

## **The Norwegian Designs Act**

Act no. 15 of 14 March 2003: The Norwegian Design Protection Act  
(the Design Act)

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This is an unofficial translation of the Norwegian Designs Act. Should there be any differences between this translation and the authentic Norwegian text, the authentic Norwegian text prevails.

### Chapter 1. General provisions.

#### **Section 1. Exclusive right to design**

The creator of a design (the designer), or his successor in title, may acquire by registration an exclusive right to exploit the design subject to the provisions of this Act (design right).

Registration of a design does not exclude protection pursuant to other acts if the requirements for such protection are fulfilled, including protection under the Trademarks Act, the Copyright Act, and the Patent Act.

#### **Section 2. Definitions**

In this Act

1. design means the appearance of a product or 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 inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs.
3. complex product means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.

#### **Section 3. Novelty and individual character**

Design right may only be granted if the design 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 before the date of priority, if priority is claimed pursuant to section 16. 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 to the public before the date referred to in the second paragraph. In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

## **Section 4. Complex products**

The design of a component part of a complex product shall only be considered to be new and to have individual character to the extent that

1. the component part is visible during normal use of the complex product, and
2. the visible features of the component part fulfil the requirements as to novelty and individual character. Normal use shall mean use of the complex product by the end user, excluding maintenance, servicing or repair work of the product.

## **Section 5. The design's availability to the public**

A design shall be deemed to have been made available to the public under this Act if it has been published following registration or otherwise. The same shall apply if the design has been exhibited, used in trade or otherwise disclosed. The design shall nevertheless not be regarded as having been made available to the public if

1. it could not reasonably have become known in the normal course of business to the circles specialized in the sector concerned operating within the EEA through circumstances, as referred to in the first paragraph, before the date of filing of the application for registration or, if priority is claimed, before the date of priority pursuant to section 16, or
2. it has solely been disclosed to other persons under explicit or implicit conditions of confidentiality.

## **Section 6. Actions that do not destroy novelty (grace period)**

The design is not regarded as having been made available to the public pursuant to section 5 if it has been made available to the public, at the earliest, twelve months prior to the date referred to in section 3, second paragraph

1. by the designer, or his successor in title
2. by other persons on the basis of information provided or actions undertaken by the designer, or his successor in title, or
3. as a consequence of an abuse in relation to the designer, or his successor in title.

## **Section 7. Design which is contrary to public interests and the rights of other persons**

A design may not be registered if it

1. is contrary to public policy or to accepted principles of morality, or
2. without authorization includes a coat of arms or other insignia, subject to Sections 165 litra b and 166 of the Penal Code, a national flag or an official control or guarantee mark for products of the same or a similar type as the products to which the design applies or which may be perceived as such a symbol, flag or mark.

A design right may not be granted if the design conflicts with a design that is the subject of a previous application for design right in Norway that was not available to the public before the date of filing of the new application or before the date of priority, if priority is claimed pursuant to section 16, but is disclosed at a later date.

Nor may a design right be granted if the design violates the right of another person in Norway to

1. a trademark, business name or an other sign,
2. a work or photographic picture protected under the Copyright Act, or
3. a geographical indication or designation of origin for agricultural products and foodstuffs protected under regulations pursuant to the Act of 17 June 1932 No. 6 relating to quality control of agricultural products, etc or under Act of 19 December 2003 No. 124 on Production of foodstuff and Food safety, etc.

## **Section 8. Designs dictated by technical function**

A design right may not be granted for the features of appearance of a product

1. that are dictated solely by its technical function, or
2. that must be reproduced in their exact form and dimension in order to permit the product to be mechanically connected to or placed in, around or against another product, so that either product may perform its function.

A design right may nevertheless be granted for a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

## **Section 9. The scope and content of a design right**

A design right entails that no-one may use the design without the consent of the holder of the design right (the holder), with such exceptions as follow from sections 10 to 12. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

The design right shall apply to any design that does not produce on an informed user a different overall impression. In assessing the scope of the design right, the degree of freedom of the designer in developing the design shall be taken into consideration.

## **Section 10. Exceptions from the design right**

The design right does not exclude that the design

1. may be used for private and non-commercial purposes,
2. may be used for experimental purposes, or
3. may be displayed for the purpose 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.

## **Section 11. Equipment on ships and aircraft**

The design right shall not exclude

1. use of equipment on ships and aircraft registered in another state when these temporarily enter Norwegian territory,
2. importation to Norway of spare parts and accessories for the purpose of repairing such craft and execution of repairs on such craft.

