

# **Act (No. 2002:570) Amending the Design Protection Act (1970:485)**

**(issued on May 30, 2002)**

In accordance with the decision by the Parliament, it is hereby prescribed, as regards the Design Protection Act (1970:485),

*that* Articles 6, 23, and 28 to 30 shall cease to apply

*that*, in Articles 34 and 37, the word “goods” shall be replaced by “product”

*that* Articles 1 to 5, 7, 8, 10 to 14, 18, 20, 21, 24, 26, 27, 31, 32, 38, 39 and 42 to 44 shall read as follows, and

*that* in the Act shall be inserted thirteen new Articles, numbered 1a, 2a, 3a, 4a, 7a and b, 8a to d, 18a and 31a and b, reading as follows.

## **1. For the purposes of this Act:**

1. *design* means the appearance of the whole or a part of a product resulting from the features of the details of the product or of the details of the ornamentation of the product, in particular as regards the lines, contours, colours, shapes, textures or materials;

2. *product* means any industrial or handicraft item, including parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic type-faces, but excluding computer programs;

3. *complex product* means a product which, through being composed of multiple replaceable components, can be disassembled and then reassembled.

**1a.** The person who has created a design (the designer) or his successor in title, may obtain, through registration, an exclusive right to exploit the design according to this Act (design right).

## **2. A design right can be obtained only 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 the filing of the application for registration or, if priority is claimed according to Articles 8 to 8d, before the date of priority. Designs shall be deemed to be identical despite existing differences if their features differ only in immaterial details.

A design shall be considered to have an individual character if the overall impression it produces on the informed user differs from the overall impression produced by any other design which has been made available to the public before the date indicated in the second Paragraph. In assessing whether the design has an individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

**2a.** A design relating to a part of a complex product shall be considered to be new and having a individual character only if

1. the component part or part thereof , once it has been incorporated into the complex product, remains visible during the normal use of that product, and

2. the design to the extent that it remains visible in itself fulfils the requirements in Article 2 as to novelty and individual character.

The term “normal use” shall mean the use by the end user, excluding maintenance, service and repair work.

**3.** A design shall be deemed to have been made available to the public if it has been published in the context of a registration procedure or otherwise. The same shall apply if the design has been exhibited, used in trade or otherwise become known.

Notwithstanding the first Paragraph, a design shall not be deemed to have been made available to the public

1. if the circles specialised in the sector concerned operating within the European Economic Area could not, in the normal course of business, reasonably have become knowledgeable of the acts mentioned in the first Paragraph before the date of the filing of the application for registration or, if priority is claimed under Articles 8 to 8d, before the priority date, or

2. if the design has become known for the sole reason that it has been disclosed to a third person under explicit or implicit conditions that the design shall be kept confidential.

**3a.** A design shall not be deemed to have been made available to the public if it has become known within a period of twelve months preceding the date indicated in Article 2, second Paragraph, provided that the design has been made available to the public or has otherwise been made known

1. by the designer,

2. by a third person as a result of information provided, or action taken, by the designer,  
or

3. as a consequence of an abuse in relation to the designer.

References in this Article to the designer apply also to his successor in title.

**4.** A design right shall not subsist

1. if the design is contrary to morality or public order.

2. if in the design has been included, without authorization, a State coat of arms, a State flag or another State emblem, a State control or guarantee warrant, another designation which alludes on the Swedish State and thereby gives the design an official character, a Swedish municipal coat of arms or such an international designation which is protected under the Act (1970:498) on the Protection of Coats of Arms and Certain Other Official Designations, or anything that may be easily confused with a coat of arms, a flag, an emblem or a designation as referred to above,

3. if the design is in conflict with another design that was not available to the public prior to the date indicated in Article 2, second Paragraph, but that was included in an application for registration in Sweden or at the Office for Harmonization of the Internal Market (Trademarks and Designs) for which a prior filing or priority date applies provided that this design has then been made available to the public,

4. if the design contains, without authorization

a) another person's trade name or trade symbol, protected in Sweden, or anything that can be perceived as a sign that has been, in the course of business or trade activities, established on the market in Sweden for another person,

b) another person's portrait or anything that can be perceived as another person's family name, artistic name or similar name, unless the portrait or the name obviously relates to a person who is long deceased,

c) anything that may be perceived as the title of another person's literary or artistic work protected in Sweden, where the title is distinctive, or anything that violates another person's copyright in such a work or in a photographic picture which is protected in Sweden.

