

Extract The Act of 31 May 2013 No 25 amending legislation on the protection of industrial property rights etc.

III

The following amendments are made to the Act of 21 June 1985 No 79 relating to the Exclusive Right to Business Names and other Business Distinguishing Characteristics etc:

Section 5-2 first sentence shall read as follows:

In connection with a legal action brought pursuant to Sections 5-1, 6-2 or 6-3, or an independent legal action, the courts may order such precautionary measures as are necessary to prevent the continued use of the business name in unchanged form.

The heading of Chapter 6 shall read:

Chapter 6. Penalties and compensation etc.

The new Section 6-1 shall read as follows:

Whosoever wilfully uses a business name that is protected pursuant to Sections 3-2 and 3-3 in contravention of the right of another person or who aids and abets thereto, is liable to fines or imprisonment for a term of up to one year.

If especially aggravating circumstances exist, the penalty shall be a fine or imprisonment for a term of up to three years. When assessing whether especially aggravating circumstances exist, particular importance shall be attached to the loss inflicted on the rightholder, including any damage to the rightholder's commercial reputation, the gain obtained by the infringer, and the extent of the infringement in other respects.

A public prosecution will only be instituted if the aggrieved person so requests unless this is required by the public interest.

With the exception of Section 61, the provisions concerning sanctions against trademark infringements in the Trademarks Act Chapter 8 <http://websir.lovdato.no/cgi-lex/lexles?doc=/lov/nl/hl-19100702-005.html> apply correspondingly to the use of a business name that is protected pursuant to Section 3-2 and 3-3 in contravention of the right of another person.

Sections 5-2, 6-2 and 6-3 apply to the use of other business names than those protected pursuant to Sections 3-2 and 3-3 in contravention of this Act or the right of another person.

The present Sections 6-1 and 6-2 will become Sections 6-2 and 6-3.

IV

The following amendments are made to the Act of 15 June 1990 No 27 relating to the protection of layout designs for integrated circuits:

The new Section 5 a shall read as follows:

Section 5 a Prohibition against infringements

Any person who has infringed another person's rights pursuant to this Act, or aided and abetted thereto, may by judgment be prohibited from repeating this action. Any person who has made significant preparations with a view to carrying out an action that would constitute an infringement, or who has in some other manner acted in a way that gives particular grounds for fearing that the person in question will commit an infringement, may be prohibited by judgment from carrying out the action.

Section 6 shall read as follows:

Section 6 Compensation and damages for infringements

For infringements of another person's rights pursuant to this Act committed intentionally or through negligence, the infringer shall pay the rightholder:

- a) compensation corresponding to a reasonable licence fee for the exploitation, as well as damages for any loss resulting from the infringement that would not have arisen in connection with licensing,
- b) damages for any loss resulting from the infringement, or
- c) compensation corresponding to the gain obtained through the infringement.

The compensation and damages are determined on the basis of the provision in letters a to c that is most favourable for the rightholder.

If the infringement has been committed with intent or through gross negligence, the infringer shall, if the rightholder so demands, pay compensation corresponding to double a reasonable licence fee for the exploitation instead of compensation and damages pursuant to the first paragraph.

The first and second paragraphs apply correspondingly to aiding and abetting.

For infringements that have taken place in good faith, the infringer shall, insofar as this is not seen as unreasonable, pay compensation corresponding to a reasonable licence fee for the exploitation or corresponding to the gain achieved as a result of the infringement.

The liability under the first to third paragraph may be reduced pursuant to the Act of 13 June 1969 No 26 on compensatory damages Section 5-2.

Section 7 shall read as follows:

Section 7 The right to exploit layout designs that constitute an infringement of a right to a layout design for an integrated circuit

Any person who, in good faith, has acquired an integrated circuit that constitutes an infringement of a right to a layout design for an integrated circuit shall be entitled to import and exploit the integrated circuit for commercial purposes. Appropriate compensation shall be paid for importation or commercial exploitation that takes place after the acquiring party is no longer in good faith.

