

The Ministry of Justice  
Stockholm

November 2018

**DESIGN PROTECTION ACT**

(Swedish Statute Book, SFS, 1970:485, as last amended by SFS 2018: 1656).

*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 details of the product itself or of the details of the ornamentation of the product relating especially to the lines, contours, colours, shapes, textures or materials;

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

3. “composite product” means a product which, through being composed of multiple replaceable components, can be disassembled and then again reassembled.

Provisions concerning Community designs in accordance with Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs are in this Act 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 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 a distinctive 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 under 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 non-essential details.

A design shall be considered to have a distinctive character if the overall impression of the design on an informed user differs from the overall impression of 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 a distinctive character, the space for variation available to 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 composite product shall be deemed to be new and having a distinctive character only if

1. the component part, or an element of it, once it has been incorporated into the composite product, remains visible during a normal use of that product, and
2. the design to the extent that it remains visible fulfils in itself the requirements in Article 2 as to novelty and distinctive 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 made public in the context of a registration procedure or otherwise. The same shall apply if the design has been exhibited, used commercially 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 professional circles in the sector concerned in the European Economic Area could not, in the normal course of business, reasonably have obtained knowledge 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 - 8 d, before the priority date, or
2. if the design has become known for the sole reason that it has been shown to someone under the explicit or implicit condition 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 public or has otherwise been made known

1. by the designer,
2. by a third person in consequence of information provided, or action taken, by the designer, or
3. as a result 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.** An obstacle to a design right exists

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 to 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 referred to above,
3. if the design conflicts with another design which was certainly not available to the public prior to the date indicated in Article 2, second Paragraph, but was included in an application for registration in Sweden or at the European Intellectual Property Office and for which a prior filing or priority date applies provided that this design has later been made available to the public,

4. if the design contains, without authorization,
- a) another party's trade name or trade symbol, protected in Sweden, or something that may be perceived as a sign which has been, in the course of commercial activities, established on the market in Sweden for another party,
  - b) another person's portrait which obviously does not refer to someone who is long deceased,
  - c) something that may be perceived as someone else's family name enjoying specific protection or someone else's generally known artistic name or a similar name, if the use of the design would constitute a disadvantage for the bearer the name and the name obviously does not refer to someone who is long deceased,
  - d) something that violates someone else's copyright in a literary or artistic work or someone else's right in a photographic picture which is protected in Sweden. *Act (2018:1656)*.

**Article 4 a.** A design right must not include such details of the appearance of a product

1. which are solely dictated by the technical function of that product, or
2. which must be reproduced in their exact form and dimensions so as to permit the product to which the design relates to be mechanically connected to, or placed in, around or against another product so that both products may perform their function.

Notwithstanding what is said in the first Paragraph, item 2, a design right may extend to a design serving the purpose of allowing mutually interchangeable products to be repeatedly assembled or be connected to each other within a system composed of modules. *Act (2002:570)*.

**Article 5.** With the exceptions prescribed in Articles 7–7 b, the design right implies that no other party may exploit the design without the authorization by the holder of the design right (the design holder). The prohibition against exploitation includes especially 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 includes any other design that does not produce, on an informed user, an overall impression different from that of the registered design (scope of protection). In assessing the scope of protection of the design right, the space for variation available to the designer in developing the 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 for private use and without profit-making 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 Sweden. The same applies to importation into Sweden of spare parts and accessories for repairing of such crafts and work for the repair of such crafts. *Act (2002:570).*

**Article 7 b.** The design right does not extend to 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 application 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 party to the Agreement Establishing the World Trade Organization (the WTO Agreement).

The same priority may be enjoyed also pursuant to an application for registration which relates to any other State or any other territory if a corresponding priority pursuant to ,a Swedish application would be 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 file a claim to this effect in the application for registration. The applicant shall, on that occasion, indicate where and when the application referred to was made. 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 specified time, the priority claimed by filing the following documents.

1. A certificate about the name of the applicant and about 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 pursuant to the first application where the design has been included.

If the party filing the first application, or its successor in title, has filed later, at 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 which is based on it or has constituted the basis for any right to priority.

Where someone has obtained a priority pursuant to 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 respect 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 respect 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.** A party that wishes to apply for the registration of a design shall do so in writing to the Registration Authority.

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

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

In addition, the application shall meet the requirements in provisions issued pursuant to Article 49. The applicant shall also pay application fees and supplementary fees prescribed in Article 48. *Act (2002:570)*.

**Article 11.** An application may include several designs if the products where the designs are intended to be used or incorporated belong to the same class. For the purpose of determining the class to be applied, the classification under the Locarno Agreement of October 8, 1968, establishing an International Classification for Industrial Designs applies as Swedish law. *Act (2002:570)*.

