

The Ministry of Justice  
Stockholm

March 5, 2013

**DESIGN PROTECTION ACT**

(Swedish Statute Book, SFS, 1970:485, as amended up to August 1, 2012)

*Unofficial translation*

**General provisions**

**Article 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.

Provisions on Community designs in accordance with Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs are contained in Articles 50–52. Act (2004:1154).

**Article 1 a.** 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). Act (2002:570).

**Article 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 8–8 d, 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. Act (2002:570).

**Article 2 a.** 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. Act (2002:570)

**Article 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 88 d, 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. Act (2002:570).

**Article 3 a.** 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. Act (2002:570).

**Article 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. *Act (2002:570)*.

**Article 4 a.** 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 of modules. *Act (2002:570)*

**Article 5.** The design right shall, with the limitations contained in Articles 7–7 b, 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. *Act (2002:570)*.

**Article 6.** *Repealed by Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 7 a.** From the design right is furthermore excluded the equipment on ships and aircrafts 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 crafts, as well as the execution of repair on such crafts. *Act (2002:570)*.

**Article 7 b.** 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. *Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 8 a.** 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. *Act (2002:570)*

**Article 8 b.** 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. *Act (2002:570)*.

**Article 8 c.** 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. *Act (2002:570)*.

**Article 8 d.** If the provisions in Articles 8–8 c are not observed, the right to priority does not apply. *Act (2002:570)*.

### **Application for registration and its examination**

**Article 9.** Registration Authority is the Patent and Registration Office.

**Article 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. *Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 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. *Act (2002:570)*

**Article 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. *Act (2002:570)*.

**Article 15.** If an obstacle to registration exists even after a statement has been submitted and if the applicant has been given an opportunity to file a statement concerning the obstacle, the application shall be rejected, unless there is a reason for issuing a new invitation to the applicant.

**Article 16.** If a party claims, before the Registration Authority, that he has a better title to the design than the applicant and the matter is in doubt, the Authority may invite him to institute proceedings before a court within a certain time, failing which his claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better title to the design is under consideration by a court, the application for registration may be declared in suspense pending a final decision in the case.

**Article 17.** If a party proves, before the Registration Authority, that he has a better title to the design than the applicant, the Authority shall transfer the

application to him, if he so requests. The party to whom the application is transferred shall pay a new application fee.

If a transfer is requested, the application may not be altered, removed from the files, rejected or accepted until the claim has been finally considered.

**Article 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. *Act (2002:570)*

**Article 18 a.** 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 1 a;
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. *Act (2002:570)*

**Article 19.** Where, in a case concerning the registration of a design, a particular document showing the design shall be kept secret according to what is specifically prescribed in this respect, the document may not, without the consent of the applicant, be made available until the period requested by him has expired or a period of six months has expired from the date of the filing of the application or, where priority under Article 8, first paragraph, has been claimed, from the date from which priority has been claimed. If the Registration Authority has decided to remove the application from the file, or to reject the application, before the period for secrecy has expired, the document may be made available only where the applicant requests the application to be reinstated or appeals against the decision.

**Article 20.** Following an opposition, the Registration Authority shall revoke, wholly or in part, a registration where an obstacle against registration existed under Articles 1–4 a 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.

When 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 revoked wholly or in part, this fact shall be recorded in the Register. *Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 22.** A final decision by the Registration Authority under Article 21 can be appealed to the Court of Patent Appeals within two months from the date of the decision.

A final decision by the Court of Patent Appeals can be appealed to the Supreme Administrative Court within two months from the date of the decision. In such case, the provisions of Articles 35–37 of the Administrative Court Procedure Act (*Act 1971: 291*) on appeal against decisions by the Administrative Court of Appeal shall apply. The decision by the Court of Patent Appeals shall contain information about that the review of the Supreme Administrative Court requires leave to appeal, and about the grounds upon which such a leave is granted. *Act (2010:1397)*.

**Article 23.** *Repealed by Act (2002:570)*.

#### **Duration of a design registration**

**Article 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 twenty-five 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. *Act (2002:570)*.