## **Section 12. Exhaustion of the design right**

The design right does not exclude the use of design-protected products that are put on the market in the EEA by the holder of the design right or with his consent.

## **Chapter 2. Application for registration of design**

### **Section 13. Application for registration**

An application for registration of a design shall be filed in writing with the Norwegian Industrial Property Office.

The application shall state the name and address of the applicant and the product or products to which registration of the design is sought, and shall include reproductions clearly illustrating the design.

If the applicant also submits a model of the design prior to its registration, it is the model that shall be regarded as illustrating the design.

The application shall state the name of the designer. The designer's name shall be entered in the Design Register. If the design is the result of cooperation between a group of two or more designers, the name of the group may replace the name of each individual designer.

The application shall in addition fulfil the requirements laid down by the King in regulations. A stipulated fee shall be paid.

### **Section 14. Amendment of the application**

An application for registration of a design may not be amended to apply to another product than that stated in the application. The design that the application concerns may only be amended if the design in its amended form retains its identity and fulfils the requirements for registration.

### **Section 15. Application for registration of more than one design multiple registration**

An application may include more than one design if the products belong to the same class according to the Locarno Agreement of 8 October 1968 establishing an international classification for industrial designs.

### **Section 16. Priority**

A person who has filed an application for design protection in Norway or in a State party to the Paris Convention of 20 March 1883 for the Protection of Industrial Property or the Agreement of 15 April 1994 establishing the World Trade Organization (WTO Agreement), and who, within six months after, this applies for a design right in Norway, may claim that the new application shall be regarded as filed at the same time as the first application.

A person who has exhibited a design at an official or officially recognized international exhibition as referred to in the Convention of 22 November 1928 relating to international exhibitions and who, within six months after this, applies for a design right in Norway, may claim that the application be regarded as filed on the date when the design was first exhibited at the exhibition.

The King may in regulations lay down further requirements concerning the right to claim priority. The King may also provide that priority may be claimed in cases other than those referred to in the first and second paragraphs.

### **Section 17. Requirements for registration**

The Norwegian Industrial Property Office shall ensure that the application fulfils the requirements laid down in sections 13 to 15. The Norwegian Industrial Property Office shall also ensure that the application applies to a design as referred to in section 2 (1), and that the requirements laid down in section 7, first paragraph, are fulfilled.

To the extent prescribed in regulations laid down by the King, the Norwegian Industrial Property Office shall, at the request of the applicant, also examine whether other factors exist that may prevent design right and, in such case, inform the applicant of this. A stipulated fee shall be paid for this examination.

### **Section 18. Registration and publication**

If the application fulfils the requirements as referred to in section 17, first paragraph, the design shall be registered and notification of registration shall be sent to the applicant. The registration of a design shall be published.

The registration may nevertheless be deferred for a maximum of six months from the date referred to in section 3, second paragraph, if so requested by the applicant in the application.

### **Section 19. Correction of the application**

If the application fails to fulfil the requirements as referred to in section 17, first paragraph, the Norwegian Industrial Property Office shall notify the applicant of this and provide information concerning the possible consequences of the irregularities. The applicant shall be given a reasonable time limit in which to respond and, if possible, for correction of the irregularities.

If the irregularities are corrected within the time limit set by the Norwegian Industrial Property Office, the application is regarded as filed on the date it was received by the Norwegian Industrial Property Office. However, the application is not regarded as filed until reproductions or a model of the design have been received by the Norwegian Industrial Property Office.

If the applicant fails to comment or to correct the irregularities before expiry of the time limit, the application shall be considered abandoned.

Processing of an application that has been abandoned shall be resumed if the applicant submits comments or corrects the irregularities within two months after expiry of the time limit. A stipulated fee shall be paid. Processing of an application may only be resumed once.

### **Section 20. If the application has**

irregularities that are not corrected subject to the provisions laid down in section 19 and the design cannot be registered in its amended form subject to section 14, second sentence, the application shall be refused. This does not apply if the Norwegian Industrial Property Office finds that the applicant should be given a new time limit for correction.

## **Chapter 3. Public disclosure and the duty to disclose information**

### **Section 21. Access to the documents of an application**

From the date an application is filed, anyone may demand access to the application and its enclosures and all documents pertaining to the case, unless otherwise provided in the second to the fifth paragraph.