**Article 12.** The Registration Authority may invite an applicant not domiciled in Sweden to appoint a representative for him 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 carried out. *Act (2002:570)*.

**Article 13.** An application for registration shall be deemed not to have been filed until 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 if 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 referred to in Articles 10, 11 and 13. The Registration Authority shall also examine whether the application relates to a design according to 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 specified time. The invitation shall contain information to the applicant that the application may be removed from the files if he does not respond in due time.

If the applicant does not, in due time, submit a statement relating to the invitation pursuant to 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 the approval of the application exists even after a statement has been submitted and 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, at the Registration Authority, that it has a better title to the design than the applicant and the matter doubtful, the Authority may invite it to institute proceedings before a Court within a specified time, failing which its claim may be disregarded during the continued examination of the application.

If 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, at the Registration Authority, that it has a better title to the design than the applicant, the Authority shall transfer the application to it, if it so requests. The party to which 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, following an examination under to Article 14, first Paragraph, found any obstacle against the registration, the design shall be recorded in 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 the 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. a party that considers itself to have a right to the design, if the opposition is based on an obstacle against the design right under Article 1 a;
2. a party that 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. a party that is affected by the right, if the opposition is based on an obstacle against the design right under Article 4, item 2.

In other respects, there is no limitation of the possibility to file an opposition. *Act (2002:570)*

**Article 19.** If, in a case concerning the registration of a design, a 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, if 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 if the applicant requests the application to be reinstated or files an appeal.

**Article 20.** Following an opposition, the Registration Authority shall revoke, wholly or in part, a registration if an obstacle against registration existed under Articles 1–4 a and the obstacle still exists, or if the registration has been made 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 concerning an opposition has taken legal force, a notice 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 appeal a final decision by the Registration Authority in a matter relating to 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.

The applicant may appeal 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. A party that has filed a request for transfer may appeal a decision rejecting the request. *Act (2016:194)*.

**Article 22.** A final decision by the Registration Authority may be appealed to the Patent and Market Court within two months from the date of the decision. *Act (2016:194)*.

**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 period of twenty-five years. Each such period shall be computed from the expiry of the preceding period.

As regards a design relating to a part intended for the repair of a composite 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.** An application for renewal of a registration shall be filed at the Registration Authority not earlier than one year before, and not later than six months after, the expiry of the current registration period. 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.

#### **Licenses, assignments etc.**

**Article 26.** If the design holder has granted someone else a 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 party 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. If it is proved that a license recorded in the Register has expired, the entry shall be removed.

The first Paragraph shall also apply in relation to a right referred to in Article 32, second Paragraph.

If a joint registration has been made, a transfer of the design right may be recorded only with reference to all the designs.

In cases and matters relating to a design right, the party last recorded in the Design Register in this capacity shall be deemed to be the design holder. *Act (2002:570)*.

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

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

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

#### **Termination of a registration, etc.**

**Article 31.** Following a claim, the Court shall revoke, wholly or in part, a registration of a design where an obstacle against a design right existed under Articles 1–4 a and the obstacle still remains, or if the registration was made in contravention of Article 13, second Paragraph.

A registration may, however, be revoked in part only if the design holder so claims or consents to a claim in this respect 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 party obtaining the registration was entitled only to a part of the design right.

When the judgment 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 the revocation of a registration may be filed only by

1. a party considering itself entitled to the design, if the action is based on the existence of an obstacle against the design right under Article 1 a;
2. a party that applies for, or is the holder of, the right, if the action is based on the existence of an obstacle against the design right under Article 4, items 3 or 4;

3. a party 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 any party suffering a prejudice because of 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 designated by the Government.

An action referred to in the first Paragraph, item 1. shall be brought within one year from the point in time when the plaintiff obtained knowledge about the registration and the other circumstances on which the action is based. If 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.** The Court may declare invalid a design right also after it has been terminated or has been surrendered.

In respect of such an action, the provisions of Article 31 a apply. *Act (2016:194)*.

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

If a party that has been deprived of a registration of a design, commenced, in good faith, the exploitation of the design in business activities in this country, or undertook significant measures in this respect, it may, against the payment of an equitable remuneration and on other reasonable conditions, continue the exploitation started 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 prescribed in the second Paragraph may be transferred to another party only together with the business activity in which it is 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 to the design, the Authority shall remove the design from the Register.

If the design right is distrained, sequestered or impounded, or if a dispute concerning the transfer of a registration is pending, the design may not, upon request by the holder of the design, be removed from the Register as long as the execution, sequestration or impound still exists, or the dispute has not been finally decided. *Act (1981:817)*.