**Article 25.** Applications for renewals of registrations shall be filed at the Registration Authority not earlier than one year, and not later than six months, after the expiry of the previous registration term. Within the same period, the renewal fees and the additional fees prescribed in Article 48 shall be paid, failing which the application shall be rejected.

A notice of renewal of a registration shall be published.

#### **On assignments and licenses etc.**

**Article 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. *Act (2002:570)*.

**Article 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. *Act (2002:570)*.

**Article 28.** *Repealed by Act (2002:570)*.

**Article 29.** *Repealed by Act (2002:570)*.

**Article 30.** *Repealed by Act (2002:570)*.

**Article 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 1–4 a 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. *Act (2012:447)*.

**Article 31 a.** An action for revocation 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 1 a;
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. *Act (2002:570)*.

**Article 31 b.** 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 31 a shall apply. *Act (2002:570)*

**Article 32.** If a design has been registered for a person other than the one who is entitled to it under Article 1 a, 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 31 a, 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. *Act (2002:570)*.

**Article 33.** If the design holder renounces, in writing to the Registration Authority, his right in the design, the Authority shall remove the design from the Register.

If the right in a design is sequestered for debt, seized or kept for securing of the payment of a debt or if a dispute concerning the transfer of a registration is pending, the design may not, upon request by the owner of the design, be removed from the Register as long as the sequestering, seizure or keeping for the payment of a debt is valid, or the dispute has not been finally decided. *Act (1981:817)*.

### **Obligation to furnish information**

**Article 34.** A person who has applied for the registration of a design and who invokes the application against another person before any document showing the design has been made publicly available, is obliged to give his consent to the making available of the document to another person.

A person who directly in relation to another person, in an advertisement or through the publication of a notice on the goods or its packaging or in any other manner states that a registration of a design has been applied for or approved, without at the same time informing about the number of the application or registration, is obliged to furnish upon request and without delay, information in this respect. If it is not explicitly claimed that a registration has been applied for, or approved, but what has occurred gives the impression that such is the case, information shall, upon request and without delay, be furnished concerning whether a registration has been applied for or approved. *Act (2002:570)*.

### **Liability and damages, etc.**

**Article 35.** If a person commits an act of infringement of a design right (design infringement) and it is committed wilfully or with gross negligence, he or she shall be punished by fines or imprisonment for not more than two years. A person who has violated an injunction issued under penalty of a fine under Article 35 b may not be adjudicated for an infringement covered by the prohibition.

Attempts to commit, or preparatory acts in respect of, offences under the first paragraph, shall be punishable according to Chapter 23 of the Criminal Code.

A public prosecutor is entitled to initiate a prosecution for a violation referred to in the first or second paragraphs only if there is a complaint from the injured party and a prosecution is called for in the public interest. *Act (2005:291)*.

**Article 35 a.** Property in respect of which a violation has occurred under Article 35 shall be declared forfeited, if this is not considered obviously unreasonable. Instead of the property itself, its value may be declared forfeited. Also profits from such a violation shall be declared forfeited, if this not obviously

unreasonable. The same applies to what someone has received in compensation for costs related to such a violation, or the value of what has been received, where the act of receiving constitutes a violation pursuant to Article 35.

Property that has been used as a tool in connection with a violation under Article 35 may be declared forfeited, where this is needed in order to prevent violations or where there are otherwise special reasons. The same applies to property that has been intended to be used as a tool in connection with a violation under Article 35, where the violation has been carried out, or has constituted a punishable attempt or a punishable preparation. Instead of the property itself, its value may be forfeited. Act (2005:291).

**Article 35 b.** Upon a petition by the design holder or by a party that, on the basis of a license, has the right to exploit the design, the court may issue an injunction prohibiting, under penalty of a fine, a party that commits, or contributes to, a design infringement to continue that act.

If the plaintiff shows a probable cause that an infringement, or a contribution thereto, takes place, and if it can reasonably be expected that the defendant, through the continuation of the infringement, or the contribution thereto, diminishes the value of the exclusive right in the design, the court may issue an injunction, under penalty of a fine, for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for damage.

The provisions in the first and second paragraphs apply also in respect of acts constituting attempts, and preparatory acts, relating to infringements.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the court for the damage that may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the court may liberate him or her from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the court unless the defendant has accepted it.