**4a.** A design right must not subsist in such features of the appearance of a product

1. which are solely dictated by the technical function of that product, or
2. which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

Notwithstanding what is said in the first Paragraph, item 2, a design right may subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a system consisting of modules.

**5.** The design right shall, with the limitations contained in Articles 7 to 7b, imply that no other person may exploit the design without the authorization by the holder of the design right (the design holder). The prohibition against exploitation comprises, in particular, the manufacture, offering for sale, marketing, importation into and exportation from Sweden, or the use of any product of which the design forms part or to which it is applied, or to keep in stock such a product for the purposes now mentioned.

A design right shall include any other design that does not produce, on the informed user, a different overall impression than that of the registered design (scope of protection). In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

**7.** From the design right are excluded acts of exploitation

1. that are carried out privately and for non-commercial purposes
2. that are carried out for experimental purposes, or
3. that imply reproduction for the purposes of quotation or teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design and, furthermore, are carried out on condition that mention is made of the source.

**7a.** From the design right is furthermore excluded the equipment on ships and aircraft belonging to another State when these temporarily enter the territory of Sweden.

The same applies to importation into Sweden of spare parts and accessories for the purpose of repairing of such craft, as well as the execution of repair on such craft.

**7b.** The design right does not comprise the use of a product if it has been put on the market within the European Economic Area by the design holder or with his consent.

**8.** If a design has been included in the application for a design registration or for protection as a utility model in a foreign State party to the Paris Convention of March 20, 1883, for the Protection of Industrial Property (the Paris Convention) and if an application for registration of the design is filed in Sweden within six months from the application in the foreign State, the application in Sweden shall, for the purposes of Article 2, be considered as having been made at the same time as the application in the foreign State (the priority date). The same shall apply if the design has been included in such an application that has been made in a State or territory which is party to the Agreement Establishing the World Trade Organization (the WTO Agreement).

The same priority may be enjoyed also on the basis of an application for registration which concerns any other State or any other territory if a corresponding priority on the basis of a Swedish application is granted where the earlier application has been made and if the legislation in force there in all essential features corresponds to the Paris Convention.

An applicant who wishes to enjoy priority shall make a claim to this effect in the application for registration. The applicant shall in that context indicate where and when the application was made on which the claim is based. The applicant shall also, as soon as this can be done, indicate the number of the earlier application.

**8a.** The Registration Authority may invite the applicant to prove, within a certain time, the priority claimed by filing the following documents.

1. A certificate about the name of the applicant and of the filing date, issued by the Authority having received the application.
2. A copy, certified by the same Authority, of the application document and the picture attached thereto showing the design.

The time indicated in the invitation must not expire earlier than three months from the filing of the application in this country.

**8b.** Priority may be granted only on the basis of the first application where the design has been included.

If the person who filed the first application, or his successor in title, has filed later, with the same Authority, an application relating to the same design, the later application may be invoked as a basis for priority. This applies, however, only if the earlier application has, when the later application is filed,

1. been withdrawn, removed from the files or rejected without having been made available to the public, and
2. not given rise to any remaining right based on it or forming the basis for any right to priority.

Where someone has obtained a priority on the basis of a later application according to the second Paragraph, the earlier application may no longer be invoked as a basis for priority.

**8c.** In the case of an application for a joint registration under Article 11, priority may be obtained for one or several of the designs.