Access may not be demanded to documents that may reveal the appearance of the design until the design has been registered pursuant to section 18. When six months has elapsed from the date referred to in section 3, second paragraph, the documents shall be made public even if the design has not been registered. If the application is abandoned or refused, the right of access shall only apply if the applicant requests resumption, appeals against the decision or claims compensation.

If the applicant so demands, the documents that may reveal the appearance of the design shall be made public earlier than provided in the second paragraph. Information concerning commercial secrets may be excepted from public disclosure if so demanded by the applicant. When such demands are filed, the information is not made public until a final refusal of the demand. Information of significance for whether a design right may be granted or for the scope or duration of the design right may not be excepted from public disclosure.

Documents prepared by the Norwegian Industrial Property Office for its own internal examination of a case may be excepted from public disclosure.

## **Section 22. The design applicant's duty to disclose information**

An applicant who invokes the design application against another party before the design has been made available to the public shall, if so requested, allow the person concerned access to the documents of the application. A person who in direct communication, in advertisements or otherwise, has made known to other persons that a design right has been applied for or granted without stating the number of the application or registration shall, if so requested, provide the number without undue delay. A person who has provided information that may give the impression that a design right has been applied for or granted shall, if so requested, provide information without undue delay as to whether the design has been registered or whether registration of the design has been applied for.

## **Chapter 4. The period of validity of a design registration**

### **Section 23. The period of validity of a design registration**

A design registration shall be valid for the period or periods of five years applied for in the application, calculated from the application date. A registration valid for a period shorter than twenty-five years may be renewed for further five-year periods up to a total registration period of twenty-five years. Each period shall run from the end of the previous period. For the design of a component part used for the purpose of the repair of a complex product so as to restore its original appearance (spare part), registration shall be valid for a maximum of five years.

### **Section 24. Renewal of registration**

Requests for renewal shall be made in writing to the Norwegian Industrial Property Office no earlier than one year before and no later than six months after the expiry of the registration period. A stipulated fee shall be paid. If the request for renewal is filed after expiry of the registration period, an additional fee shall be paid. Payment of the renewal fee within the time limits laid down in the first paragraph, stating the registration number of the design, shall be regarded as a request for renewal.

The renewal of a registration shall be entered in the Design Register and be published.

## **Chapter 5. Review and invalidity, etc.**

### **Section 25. Administrative review and review by a court of law**

If a design fails to fulfil the requirements laid down in sections 2 to 8, the design registration shall be wholly or partly cancelled by the Norwegian Industrial Property Office or be invalidated by a court of law pursuant to the provisions of sections 26 to 28. If the design has been registered for someone other than the person who is entitled to obtain registration of the design, the registration shall be cancelled pursuant to the provisions of sections 26 and 27 or be transferred to the rightful holder pursuant to sections 29 and 30.

The registration may not be cancelled or invalidated on the basis that the holder has only partial right to the design.

## **Section 26. Time limits and requirements regarding association with a case**

An administrative review may be requested by anyone during the period of registration unless otherwise provided by the second and third paragraphs.

A request for administrative review may only be filed by

1. a person who claims the right to the design if such claim is founded on the assertion that the holder is not entitled to hold the right to the design.
2. a person who applies for or holds the previous right if the claim is founded on the assertion that the registration violates rights referred to in section 7, second and third paragraphs.
3. the Ministry or by the person or body affected by the use if the claim is founded on the assertion that the registration violates rights referred to in section 7, first paragraph (2).

If the claim is founded on the assertion that the holder is not entitled to hold the right to the design, it must be put forward at the latest one year after the person making the claim learned of the registration and the other circumstances on which the claim is founded. If the holder acted in good faith when the design was registered or when the registration was transferred to the holder, the claim may not be put forward later than three years after the registration or transfer.

The first to third paragraphs shall apply correspondingly to legal proceedings concerning invalidity.

Legal proceedings concerning invalidity may also be instituted after the registration has lapsed or has been renounced. A person who brings a legal action in such a case must have legal interest in the case.

If a request for an administrative review claiming that the holder is not entitled to hold the right to the design is filed with the Norwegian Industrial Property Office within the time limit laid down in the third paragraph, legal proceedings concerning the question, notwithstanding the third paragraph, may be instituted within two months after the day the notification of the Norwegian Industrial Property Office's final decision was sent to the party concerned.