When the case is adjudicated, the court shall decide whether a prohibition issued under the second paragraph shall continue to apply.

As regards appeals against decisions under the second or fourth paragraph and as regards the proceedings in higher courts, the provisions on appeal against decisions in Chapter 15 of the Code of Judicial Procedure shall apply.

An action for the imposition of a fine may be brought by the party that has requested the injunction and shall be processed in accordance with the provisions in the Code of Judicial Procedure relating to actions in cases where a higher penalty than fines is not prescribed. In connection with such an imposition, an action may be brought for a new injunction to be issued under penalty of a fine. Act (2009:112).

**Article 35 c.** If the applicant shows a probable cause that someone has committed a design infringement, the court may order, under penalty of a fine, one or more of the parties referred to in the second paragraph to provide information to the applicant on the origin and distribution networks for the goods or services in respect of which the infringement has been committed (*order to provide information*). Such an order may be issued upon a petition by the design holder or by a party that, on the basis of a license, has the right to exploit the design. Such an order may be issued only if it can be assumed that the information would facilitate the inquiry into an infringement relating to the goods or services.

The obligation to provide information relates to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale been exploiting the goods that the infringement concerns,
3. has on a commercial scale been exploiting the service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service that has been used in connection with the infringement, or
5. has been indicated by a party referred to in items 2–4 as being involved in the production or distribution of the goods or the making available of the service that the infringement concerns.

The information on the origin or distribution network of goods or services may, in particular, include

1. the names and addresses of producers, distributors, suppliers and others who have previously held the goods or made available the services,
2. the names and addresses of intended wholesalers and retailers,
3. information on how much has been produced, delivered, received or ordered and the price obtained for the goods or services.

The provisions in the first to third paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements. *Act (2009:112)*

**Article 35 d.** An order to provide information may be issued only if the reasons speaking in favour of the order outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The obligation to provide information pursuant to Article 35 c does not include information the revelation of which would disclose that the provider of the information or any person closely related to him or her as referred to in Chapter 36, Article 3, of the Code of Judicial Procedure has committed a criminal offence.

The Act (1998:204) on Personal Data contains provisions that limit the use that can be made of personal data received. *Act (2009:112)*

**Article 35 e.** A decision on an order to provide information may be rendered by the court where a trial on the infringement is pending. In other respects, the

competence of the courts is governed by Articles 43 and 52 in respect of cases referred to there and by the provisions for civil cases in the Code of Judicial procedure in respect of other cases related to infringements. The provisions in the Code of Judicial Procedure concerning limitation of the competence of courts in disputes that have to be initiated otherwise than before a court shall, however, not apply.

If the petition for an order to provide information is directed against a party other than the applicant's opposite party in an infringement case, the provisions applicable on the court proceedings for that case shall apply. Decisions on orders to provide information may be appealed separately.

If the petition for an order to provide information is directed against a party other than the one referred to in the second paragraph, the provisions in the Act (1996:242) on Court Matters shall apply. For the purpose of the inquiry into the issue, also an oral hearing may be held pursuant to Chapter 37 of the Code of Judicial Procedure. The Court may decide that each party shall bear its own litigation costs.

An action for the imposition of a fine may be brought by the party that has applied for the order and shall be processed in accordance with the provisions in the Code of Judicial Procedure on actions in criminal cases for which no higher penalty than a fine is prescribed. In connection with such an action, an action may be brought for a new order to provide information. *Act (2009:112)*

**Article 35 f.** Anyone who pursuant to the provisions in Article 35 c, second paragraph, items 2 to 5, has been ordered to provide information pursuant to the first paragraph of the same Article, has a right to a reasonable compensation for the costs and inconvenience caused. The compensation shall be paid by the party that has applied for the order to provide information.