#### **Obligation to furnish information**

**Article 34.** If a party having applied for the registration of a design invokes the application against someone else before any document showing the design has

been made publicly available, is it obliged to give its consent to the making available of the document to that other party.

A party which directly in relation to another party, in an advertisement or through a notice on a product or its packaging or in any other manner indicates that the registration of a design has been applied for, or approved, without at the same time informing about the number of the application or the registration, is obliged to furnish information in this respect upon request and without delay. If it is not explicitly indicated that a registration has been applied for, or approved, but what occurs 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 someone commits an act of infringement of a design right (design infringement) and the act is committed wilfully or by gross negligence, he or she shall be punished by fines or imprisonment for not more than two years. A party that has violated an injunction under penalty of a fine under Article 35 b must not be held punishable for an infringement covered by the prohibition.

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

A public prosecutor is entitled to start a prosecution for a violation referred to in the first or second Paragraph 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 criminal violation exists under Article 35 shall be declared forfeit, if this is not considered obviously unreasonable. Instead of the property itself, its value may be declared forfeit. Also profits from such a criminal violation shall be declared forfeit, if this not obviously unreasonable. The same applies to what someone has received as compensation for costs related to such a criminal violation, or the value of what has been received, where the act of receiving constitutes a criminal violation pursuant to Article 35.

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

**Article 35 b.** Upon a claim by the design holder or by a party that, pursuant to 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 has been 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 mentioned in the second Paragraph may be issued only if the plaintiff deposits a security at 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. In respect of the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall consider 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 apply.

An action for the imposition of a fine may be brought by the party requesting the injunction. *Act (2016:194)*.

**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 about the origin of, 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 claim by the design holder or by a party that, pursuant to 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 applies to any party that

1. has committed, or contributed to, the infringement,
2. has on a commercial scale exploited the goods that the infringement concerns,
3. has on a commercial scale exploited the service that the infringement concerns,
4. has on a commercial scale made available an electronic communication service or another service used for the infringement, or
5. has been identified 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 of, or distribution network for, goods or services may include, in particular

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 about how much has been produced, delivered, received or ordered and the price fixed for the goods or services.

The provisions in the first to third Paragraphs also apply 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 measure outbalance the inconvenience or other harm caused by the measure 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 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) contains provisions limiting the use than can be made of personal data received. *Act (2018:274)*.

**Article 35 e.** If a claim for an order to provide information is directed against the party that is the applicant's opposite party in an infringement case, the provisions applicable to the court proceedings for that case apply. A decision on an order to provide information may be appealed separately.

If the claim for an order to provide information is directed against a party other than the one referred to in the first Paragraph, the provisions in the Act (1996:242) on Court Matters shall apply. 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 applying for the order. *Act (2016:194)*

**Article 35 f.** Anyone who has, pursuant to the provisions in Article 35 c, second Paragraph, items 2 to 5, been ordered to provide information pursuant to the first Paragraph of the same Article, is entitled to a reasonable compensation for costs and inconvenience caused. The compensation shall be paid by the party applying 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 about this fact to the party to which the information relates 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.** In addition to what is provided in Chapter 8, Articles 8 and 9 of the Act (2018:218) with Additional Provisions to the EU General Data Protection Regulation, personal data on violations of the law constituting criminal offences pursuant to Article 35 may be processed if this is necessary for a legal claim to be established, asserted or defended. *Act (2018:274)*.

**Article 35 h.** Upon a claim by the plaintiff, the Court may, in infringement cases, order the party that has committed, or contributed to, the infringement to defray appropriate measures to disseminate information about the judgment in the case.

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

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

1. lost profits,
2. profit made by the party committing 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 of the design to the extent reasonable.

The right to compensation for a design infringement will be statute-barred if no action is brought within five years from the point in time when the damage occurred. *Act (2018:1656)*

**Article 37.** Upon a claim by a party suffering a design infringement, the Court may, to the extent reasonable, decide that a product manufactured in, or imported into, Sweden, in violation of the design right of another party shall be recalled from the market, 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 for the infringement.

Property referred to in the first Paragraph may be seized, where it can reasonably be assumed that a criminal violation 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 claim, 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 issued only if the owner has acted in good faith.

The provisions of the first to third Paragraphs also apply 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 suffering a design infringement should pay a compensation to the party against which the measure is directed.

Any measure pursuant to the first Paragraph shall be defrayed by the defendant unless there are specific reasons against it.

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

**Article 37 a.** If it can reasonably be presumed 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 to search for objects or documents that may 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 outbalance 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.** A matter relating to an infringement investigation may be taken up for consideration only upon a claim by the holder of the design or by a party that, pursuant to a license, has a right to exploit the design. Where legal proceedings have not yet been initiated, the claim shall be submitted in writing.