When special grounds exist, the courts may, instead of stipulating measures pursuant to Sections 5 a and 8, decide that a person who, acting in good faith, has acquired a copy of a layout design for an integrated circuit that constitutes an infringement of a right to a layout design shall be permitted to exploit the integrated circuit in question in return for reasonable compensation and on appropriate terms and conditions in other respects, during the whole or part of the duration of the right to the layout design.

Section 8 shall read as follows:

Section 8 Measures to prevent infringements

In order to prevent an infringement, the courts may, insofar as this is deemed to be reasonable, order preventive measures to be taken in relation to copies of integrated circuits that constitute an infringement of a right to a layout design for an integrated circuit and in relation to materials and implements that are principally used, or intended to be used, for the manufacture of such copies. Such measures can, among other things, entail copies of integrated circuits and materials and implements being:

- a) recalled from the channels of commerce,
- b) definitively removed from the channels of commerce,
- c) destroyed, or
- d) handed over to the rightholder.

The decision concerning whether such measures shall be imposed and the choice between possible measures shall be made on the basis of an assessment of proportionality. Among other things, account shall be taken of the gravity of the infringement, the effects of the measures and third party interests.

The first paragraph applies correspondingly in cases as mentioned in Section 5 a second sentence.

Measures imposed pursuant to this section shall not be contingent on the rights holder paying compensation to the party against whom the measure is directed, and they do not affect the rights holder's right to compensation or damages pursuant to Section 6. Measures shall be carried out for the defendant's account unless special grounds indicate otherwise.

The new Section 8 a shall read as follows:

Section 8 a Communication of information about judgments in infringement cases

In a judgment in a case concerning infringement, the courts may order that information about the judgment shall be communicated in a suitable manner for the infringer's account. This applies correspondingly to aiding and abetting and in cases as mentioned in Section 5 a second sentence.

Section 9 shall read as follows:

Section 9 Penalties

Any person who with intent commits or aids and abets the infringement of a right to a layout design for an integrated circuit is liable to fines or imprisonment for a term of up to one year.

If especially aggravating circumstances exist, the penalty shall be fines or imprisonment for a term of up to three years. When assessing whether especially aggravating circumstances exist, particular importance shall be attached to the loss inflicted on the rightholder, including any damage to the rightholder's commercial reputation, the gain procured by the infringer, and the extent of the infringement in other respects.

A public prosecution will only be instituted if the aggrieved person so requests unless this is required by the public interest.

V

The following amendments are made to the Act of 12 March 1993 No 32 relating to the plant breeder's right:

In Chapter 6, the new Section 21 a shall read as follows:

Section 21 a *Prohibition against infringements*

Any person who has infringed another person's rights pursuant to this Act, or aided and abetted thereto, may by judgment be prohibited from repeating this action. Any person who has made significant preparations with a view to carrying out an action that would constitute an infringement, or who has in some other manner acted in a way that gives particular grounds for fearing that the person in question will commit an infringement, may be prohibited by judgment from carrying out the action.

Section 22 shall read as follows: Section 22 *Penalties*

Any person who with intent commits or aids and abets the commission of an infringement against the rights of a plant breeder is liable to fines or imprisonment for a term of up to one year.

If especially aggravating circumstances exist, the penalty shall be fines or imprisonment for a term of up to three years. When assessing whether especially aggravating circumstances exist, particular importance shall be attached to the loss inflicted on the rightholder, including any damage to the rightholder's commercial reputation, the gain procured by the infringer, and the extent of the infringement in other respects.

Any person who with intent violates the provisions concerning the use of variety denominations in Section 20, or who aids and abets thereto, shall be liable to fines.

In connection with violation of the provisions of the first or second paragraph, a public prosecution will only be instituted if the aggrieved person so requests unless this is required by the public interest. Violation of the provisions of the third paragraph will only be prosecuted if the aggrieved person so requests.