Anyone who makes available an electronic information service and who has, pursuant to an order to provide information, delivered information referred to in Chapter 6, Article 20, of the Act (2003:389) on Electronic Communication, shall send a written notice on this to the person whom the information concerns not earlier than one month and not later than three months from the delivery of the information. Costs for the notice shall be compensated in accordance with the first paragraph. *Act (2009:112).*

**Article 35 g.** Notwithstanding the prohibition in Article 21 of the Act (1998:204) on Personal Data, personal data on violations that constitute offences pursuant to Article 35 may be processed if this is necessary in order for a legal claim to be established, asserted or defended in a specific case. *Act (2009:112).*

**Article 35 h.** At the petition by the plaintiff, the court may, in infringement cases order the party that has committed, or contributed to, the infringement to pay a pecuniary compensation for appropriate measures to disseminate information about the judgement in the case.

The provisions in the first paragraph apply also to acts constituting attempts, and preparatory acts, related to infringements. *Act (2009:112)*

**Article 36.** Anyone who wilfully or with negligence commits a design infringement shall pay a reasonable compensation for the exploitation of the design and compensation for the further damage that the infringement has caused. When the amount of the compensation is decided, particular consideration shall be given to

1. lost profits,
2. profit that has been made by the party that committed the infringement,
3. damage caused to the reputation of the design,
4. moral damage, and
5. the interest of the holder of the design in that infringements are not committed.

Anyone who without intent or negligence commits a design infringement shall pay a compensation for the exploitation if and to the extent that this is reasonable.

The right to compensation for design infringement will be statute-barred if no action is brought within five years from the time when the damage was caused. *Act (2009:112)*

**Article 37.** Upon petition by a party that has suffered a design infringement, the court may, in so far as is reasonable, decide that property that has been manufactured in, or imported into, Sweden, in violation of the design right of another party shall be recalled from the channels of commerce, be altered or be taken into custody for the remainder of the term of protection, or destroyed or that some other measure shall be taken in respect of it. The same applies to implements that have been, or have been intended to be, used in connection with the infringement.

Property referred to in the first paragraph may be seized, where it can reasonably be assumed that a criminal offence pursuant to Article 35 has been committed. The provisions on seizure in criminal cases in general shall apply to such seizures.

Notwithstanding the provisions in the first paragraph, the court may, where there are extraordinary reasons, upon a petition, decide that the owner of the property referred to in the first paragraph may have disposal of the property for the remainder of the term of protection, or part of it, against a reasonable compensation and on other reasonable conditions. Such a decision may be rendered only if the owner has acted in good faith.

The provisions of the first to third paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to infringements.

A decision on a measure pursuant to this Article must not imply that the party that has suffered a design infringement has to pay a compensation to the party against which the measure is directed.

Any measure pursuant to the first paragraph shall be paid for by the defendant where there are no specific reasons against it.

A decision referred to in this Article shall not be rendered, if forfeiture or some other measure for the prevention of wrongful acts shall be decided pursuant to Article 35 a or the Criminal Code. Act (2009:112)

**Article 37 a.** Where it can reasonably be assumed that someone has committed, or contributed to, an infringement, the court may, for the purpose of preserving evidence relating to the infringement, order that an investigation be undertaken in respect of that party in order to search for objects or documents that can be assumed to be of importance for the inquiry into the infringement (*infringement investigation*).

An order for an infringement investigation may be issued only if the reasons speaking in favour of the measure outweigh the inconvenience or other harm that the measure would cause to the party against which it is directed or to any other opposite interest.

The provisions in the first and second paragraphs apply also to acts constituting attempts, and to preparatory acts, relating to an infringement. Act (2009:112).

**Article 37 b.** An order for an infringement investigation is issued by the court where proceedings relating to the infringement are conducted. Where legal proceedings have not yet been initiated, the issue of the competence of the courts is governed by the provisions in Articles 43 and 52 in respect of cases referred to there, and by the provisions for civil cases in the Code of Judicial Procedure in respect of other cases related to infringements. The provisions in the Code of Judicial Procedure relating to limitation of the competence of Courts in disputes that are to be initiated otherwise than before a court shall, however, not apply.

Issues relating to infringement investigations may be taken up for consideration only upon a petition by the holder of the design or by a party that, on the basis of a license, has a right to exploit the design. Where legal proceedings have not yet been initiated, the petition shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is issued. Where a delay would entail a risk that objects or documents of importance for the inquiry into the infringement would be removed, destroyed or distorted, the court may, however, immediately issue an order to be valid until otherwise decided.