The opposite party shall be given an opportunity to respond before an order for an investigation is issued. If 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 during a legal proceeding. Act (2016:194).

**Article 37 c.** An order for an infringement investigation may be issued only if the applicant posts a security at the Court for the damage which may be caused to the opposite party. If the applicant is not able to post such a security, the Court may liberate the applicant from it. In respect of 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 accepted it.

In respect of appeals against the decision by the Court relating to an infringement investigation and in respect of 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 include 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.

If necessary, the Court shall also prescribe 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 one month from the conclusion of the execution, file an action or initiate in some other manner a proceeding relating to the issue, any measure undertaken at the execution of the infringement investigation shall be invalidated to the extent possible. The same applies if 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 by 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 is entitled 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.



At the execution the Enforcement Authority is entitled 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 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 must be adjudicated, no forfeiture be imposed, and compensation for damage related to an exploitation before a notice of the registration was published under Article 18 may be decided under 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 judgment having legal force, the Court must not adjudicate any sanctions or decide other measures under Articles 35 - 38.

If an action is brought for a design infringement and the party against which the action is brought claims that the registration be revoked, the Court shall, upon a claim by that party, order the proceedings to be stayed pending a final decision on the question of revocation of the registration. If no action in this respect has been brought, the Court shall, in connection with the staying order, invite him to bring such an action within a specified time. *Act (2002:570)*.

**Article 40.** A fine shall be imposed on any party that wilfully or by negligence that is not insignificant

1. does not meet its 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 by negligence does not meet his obligation or commits an act referred to in the first Paragraph, shall pay a compensation for any damage caused. If the negligence is insignificant, the compensation may be adjusted.

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

### **Provisions on proceedings**

**Article 41.** A design holder or a party that has, pursuant to a license, the right to exploit the design, may bring an action for a declaratory judgment to resolve the question whether he enjoys, pursuant to the registration, protection against another party, if an uncertainty exists in this respect and that uncertainty causes prejudice to him.

Under the same conditions, a party that is engaged in, or intends to engage in, an activity may bring an action for a declaratory judgment against the design holder to resolve the issue whether an obstacle to the activity would exist due to a certain design registration.

If it is claimed, in a case referred to in the first Paragraph, that the design registration be revoked, the provisions of Article 39, second Paragraph, apply accordingly

**Article 42.** A party that 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 a declaratory judgment 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 fulfilled when a notice has been sent in registered, pre-paid letter 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. If he forfeits his time, his action shall not be admissible. *Act (2002: 570).*

**Article 43.** The Patent and Market Court is the competent Court in

1. cases and matters pursuant to this Act if they are not to be processed under the Act (1974:371) on the Proceedings in Labour Disputes and
2. cases referred to in Article 81 in Council Regulation (EC) No 6/2002 on the Community Design.

The provisions in the Code of Judicial Procedure on limitation of the competence of a Court in disputes which shall be taken up otherwise than before a Court shall not apply to a claim for an order to provide information or an order for an infringement investigation. *Act (2016:194).*

**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 with residence here who is empowered to receive for him, serving of summons, notifications and other documents relating to court cases and other matters concerning the design right, with the exception, however, of serving of summons in criminal cases and invitations to a party to appear personally in the Court. The representative shall be notified to the Design Register and recorded there.

If a design holder has not notified a representative in accordance with the first Paragraph, a serving may instead be carried out by the transmission of the document in a pre-paid letter to the address last recorded in the Design Register. If a complete address is not recorded in the Register, the serving may, instead, be carried out by making the document available at the Registration Authority and by entering a notice about this fact and about the essential contents of the document in a publication decided by the Government. A serving shall be deemed to have been performed 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 in Article 12 or Article 45 shall not apply in relation to 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 in this country and who is empowered as prescribed in those Articles. *Act (1977:731).*

**Article 47.** *Repealed by Act (2016:194).*

**Article 48.** In matters concerning the registration of a design or concerning the renewal of the 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 paid after the expiry of a current registration period shall be paid in 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 filing an application for registration of a Community design to the Registration Authority for forwarding under Article 35.2 of Council Regulation (EC) No 6/2002 on Community designs, shall pay a fee in an amount determined by the Government. The same applies when a party requests a certificate under Article 78.5 of the Council Regulation. *Act (2004:1154).*

**Article 51.** In respect of an infringement of a Community design the provisions of Article 35 on liability for 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 apply to infringements of Community designs. Act (2004:1154).

**Article 52.** *Repealed by Act (2016:194).*

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