Section 23 shall read as follows:

Section 23 *Compensation and damages for infringements*

For infringements of a breeder's right committed with intent or through negligence, the infringer shall pay the rightholder:

- a) compensation corresponding to a reasonable licence fee for the exploitation, as well as damages for any loss resulting from the infringement that would not have arisen in connection with licensing,

b) damages for any loss resulting from the infringement, or

c) compensation corresponding to the gain obtained through the infringement.

The compensation and damages are determined on the basis of the provision in letters a to c that is most favourable for the rightholder.

If the infringement has been committed with intent or through gross negligence, the infringer shall, if the rightholder so demands, pay compensation corresponding to double a reasonable licence fee for the exploitation instead of compensation and damages stipulated pursuant to the first paragraph.

The first and second paragraphs apply correspondingly to aiding and abetting.

For infringements that have taken place in good faith, the infringer shall, insofar as this is not seen as unreasonable, pay compensation corresponding to a reasonable licence fee for the exploitation or corresponding to the gain procured as a result of the infringement.

Any person who with intent or through negligence violates the provisions concerning variety denominations in Section 20 is obliged to compensate the loss caused by the violation.

The liability under the first to third and fifth paragraphs may be reduced pursuant to the Act of 13 June 1969 No 26 on compensatory damages Section 5-2.

Section 24 shall read as follows: *Section 24 Measures to prevent infringements*

In order to prevent an infringement, the courts may, insofar as this is deemed to be reasonable, order preventive measures to be taken in relation to plant material that constitutes an infringement of a plant breeder's right, and in relation to materials and implements that are principally used, or intended to be used, for the production of such plant material. Such measures can, among other things, entail plant material and materials and implements being:

- a) recalled from the channels of commerce,
- b) definitively removed from the channels of commerce,
- c) destroyed, or
- d) handed over to the rightholder.

The decision concerning whether such measures shall be imposed and the choice between possible measures shall be made on the basis of an assessment of proportionality. Among other things, account shall be taken of the gravity of the infringement, the effects of the measures and third party interests.

The first paragraph applies correspondingly in cases as mentioned in Section 21 a second sentence.

Measures imposed pursuant to this section shall not be contingent on the rightholder paying compensation to the party against whom the measure is directed, and they do not affect the rightholder's right to compensation or damages pursuant to Section 23. Measures shall be carried out for the defendant's account unless special grounds indicate otherwise.

The new Section 24 a shall read as follows:

Section 24 a *Permission for exploitation*

Instead of stipulating measures pursuant to Sections 21 a and 24, the court may, when extraordinary grounds for doing so exist, grant permission for the exploitation of a plant variety during the duration of the plant breeder's right, or during part of it, in return for reasonable compensation to the rightholder and on appropriate terms and conditions in other respects. Such permission may only be granted to a person who has acted in due good faith.

The new Section 24 b shall read as follows:

Section 24 b *Communication of information about judgments in infringement cases*

In a judgment in an infringement case, the courts may order that information about the judgment shall be communicated in a suitable manner for the infringer's account. This applies correspondingly to aiding and abetting and in cases as mentioned in Section 21 a second sentence.

Section 25 shall read as follows: Section 25 *Temporary legal protection*

Insofar as an application leads to the granting of a plant breeder's right, Section 3, Section 21 a, Section 23 first to third and fifth and sixth paragraphs, Sections 24, 24 a and 24 b shall also apply during the period from the application was announced pursuant to Section 7 until the plant breeder's right was granted.

The limitation period for claims pursuant to this section does not start to run until the plant breeder's right is granted.

Section 29 first paragraph shall read as follows:

Actions concerning the right to a plant variety for which a plant breeder's right has been applied for, actions concerning the transfer of a plant breeder's right, civil actions concerning infringements of a plant breeder's right and actions as mentioned in Section 12 second paragraph, Section 17, Section 18 second paragraph, cf. Section 12 second paragraph and Section 28, shall be brought before Oslo District Court.