A priority may, in the case of such an application, be claimed from several earlier applications. This applies even if the earlier applications have been filed in different countries.

**8d.** If the provisions in Articles 8 to 8c are not observed, the right to priority does not apply.

**10.** Anyone wishing to apply for the registration of a design shall apply in writing to the Registration Authority.

The application shall contain indications about who created the design and about the product or products to which the design is intended to be applied or in which it is intended to be incorporated, and pictorial material showing the design. If registration is sought by a person other than the designer, the applicant shall prove his right to the design.

If the applicant, before the publication of a design according to Article 18, files also a model, the model shall be deemed to show the design.

The application shall furthermore in other respects fulfil the requirements under such provisions as may be issued pursuant to Article 49. The applicant shall also pay the application fees and supplementary fees as prescribed in Article 48.

**11.** An application may include several designs if the products for which the designs are intended to be used or form part of belong to the same class. For the purpose of determination the class, the classification under the Locarno Agreement of October 8, 1968 Establishing an International Classification for Industrial Designs is part of Swedish law.

**12.** The Registration Authority may invite an applicant who is not domiciled in Sweden to appoint a representative empowered to receive communications in the case and having his domicile in this country, and to notify the Authority about the representative. If the applicant does not comply with the invitation, communications may be served through the transmission of the document by mail to the applicant at his latest known address. A communication shall be deemed to have been served when this has been done.

**13.** An application for registration shall be deemed to have been filed only when the applicant has filed pictorial material or a model showing the design.

At the request by the applicant, the design contained in an application may be altered where the design after the alteration preserves its identity and meets the requirements for protection under this Act.

**14.** The Registration Authority shall examine whether the application fulfils the requirements under Articles 10, 11 and 13. The Registration Authority shall furthermore examine whether the application concerns a design under Article 1, item 1, and whether there is an obstacle to a design right according to Article 4, items 1 or 2.

If the application does not fulfil the requirements under the first Paragraph, the Registration Authority shall invite the applicant to complete or amend his application within a certain time. The invitation shall contain information to the applicant that the application may be removed from the files if he does not respond within the time indicated.

Where the applicant does not submit in due time a statement relating to the invitation under the second Paragraph, the Registration Authority shall remove the application from the files.

The Registration Authority shall reinstate an application which has been removed from the files if the applicant, within two months from the expiry of the time indicated in the invitation, completes or amends his application and pays the prescribed reinstatement fee. An application may be reinstated only once.

**18.** If the application documents are complete and the Registration Authority has not, on the basis of an examination according to Article 14, first Paragraph, found any obstacle against the registration, the design shall be entered into the Register and a notice to that effect be published.

Anyone who wishes to file an opposition against the registration shall do so in writing to the Registration Authority within two months from the date of the publication of the notice.

The Registration Authority shall inform the design holder about the opposition and give him an opportunity to file observations, if the opposition is not obviously unfounded.

If an opposition is withdrawn, the opposition procedure may nevertheless be completed where special reasons exist.

**18a.** An opposition may be filed only by

1. any person who considers himself to have a right in the design, if the opposition is based on an obstacle against the design right under Article 1a;
2. any person who applies for or is the holder of the right, if the opposition is based on an obstacle against the design right under Article 4, items 3 or 4;
3. anyone who is affected by the right, where the opposition is based on an obstacle against the design right under Article 4, item 2.

In other respects there is no limitation as regards the possibilities to file an opposition.

**20.** Following an opposition, the Registration Authority shall revoke, wholly or in part, a registration where an obstacle against registration existed under Articles 1 to 4a and the obstacle still exists or where the registration has been effected in contravention of Article 13, second Paragraph.

The Registration Authority shall reject the opposition where no obstacle exists against the design right.

A registration may be revoked in part only if the design holder so requests or consents to a request to that effect and the design in its amended form maintains its identity and fulfils the requirements for protection under this Act.