In other respects, any issue relating to an infringement investigation which arises before legal proceedings have been initiated shall be processed in the same way as if the issue had arisen in the course of legal proceedings. Act (2009:112).

**Article 37 c.** An order for an infringement investigation may be rendered only where the applicant posts a security at the court for the damage which may be caused to the opposite party. Where the applicant is not able to post such a security, the court may liberate the applicant from it. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the court unless the opposite party has approved it.



As regards appeals against the decision by the court relating to an infringement investigation and as regards the proceedings in higher courts, the provisions concerning appeal against decisions prescribed in Chapter 15 of the Code of Judicial Procedure apply. Act (1998:1457).

**Article 37 d.** An order for an infringement investigation shall contain information about

1. the purpose of the investigation,
2. the objects and documents that may be searched for, and
3. which premises may be searched.

Where necessary, the court shall set also other conditions for the execution of the order. Act (1998:1457).

**Article 37 e.** An order for an infringement investigation is immediately enforceable. If an application for its execution has not been filed within one month from the order, the order becomes invalid.

Where the applicant does not, within a month from the conclusion of the execution, file an action or initiate in some other manner a proceeding relating to the issue, any measure which has been undertaken in the context of the execution of the infringement investigation shall be invalidated to the extent possible. The same applies where an order for an infringement investigation is invalidated after the execution has been concluded. Act (1998:1457).

**Article 37 f.** An order for an infringement investigation is executed through the Local Enforcement Authority in accordance with the conditions prescribed by the court and in applying Chapters 1–3, Chapter 17, Articles 1–5, and Chapter 18, of the Enforcement Code. The applicant's opposite party shall be informed about the execution only if the order for an infringement investigation has been issued after hearing the opposite party. The Authority has the right to take photographs and to make video and sound recordings of such objects for which it is authorised to search. The Authority also has the right to make copies of, and extracts from, such documents for which it is authorised to search.

An infringement investigation must not concern written documents referred to in Chapter 27, Article 2 of the Code of Judicial Procedure. Act (2006:685).

**Article 37 g.** The opposite party has the right to summon an attorney when an order for an infringement investigation is to be executed. The execution must not begin before the attorney has arrived. This does, however, not apply if

1. the investigation is thereby unnecessarily delayed, or
2. there is otherwise a risk that the purpose of the measure will not be achieved.

In the course of the execution the Enforcement Authority is authorised to engage, if necessary, the services of an expert.

The Authority may permit the applicant or a representative of the applicant to attend the investigation in order to provide information. If such a permission is granted, the Authority shall see to it that the applicant or the representative is not

being informed about the findings at the investigation more than can be justified by the execution. *Act (2006:685)*.

**Article 37 h.** Photographs and video and sound recordings of objects as well as copies of, and extracts from, documents from the infringement investigation shall be listed and be held available for the applicant and the opposite party. *Act (1998:1457)*.

**Article 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. No criminal penalty may be imposed, no forfeiture take place and no compensation for injury on the basis of an exploitation which took place before a notice of the registration was published under Article 18 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. *Act (2005:291)*.

**Article 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 3538.

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 stayed until the question of the revocation of the registration has been finally decided. If an action in this respect has not been brought, the court shall, in connection with the order for staying of the proceedings, invite him to bring such an action within a certain time. *Act (2002:570)*.

**Article 40.** A fine shall be imposed on any person who wilfully or with negligence that is not insignificant

1. does not meet his obligations under Article 34,
2. in cases prescribed in that Article provides incorrect information, if a penal sanction is not provided for in the Criminal Code

Anyone who wilfully or with negligence does not meet his obligation or commits an act as referred to in the first paragraph, shall pay a compensation for any injury caused. The compensation may be adjusted in case the negligence is insignificant.

A public criminal prosecution for a violation as referred to in the first paragraph may be brought only if there is a complaint from the injured party and such action, for specific reasons, is called for in the public interest.

**Provisions on proceedings**

**Article 41.** A design holder or a person who has, on the basis of a license, the right to exploit the design, may bring an action to resolve the question on whether or not he enjoys, on the basis of the registration, protection in relation to another person, where an uncertainty exists and the uncertainty causes injury to the plaintiff.