## **Section 27. Filing and processing of requests for administrative review**

A request for administrative review shall be filed in writing with the Norwegian Industrial Property Office, stating

1. the name and address of the person who filed the request,
2. the registration and, if appropriate, the design in the registration for which a review is requested,
3. the grounds on which the request is based, and
4. necessary documentation of circumstances cited in support of the request.

The request shall in addition fulfil the requirements laid down by the King in regulations. A stipulated fee shall be paid.

If the request fails to fulfil the requirements of the first paragraph and section 26, the Norwegian Industrial Property Office shall give a reasonable time limit in which to respond and, if possible, correction of the irregularities. If the irregularities are not corrected before expiry of the time limit, the request shall be refused unless the Norwegian Industrial Property Office finds that a new time limit should be given for correction.

If the request for review is filed by a person other than the holder, the Norwegian Industrial Property Office shall as soon as possible notify the holder of the request, giving a reasonable time limit in which to respond.

If two or more requests for review of the same registration are filed, the Norwegian Industrial Property Office may merge the cases to one case unless objectively justified objections are put forward.

The Norwegian Industrial Property Office may take into consideration circumstances not affected by the request for review. If a request for review is withdrawn, the Norwegian Industrial Property Office may continue processing of the case if special reasons so indicate. This paragraph shall only apply in so far as it is compatible with section 26, second paragraph.

Anyone may claim access to the documents of a case concerning administrative review. The provisions laid down in section 21, fourth and fifth paragraph, shall apply correspondingly.

### **Section 28. Amendment of a registered design**

The registration of a design may be partly cancelled by the Norwegian Industrial Property Office if the design in its amended form retains its identity and fulfils the requirements for registration and if the holder has requested or consented to the amendment.

The registration of a design may on the same requirements be found partly invalid by a court.

The amended design shall be entered in the Design Register and a new notification of registration shall be sent to the holder. Notification of the amendment enclosing reproductions of the design in its amended form shall be published.

### **Section 29. The right to the design**

A person who, in a case concerning administrative review, claims the right to a design that has been registered for another person may claim that the registration be transferred rather than cancelled.

If someone claims the right to a design in an application filed by another person, the Norwegian Industrial Property Office may transfer the application. The person to whom the application is transferred shall pay a new application fee.

If the Norwegian Industrial Property Office finds there to be doubt in a question as referred to in the first and second paragraphs, a person who claims the right to the design shall be encouraged to institute legal proceedings within a reasonable time limit. If legal proceedings are not instituted within the time limit, the Norwegian Industrial Property Office may disregard the claim. The claimant shall be notified of this.

### **Section 30. Legal proceedings concerning transfer of an application or registration**

A person who claims the right to a design in an application filed by another person or to a design that has been registered for another person may institute legal proceedings for transfer of the application or registration. Legal proceedings concerning transfer of a registration must be instituted within the time limit laid down in section 26, third paragraph, cf. sixth paragraph.

### **Section 31. Right to continued use**

If a person who is deprived of registration pursuant to section 29 or 30 has in good faith begun to use the design in Norway or has made extensive preparations to do so, he may continue or commence such use in exchange for a reasonable remuneration and on otherwise reasonable requirements. This right shall apply on the same requirements to holders of registered licences.

Rights pursuant to the first paragraph may only be transferred to other persons in conjunction with transfer of the undertaking in which the right arose or where use was intended to take place.



### **Section 32. The relationship between cases before the Norwegian Industrial Property Office and before the courts**

If proceedings before the Norwegian Industrial Property Office concerning transfer of an application are in progress, the Patent Office may not amend, abandon, refuse or grant the application before the case concerning transfer is finally decided. If the case concerns the right to a design in a registration, the registration may not be cancelled, amended or expunged before such date.

If legal proceedings have been instituted concerning the right to the design, the Norwegian Industrial Property Office shall defer the processing of a case concerning registration, cancellation or transfer until such legal proceedings are decided by a final and unappealable judgment. If legal proceedings are instituted concerning invalidity, the Norwegian Industrial Property Office shall defer the processing of a case concerning cancellation until such date.

A person who has requested an administrative review may not institute legal proceedings concerning invalidity or transfer while the case before the Norwegian Industrial Property Office is in progress.

### **Section 33. Cancellation on the initiative of the Norwegian Industrial Property Office**

If the registration of a design or the renewal or amendment of a registration has clearly occurred erroneously, the Norwegian Industrial Property Office may on its own initiative wholly or partly cancel the entry.

