped.

Chapter 6

Duty of Disclosure

Sec. 34. An applicant who invokes his application against another person before the application has become available to the public is under obligation upon request to allow the person concerned access to the application documents.

Any person who by direct communication with another or in advertisements or by the marking of goods or their packaging or in any other way indicates that registration of a design has been applied for is obliged, if so requested, to provide without undue delay such information. Where it is not explicitly stated that registration has been applied for or obtained, but the circumstances are such as to bring about the belief that this is the case, information shall, if requested, be given without undue delay as to whether registration has been applied for or obtained.

Chapter 7

Provisions concerning Legal Protection, etc.

Sec. 35. Anyone who deliberately infringes a design right (design infringement) or who contributes thereto, shall be liable to a fine or to imprisonment for a period of up to three months.

Public prosecution shall only take place at the request of the injured party.

Sec. 36. Anyone who deliberately or through negligence commits design infringement is liable to pay compensation for the use of the design and for any further damage caused by the infringement. If the negligence was minimal, the amount of compensation may be reduced.

If the infringement is committed without negligence and in good faith, the court may order the infringer to pay damages to the extent deemed reasonable, but not exceeding the presumed profit from the infringement.

Sec. 37. In the case of infringement of a design the court may, to the extent deemed reasonable for preventing continued infringement, at the request of the injured party, order that goods which without authorisation have been produced in or imported into this country, or articles whose use would constitute design infringement, shall be altered in a prescribed manner, destroyed or deposited in safe custody for the remainder of the period of protection, or in the case of goods produced or imported without authorisation, 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 articles in question or rights thereto and who has not committed infringement.

Notwithstanding the provisions of the [first paragraph](#), the court may, where special grounds exist and if so requested, grant permission for the control of goods that have been manufactured or imported without authorisation during the period of protection of the design or part thereof against reasonable compensation and on otherwise reasonable terms.

Sec. 38. If anyone without authorisation uses for the purposes of a trade or business a design for which registration has been sought, and if the use 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 compensation for damage due to use prior to the publication of a notice of registration 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.

Sec. 39. In civil cases relating to design infringement a decision in favour of the defendant may not be made on the grounds that the registration is invalid or that its transfer may be claimed, cf. [sections 31](#) and [32](#), unless a judgement declaring the registration invalid or ordering its transfer has first been passed. However, a judgement in favour of the defendant may be based upon the cancellation or transfer of the registration pursuant to [section 21](#).

Sec. 40. Anyone who deliberately or through negligence violates the provisions in [section 34](#) shall be liable to a fine and liable to pay compensation for the damage caused to the extent deemed reasonable.

Public prosecution shall only take place at the request of the injured party.

Chapter 8

Provisions concerning Legal Proceedings

Sec. 41. The following legal actions may be brought before the Oslo City Court (*Oslo byrett*):

1. Actions relating to the right to a design for which registration has been sought under the present Act.
2. Actions relating to the review of a decision whereby the Board of Appeals refuses an application for registration of a design, cancels a registration or upholds a first instance decision to cancel a registration, cf. [section 23, third paragraph](#).
3. Actions relating to the invalidation or transfer of a registered design, cf. [sections 31](#) or 32.

The Oslo City Court is the *forum conveniens* for applicants and design right holders who are not resident in this country.

Sec. 42. Anyone bringing a legal action concerning invalidation or transfer of a registration to himself or concerning a compulsory licence shall at the same time notify the Patent Office and in a registered letter give notice of the action to any licensee entered in the Register and whose address is recorded therein. A licensee wishing to bring action for design infringement shall in the same way notify the design right holder, provided his name and address is recorded in the Register.

If the plaintiff does not document that the notification mentioned in the [first paragraph](#) has been sent, the court may fix a time limit in which this notification is to be made. If the time limit granted is not observed, the action shall be dismissed.

Sec. 43. The court shall send the Patent Office transcripts of judgements in civil actions brought in accordance with the present Act.

Chapter 9

Miscellaneous Provisions

Sec. 44. Anyone is entitled to inspect the Register of Designs and for a fee obtain certified copies thereof and certified copies of an application with enclosures after it has been made available to the public pursuant to [section 19](#).

Sec. 45. A design right holder who is not resident in this country shall have a representative domiciled in this country and entered in the Register of Designs, who is empowered to receive on his behalf delivery of writs and other procedural communications concerning the design.

If the design right holder does not have such a representative, service of process may be effected by sending the document concerned by registered mail to the address recorded in the Register of Designs. In such cases [section 178](#) of the Courts of Justice Act shall apply.

If there is no record of a complete address in the Register, a document in which a legal action is brought or where the court otherwise finds grounds, may be served by publishing the document or an extract thereof in *Norsk Lysningsblad* (the Norwegian Official Gazette) and in the publication issued by the Patent Office, with a statement to the effect that the document may be collected from the office of the court. In such case, [section 181, fourth paragraph](#), of the Courts of Justice Act shall apply, although in such

manner that the date of the notification in the publication issued by the Patent Office shall replace the date of posting a notice in the court.

Sec. 46. Subject to reciprocity, the King may decree that the provisions in [section 12](#) or [section 45](#) shall not apply to applicants or design right holders domiciled in the foreign country concerned or who have a representative resident there whose name has been given to the registering authorities in this country and who has the powers referred to in said provisions. In such a case, the writ or communication shall be served in accordance with the general provisions in [Chapter 9](#) of the Courts of Justice Act.

Sec. 47. The King shall issue further provisions concerning applications for registration and renewal and the processing thereof, oppositions and the processing thereof, the Register of Designs, the publication issued by the Patent Office and the general implementation of this Act. In this connection, it may be decided that the journals of the Patent Office relating to applications filed and the processing thereof shall be available to the public.

Sec. 48. When applying for registration of a design or renewal of a design registration an application or renewal fee shall be paid and also, if necessary, the following additional fees: a class fee for each class in excess of one, a multiple registration fee for each design in excess of one, a storage fee for the storage of models, and a publication fee for the publication of each picture in excess of one. An increased renewal fee shall be paid after the expiration of a current period of registration.

The King shall determine the fees referred to in this Act as well as the actual rules for the payment thereof. When altering the renewal fees he may determine that the new fees shall apply also to prior registrations. The King shall also determine the fees for entry in the Register of Designs and for copies and certificates issued by the Patent Office.

Chapter 10

Provisions for Entry into Force and Transitional Provisions

Sec. 49. This Act shall enter into force on October 1, 1970. At the same time, the Designs Act of July 2, 1910, with subsequent amendments, shall be repealed. However, the former Act shall apply to applications filed on or before September 30, 1970, and for designs which have been or will be registered in pursuance of such applications. However, the provision in [section 1, third paragraph](#), of the former Act shall not apply to artistic, literary or musical works if the design protection therefor expires after September 30, 1971.