Under the same conditions, a person who is engaged in, or intends to engage in, a business activity may bring an action against the design holder to resolve the question whether an obstacle to the activity would exist on the basis of a certain design registration.

The provisions of Article 39, second paragraph, apply accordingly, where it is claimed, in a case referred to in the first paragraph that the design registration be revoked.

**Article 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 in this respect, his action shall not be admissible. *Act (2002:570).*

**Article 43.** Where there is not, under the Code of Judicial Procedure, a court competent to consider an action concerning the better title to a design, the revocation of a design registration, the transfer of such a registration, the invalidation of a design registration under Article 31 b, 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 Stockholm District Court *Act (2002:570).*

**Article 44.** Copies of judgments or final decisions in cases referred to in Articles 16, 31–32, 35–38 or 41, shall be transmitted to the Registration Authority. *Act (2002:570).*

**Article 45.** A design holder who does not have his domicile in Sweden shall have a representative resident here who is empowered to receive notice of writs, summons and other documents relating to court cases and other matters concerning the design right, with the exception, however, as regards writs in criminal cases and as regards invitations for a party to appear personally in the court. The representative shall be notified to the Design Register and recorded there.

Where a design holder has not notified a representative according to the first paragraph, a summon may instead be served through the transmission of the document in a pre-paid letter to the address recorded in the Design Register. Where a complete address is not recorded in the Register, the summon may, instead, be effected through the making available of the document at the Registration Authority and through the entry of a notice about this fact and about the essential contents of the document in a publication as decided by the Government. A summon shall be considered as effected when the actions now mentioned have been carried out. *Act (1977:702)*.

**Article 46.** The Government may, on condition of reciprocity, prescribe that the provisions of Article 12 or Article 45 shall not apply in relation to such an applicant or a design holder who is domiciled in a certain foreign State or who has a representative domiciled there who has been notified to the Registration Authority and who is empowered as prescribed in those Articles. *Act (1977:731)*.

**Article 47.** Decisions by the Registration Authority other than those referred to in Article 21, can be appealed through the lodging of an appeal to the Court of Patent Appeals within two months from the date of the decision.

A final decision by the Court of Patent Appeals can be appealed to the Supreme Administrative Court within two months from the date of the decision. In such case, the provisions of Articles 35–37 of the Administrative Court Procedure Act (Act 1971:291) on appeal against decisions by the Administrative Court of Appeals shall apply. The decision by the Court of Patent Appeals shall contain information about the review of the Supreme Administrative Court requires leave to appeal, and about the grounds upon which such a leave is granted. *Act (2010:1397)*.

**Article 48.** In matters concerning the registration of a design or concerning the renewal of a registration of a design the applicant shall pay an application fee or a renewal fee and, where applicable, the following additional fees, namely a class fee for each class of goods in addition to the first one, a joint registration fee for each design in addition to the first one, a storage fee for the storage of a model and a publication fee for the publication of a notice about a picture in addition to the first one. A renewal fee which is paid after the expiry of a current registration period shall be paid with an increased amount.

**Article 49.** The Government determines the fees under this Act.

Further provisions on the application of this Act are issued by the Government or, as decided by the Government, by the Registration Authority. *Act (1977:731)*.

### **Community designs**

**Article 50.** A party who files an application for registration of a Community design to the Registration Authority for forwarding in accordance with Article 35.2 of Council Regulation (EC) No 6/2002 on Community designs, shall pay a fee to an amount determined by the Government. The same applies when a party requests a certificate in accordance with Article 78.5 of the Council Regulation. *Act (2004:1154)*.

**Article 51.** In the case of an infringement of a Community design the provisions of Article 35 on design infringement apply. In addition, Articles 35 a–37 h apply, unless otherwise follows from Council Regulation (EC) No 6/2002 on Community designs. In such cases the provisions on design infringement shall apply to infringements of Community designs. *Act (2004:1154).*

**Article 52.** Stockholm District Court is the court for cases referred to in Article 51 and in Article 81 in Council Regulation (EC) No 6/2002 on Community designs. *Act (2004:1154).*