The holder of the registration shall be notified with a reasonable time limit in which to respond before cancellation takes place.

### **Section 34. Expunction of the registration**

If a registration is not or cannot be renewed or if the holder submits a written request for expunction, the registration shall be expunged from the Design Register after expiry of the registration period.

If legal proceedings have been instituted concerning transfer of the registration or if the design right is subjected to execution, the registration may not be expunged on the request of the holder before such proceedings are decided by a final and unappealable judgment or the execution lapses.

### **Section 35. Entry in the Design Register and publication**

If a request for administrative review of a registration has been submitted or legal proceedings concerning invalidity or transfer of a registration have been instituted, this shall be entered in the Design Register and be published. When the case is finally decided, the decision shall be entered in the Design Register and be published.

Cancellation of a registration pursuant to section 33 and removal of a registration pursuant to section 34 shall be entered in the Design Register and be published.

The right to continued use pursuant to section 31 shall be entered in the Design Register and be published if so requested by one of the parties.

## **Chapter 6. Appeals, etc.**

## **Section 36. Appeals concerning the decisions of the Norwegian Industrial Property Office**

If, in relation to a design application or a request that an international design registration shall apply in Norway, the Norwegian Industrial Property Office decides against the applicant, an appeal may be made by the applicant to the Norwegian Board of Appeal for Industrial Property Rights (Board of Appeal).

The decision in a case concerning administrative review pursuant to section 25 may be appealed to the Board of Appeal by the party that is decided against. If a claim pursuant to section 29 concerning transfer of an application or registration is granted, the decision may be appealed to the Board of Appeal by the applicant or the holder.

A decision to cancel an entry pursuant to section 33 may be appealed to the Board of Appeal by the holder.

The decision to reject or refuse a request for

1. resumption pursuant to section 19, fourth paragraph,
2. exceptions from public disclosure pursuant to sections 21, fourth paragraph, 27, sixth paragraph, and 38, fifth paragraph,
3. access to documents in cases pursuant to this Act,
4. renewal of a design registration pursuant to section 24, or
5. reinstatement of rights pursuant to section 50 may be appealed to the Board of Appeal by the person who submitted the request.

Other decisions by the Norwegian Industrial Property Office may not be appealed.

## **Section 37. Filing of appeals**

An appeal must be filed in writing with the Norwegian Industrial Property Office within two months after the date that notification concerning the decision is sent to the party concerned. The appeal shall state

1. the name and address of the appellant,
2. the decision that is appealed against,
3. the desired amendment to the decision, and
4. the grounds on which the appeal is based.

The appeal shall in addition fulfil the requirements laid down by the King in regulations. The stipulated appeal fee shall be paid.

## **Section 38. Consideration of appeals**

Other parties to the case shall be notified of the appeal as soon as possible and be given a reasonable time limit in which to respond.

If the requirements for consideration of the appeal are fulfilled, the Norwegian Industrial Property Office may set aside or amend the decision if it finds the appeal to be clearly justified. If such a decision is not made, the documents of the case shall be sent to the Board of Appeal. If the Norwegian Industrial Property Office sends a statement to the Board of Appeal, a copy shall be sent to the parties.

If the requirements for consideration of the appeal are not fulfilled, the appellant shall be given a reasonable time limit in which to respond and, if possible, correction of the irregularities. If the irregularities are not corrected before expiry of the time limit, the appeal shall be dismissed unless the Board of Appeal finds that a new time limit for correction should be given.

If the appeal is considered, the Board of Appeal shall make the examination that the appeal gives grounds for. It may take into consideration matters not affected by the appeal. If the appeal is withdrawn, the Board of Appeal may continue consideration of the case if there are special reasons for so doing. This paragraph shall apply only in so far as it is compatible with section 26, second paragraph.

Anyone may claim access to the documents of an appeal case. The provisions laid down in section 21, fourth and fifth paragraphs, shall apply correspondingly.

### **Section 39. Review by a court of decisions made by the Norwegian Board of Appeal for Industrial Property rights**

Decisions made by the Norwegian Industrial Property Office may only be brought before the courts if the right of appeal pursuant to section 36 has been used and the Board of Appeal has decided the appeal. The previous sentence does not affect the right to institute legal proceedings concerning invalidity or transfer pursuant to sections 25 and 30.