If the decision by the Registration Authority has taken legal force, a notification to that effect shall be published. If the decision implies that the registration is invalidated wholly or in part, this fact shall be recorded in the Register.

**21.** The applicant may, where the decision goes against him, appeal against a final decision by the Registration Authority in a case concerning an application for registration of a design. Any final decision relating to an opposition against a registration may be appealed by the design holder and the opponent where it has gone against the person who wishes to appeal. Where the opponent withdraws his appeal, the case may still be brought to a decision where there are special reasons for that.

The applicant may appeal against a decision whereby a request for reinstatement under Article 14, fourth Paragraph, has been rejected or a request for transfer under Article 17 has been approved. The person who has filed a request for transfer may appeal against any decision rejecting the request.

**24.** The registration of a design is valid for one or more periods of five years, computed from the date of filing of the application for registration. A registration valid for a period shorter than twenty-five years may be renewed, upon request, for additional periods of five years up to a total term of 25 years. Each such period shall be computed from the end of the preceding period.

As regards a design which relates to a part intended for the repair of a complex product so that it gets back its original look, the registration never lasts for more than at most three five-year periods.

**26.** If the design holder has granted someone else the right to exploit the design (license), the licensee may transfer his right further only if there is an agreement to that effect.

If the license forms part of a business activity, it may, however, be transferred together with the activity, unless there is an agreement to the contrary. In such a case, the transferor remains liable for the fulfilment of the license agreement.

**27.** If a design right has been transferred to another person or a license has been granted or transferred, an entry to this effect shall, upon request and against the payment of the

prescribed fee, be made in the Design Register. Where it is proved that a license recorded in the Register has expired, the entry shall be removed.

The provisions of the first Paragraph shall apply also in relation to a right as provided in Article 32, second Paragraph.

If a joint registration has been effected, a transfer of the design right shall be recorded only in relation to all the designs.

As the design holder shall, for the purposes of lawsuits or other legal cases relating to the right, be deemed the person who was last recorded in the Design Register in this capacity.

**31.** A Court shall, upon the filing of an action in this respect, revoke, wholly or in part, a registration where an obstacle against the granting of a design right has existed under Articles 1 to 4 and the obstacle still remains, or where the registration has been effected in contravention of Article 13, second Paragraph.

A registration may, however, be revoked in part only where the design holder so requests and the design in its amended form maintains its identity and fulfils the requirements for protection under this Act.

The registration must not be revoked on the ground that the person who has obtained the registration was entitled only to a part of the design right.

When the judgement has obtained legal force, it shall be transmitted to the Registration Authority for recording in the Design Register.

**31a.** An action for invalidation of a registration may be filed only by

1. any person who considers himself entitled to the design, if the action is based on an obstacle against the design right under Article 1a;
2. any person who applies for, or is the holder of, the right, if the action is based on an obstacle against the design right under Article 4, items 3 or 4;
3. anyone who is affected by the right, if the action is based on the existence of an obstacle against the registration under Article 4, item 2.

In all other cases an action may be brought by anyone who suffers an injury from the registration.

An action based on any of the provisions in Article 4, items 1 or 2, may be brought also by a Public Authority appointed by the Government.

An action referred to in the first Paragraph, item 1 shall be brought within one year from the time when the plaintiff had gained knowledge about the registration and the other circumstances on which the action is based. Where the design holder was in good faith when the design was registered or when the design right was transferred to him, an action may not be brought later than three years from the registration.

**31b.** A Court may declare a design right to be invalid also after it has been terminated or has been surrendered.

As regards such an action, the provisions of Article 31a shall apply.

**32.** If a design has been registered for a person other than the one who is entitled to it under Article 1a, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him. Any action in this respect shall be brought within the period prescribed in Article 31a, fourth Paragraph.