The decision of the appeal case by the Board of Appeal may be brought before the courts by the party against which the decision was made unless otherwise provided by the third paragraph. Legal proceedings must be instituted within two months after the date that notification concerning the decision is sent to the party concerned. Information concerning the time limit for instituting legal proceedings shall be included in the notification of the decision. Legal proceedings shall be brought against the State represented by the Board of Appeal.

The decision by the Board of Appeals of cases concerning administrative transfer of an application or registration may not be brought before the courts. The same applies to decisions where the Board of Appeals rejects or refuses a request for administrative review, or upholds a decision of the Norwegian Industrial Property Office concerning rejection or refusal.

## **Chapter 7. Compensation and penalties, etc.**

### **Section 39 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 40. Compensation and damages for design infringements**

For design infringements 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 procured 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 intentionally or through gross negligence, the infringer shall, if the rightholder so demands, pay compensation corresponding to double a reasonable licence free 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 procured as a result of the infringement.

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

### **Section 41. Measures to prevent infringements**

In order to prevent an infringement, the court may, insofar as this is deemed to be reasonable, order preventive measures to be taken in relation to products that constitute a design infringement, and in relation to materials and implements that are principally used, or intended to be used, for the manufacture of such products. Such measures can, among other things, entail products 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 39 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 40. Measures shall be carried out for the defendant's account unless special grounds indicate otherwise.

### **Section 41 a Permission for exploitation**

Instead of stipulating measures pursuant to Sections 39 a and 41, the court may, when extraordinary grounds for doing so exist, grant permission for exploitation of the design during the duration of the right to the design, 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.

### **Section 41 b Communication of information about judgments in infringement cases**

In a judgment in an infringement case, the court 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 39 a second sentence.

### **Section 42. Use prior to registration**

If any person, without the applicant's consent, exploits a design for which an application for registration has been submitted, and if the exploitation takes place after the documents showing the design have become public pursuant to Section 21, but before the announcement of the registration, Section 39 a, Section 40 first to third and fifth paragraphs, Sections 41, 41 a and 41 b shall apply correspondingly if the application leads to registration.

The statutory period of limitation for claims pursuant to this provision does not commence until the design has been registered.

### **Section 43. Grounds for judgment in favour of the defendant in civil cases**

In civil cases concerning design infringement, judgment that the registration is invalid or that its transfer may be claimed pursuant to the provisions of chapter 5 may only be made if a final and unappealable judgment has already been passed declaring the registration invalid or ordering its transfer or if the Norwegian Industrial Property Office has made a final decision ordering cancellation or transfer.

### **Section 44. Penalties**

Any person who commits a design infringement 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 damage 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.

For violation of this provision it may be abstained from prosecution if prosecution is not required by the public interest, cf. Procedural Penal Act Section 62 a.

### **Section 45. Penalties and compensation in the event of breaches of the duty to disclose information pursuant to section 22**

A person who wilfully or negligently has breached the duty to disclose information pursuant to section 22 shall be liable to fines and shall compensate for any damage to the extent deemed reasonable.

## **Chapter 8. Provisions concerning legal proceedings**

### **Section 46. Obligatory venue**

The following actions must be brought before Oslo District Court:

1. Actions concerning the right to a design for which an application for registration has been submitted pursuant to this Act, cf. Section 30.
2. Actions concerning a review of a decision made by the Norwegian Industrial Property Office's Board of Appeal as mentioned in Section 39.
3. Actions concerning invalidity or the transfer of a registration cf. Sections 25 and 30.
4. Civil actions concerning design infringements.

The Oslo District Court is the venue for applicants and holders who are not resident in Norway.

### **Section 47. Notification of legal proceedings**

A person who institutes legal proceedings concerning invalidity or transfer of a registration shall at the same time notify the Norwegian Industrial Property Office and by means of a registered letter give notification to any licensee entered in the Design Register and whose address is recorded therein. A licensee who institutes legal proceedings concerning design infringement shall in the same way notify the person entered in the Design Register as the design right holder if his address is recorded in the register.

If the plaintiff does not document that the necessary notifications have been given, the court may fix a time limit during which the notifications must be given. If the time limit is not observed, the case shall be dismissed.

## **Section 48. Forwarding of judgments**

The court shall forward transcripts of judgments in civil disputes pursuant to this Act to the Norwegian Industrial Property Office.