If a person, who has been deprived of a registration, commenced, in good faith, the exploitation of the design in the course of business activities in this country, or has taken significant measures in this respect, he may, against the payment of an equitable remuneration and on other conditions considered reasonable, continue the exploitation or commence the intended exploitation while maintaining its essential features. The same right shall, under the corresponding conditions, be granted to any licensee recorded in the Register.

A right as prescribed in the second Paragraph may be transferred to another person only in connection with the business activity in which it was exploited or where the exploitation was intended to take place.

**38.** If anyone exploits, in violation of Article 5, a design included in an application for registration after a document showing the design has been made publicly available, the provisions on design infringement shall apply accordingly to the extent that the application results in a registration. A criminal penalty may, however, not be imposed and compensation for injury on the basis of an exploitation which took place before a notice of the registration was published according to Article 18, may be decided according to Article 36, second Paragraph.

The provisions in Article 36, third Paragraph, do not apply if the action for compensation was brought no later than one year after the registration of the design.

**39.** If the registration of a design has been revoked or the design right has been declared null and void through a decision or a judgement having legal force, the Court may not adjudicate any sanctions or decide on other measures according to Articles 35 to 38.

If an action is brought for a design infringement and the person against whom the action is brought claims that the registration be revoked, the Court shall, upon his request, order the proceedings to be suspended until the question of the revocation of the registration has been finally decided. If the action in this respect has not been brought, the Court shall, in connection with the order for suspension, prescribe a certain time for him within which such an action shall be brought.

**42.** Anyone who wishes to bring an action for the revocation of a design registration or for the transfer of a registration, shall notify this fact to the Registration Authority and inform anyone who, according to the Design Register, holds a license for the exploitation of that design. A licensee who wishes to bring an action for design infringement or for the resolution of a question as referred to in Article 41, first Paragraph, shall inform the design holder about this fact.

The obligation to notify under the first Paragraph shall be considered to have been met when a notice has been sent in registered, pre-paid mail to the address recorded in the Design Register.

If it is not shown, at the time when the action is brought, that a notification or a notice has been furnished according to the first Paragraph, the plaintiff shall be given sufficient time for this purpose. Where he fails to comply in this respect in time, his action shall not be admissible.

**43.** Where there is not, under the Code of Judicial Procedure, any Court competent to consider an action concerning the entitlement to design, the revocation of a design registration, the transfer of such a registration, the invalidation of a design registration under Article 31b, a right as prescribed in Article 32, second Paragraph, a compensation under Article 40, second Paragraph or the resolution of a question under Article 41, the action shall be brought at the District Court in Stockholm (Stockholms tingsrätt).



**44.** Copies of judgements or final decisions in cases referred to in Articles 16, 31 to 32, 35 to 38 or 41, shall be transmitted to the Registration Authority.

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1. This Act enters into force on July 1, 2002.
  2. The new provisions shall apply also to designs which are registered at the point in time of the entry into force or which are being registered on the basis of applications filed before that point in time, unless otherwise follows from what is prescribed below.
  3. Applications for registration which were filed before October 28, 2001, shall, as regards the registration procedures and the requirements for registration, be processed and decided upon according to the provisions previously in force.
  4. The provisions of Articles 2a and 4a shall not apply to designs which have been registered on the basis of applications filed before the entry into force.
  5. The question of the revocation of a registration of a design which has been registered under the previous provisions shall be considered on the basis of the previous provisions.
  6. A design registration for which the term of protection of 15 years has expired before the entry into force but after October 27, 2001, may, upon request, be renewed for further terms of five years up to, in total, 25 years computed from the date of filing of the application for registration, if a request for renewal is filed before December 31, 2002.
  7. If someone before the entry into force has commenced the exploitation of a design in a way which did not require the consent of the design holder under the previous provisions but which requires such consent under this law, he or she may, notwithstanding the new provisions, continue the planned activity. The same right has, under the same conditions, also anyone who has undertaken significant activities in order to exploit the design.
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