## **Chapter 9. Miscellaneous provisions**

### **Section 49. Address for correspondence**

Notifications from the Norwegian Industrial Property Office or the Norwegian Board of Appeal for Industrial Property Rights to an applicant, design proprietor, or a party requiring an administrative review are always considered as submitted when sent to the address specified most recently to the Norwegian Industrial Property Office or the Norwegian Board of Appeal for Industrial Property Rights by the party concerned. The address shall be recorded in the Design Register. If the applicant or proprietor has a representative, notifications according to this paragraph may be sent to the representative.

If the recorded address proves to be incorrect, the notification or an extract thereof, shall be published in the Norwegian Design Journal (Norsk Designtidende) with an indication that the document may be obtained at the Norwegian Industrial Property Office or the Norwegian Board of Appeal for Industrial Property Rights.

May service of process or other procedural notifications not be submitted at the stated address, paragraph 2 applies correspondingly to the Court. In such case, the document shall be considered served or notification given four weeks after the publication in the Norwegian Design Journal (Norsk Designtidende).

If the applicant or the design proprietor otherwise has appointed a representative to act on his behalf in matters concerning the application or the design, the name and the address of the representative shall be recorded in the Design Register. This also applies if a party requesting an administrative review has appointed a representative to act on his behalf in matters concerning the request.

### **Section 50. Reinstatement of rights**

A person who, in relation to the Norwegian Industrial Property Office, has failed to observe a time limit prescribed in or pursuant to the provisions laid down in chapter 2, 4 or 6 and, as a result of this, has suffered loss of rights, shall, when so requested, be granted reinstatement of rights if he can prove that he or his representative has taken the care that may reasonably be expected. The claim must be filed in writing with the Norwegian Industrial Property Office within two months after removal of the cause of the failure to observe the time limit and not later than four months after expiry of the time limit. Within the same time limit, the omitted act shall be carried out. A stipulated fee shall be paid.

The first paragraph shall not apply to time limits pursuant to section 16 concerning priority or the time limit for bringing legal proceedings pursuant to section 39, paragraph 2, 2. sentence. Nor shall reinstatement of rights be granted in cases of failure to observe the time limit laid down in section 37 for appeal against decisions referred to in section 36, second paragraph.

### **Section 51. The Design Register, etc.**

The Norwegian Industrial Property Office keeps the Design Register and issues a publication where registrations, etc. are published.

Anyone has a right to inspect the Design Register and to receive a certified extract therefrom. A stipulated fee shall be paid for extracts.

A stipulated fee shall be paid for copies of documents available to the public pursuant to this Act.

The fees for non-certified printouts and copies shall be set to a level where the total income does not exceed the actual costs of communicating the information, with a reasonable profit added.

## **Section 52. Regulations pursuant to this Act (Fees, etc.)**

The King may in regulations issue further provisions for supplementation and implementation of this Act. The King may, inter alia, issue provisions concerning

1. the scope of the Norwegian Industrial Property Office's examination of applications,
2. international applications and registrations,
3. length of time limits pursuant to the Act,
4. division and merger of applications and registrations,
5. keeping of and access to the Design Register, and
6. fee rates and payment. The King may here prescribe fees for division and merger of applications and registrations.

## **Section 53. Licensing**

A design right holder may grant another person a right to use the design (licence). The licensee may not further transfer the right unless his agreement with the holder so permits.

If the licence belongs to an undertaking, it may be transferred together with the undertaking unless otherwise agreed. A person who transfers the undertaking, shall remain liable for fulfilment of the agreement.

A licence shall be entered in the Design Register and be published if one of the parties so requests. The same applies if a registered licence has been transferred or has ceased to be valid.

## **Section 54. The legal effect, etc. of entries in the Design Register**

Legal proceedings that apply to a design registration may always be instituted against the person registered as holder of the design right in the Design Register and notifications that the Norwegian Industrial Property Office shall give to the holder may always be sent to this person.

If a design right is transferred to another person, this shall be entered in the Design Register and be published if one of the parties so requests. If some of the designs in a co-registration pursuant to section 15 are transferred, the transfer may only be entered in the Design Register and be published if the holder requests that the registration be divided. A stipulated fee shall be paid for such division.

Liens attaching to the design right shall be entered in the Design Register and be published after notification by the execution and enforcement authorities (namsmyndighetene).

A voluntary transfer of a design registration or a licence for which registration has been claimed, will in case of a conflict prevail over transfers or licences that are not registered or for which registration has later been claimed, as long as the right holder in question acted in good faith at the time registration was claimed.

## Chapter 10. International design registration

### **Section 55. Definitions**

By international design registration is meant registration of a design undertaken by the International Bureau of the World Intellectual Property Organization (WIPO) on the basis of the Geneva Act of the Hague Agreement of 6 November 1925 concerning the International Registration of Industrial Designs (Geneva, 2 July 1999).

The Norwegian Industrial Property Office is the registration authority in matters relating to the international registration of designs in Norway.

### **Section 56. Application for international design registration**

A person who is a Norwegian national or domiciled or has a real and effective industrial or commercial establishment in Norway may apply for international registration of a design by filing an application for this with the Norwegian Industrial Property Office or the International Bureau.

The application shall fulfil the requirements laid down in the Geneva Act of the Hague Agreement.

When an application for international design registration is filed with the Norwegian Industrial Property Office, the Norwegian Industrial Property Office shall forward the application to the International Bureau within the time limit laid down in regulations. A stipulated fee shall be paid for such forwarding.

### **Section 57. Requirement that an international design registration shall have effect in Norway**

When the Norwegian Industrial Property Office receives a notification from the International Bureau with a requirement from the holder that an international registration shall have effect in Norway, the Norwegian Industrial Property Office shall examine whether the registration applies to a design as referred to in section 2 (1) and whether the requirements laid down in section 7, first paragraph, are fulfilled.

If the requirements are not fulfilled, the Norwegian Industrial Property Office shall wholly or partly refuse to give the international registration effect in Norway. Such refusal must be notified to the International Bureau within the time limit laid down in regulations.

In the event of refusal, the holder of the international registration may, on the requirements laid down in regulations, request the Norwegian Industrial Property Office to re-evaluate the question of whether the international registration shall have effect in Norway.

If the requirements are fulfilled, the Norwegian Industrial Property Office shall enter the international registration in the Design Register and publish that it has effect in Norway.

Sections 19 and 50 shall apply correspondingly to the Norwegian Industrial Property Office's consideration of requests that an international registration shall have effect in Norway. If the international holder has claimed priority, section 16 shall apply.

### **Section 58. The effects of an international design registration**

An entry in the Design Register indicating that an international registration has effect in Norway has the same effect as if the design was registered in Norway. The entry has effect from the assumed date of the registration at the International Bureau.



Until the international registration is entered in the Design Register and published pursuant to section 57, fourth paragraph, the registration has the same effect as an application for design registration in Norway. If anyone uses the design without the consent of the international holder and this use takes place after the international registration has been published by the International Bureau, sections 39 a, 40 first to third and fifth paragraph and sections 41, 41 a and 41 b shall apply correspondingly if the registration is subsequently entered in the Design Register. The period of limitation for claims pursuant to this paragraph does not commence until the registration has been entered in the Design Register.

The entry may be renewed pursuant to the provisions of the Geneva Act of the Hague Agreement. When the Norwegian Industrial Property Office receives notification from the International Bureau of renewal of an international registration, this shall be entered in the Design Register and published.

An entry in the Design Register indicating that an international registration has effect in Norway may be cancelled, invalidated, transferred or removed pursuant to the provisions of chapter 5. Cancellation pursuant to section 33 must be carried out within the time limit laid down in regulations.

### **Section 59. The effect of expiry of an international design registration**

If an international registration wholly or partly expires, it shall also cease to have effect in Norway to the same extent. This shall be entered in the Design Register and be published.

## Chapter 11. Final provisions

### **Section 60. Repeal of the Designs Act of 29 May 1970 and terminological amendments to other Acts**

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### **Section 61. Other statutory amendments**

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### **Section 62. Commencement and transitional provisions**

The Act shall apply from the date decided by the King. The King may bring into force the various provisions on different dates.

The Designs Act shall also apply to designs which were registered or for which registration was applied before the Act entered into force with such exceptions as follow from this section.

In the case of applications filed before the Act entered into force, the previous provisions concerning applications, processing, right of inspection, appeals and review of appeal decisions by a court shall apply.

The provisions of sections 4 and 8 do not apply to designs which were registered or for which registration was applied before the Act entered into force. Review by the Norwegian Industrial Property Office or the courts of a registration made on the basis of the previous provisions shall take place on the basis of these provisions.

If anyone, before the Act entered into force, used a design in a manner that did not require the consent of the holder pursuant to the previous provisions but which requires such consent pursuant to this Act, the person concerned may continue this use notwithstanding the new provisions. The same right may be invoked by persons who have made substantial preparations to use a design.

