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Council Regulation (EC) No 6/2002

of 12 December 2001

on Community designs

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Council Regulation (EC) No 6/2002

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on Community designs

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

(1) A unified system for obtaining a Community design to which uniform protection is given with uniform effect throughout the entire territory of the Community would further the objectives of the Community as laid down in the Treaty.

(2) Only the Benelux countries have introduced a uniform design protection law. In all the other Member States the protection of designs is a matter for the relevant national law and is confined to the territory of the Member State concerned. Identical designs may be therefore protected differently in different Member States and for the benefit of different owners. This inevitably leads to conflicts in the course of trade between Member States.

(3) The substantial differences between Member States' design laws prevent and distort Community-wide competition. In comparison with domestic trade in, and competition between, products incorporating a design, trade and competition within the Community are prevented and distorted by the large number of applications, offices, procedures, laws, nationally circumscribed exclusive rights and the combined administrative expense with correspondingly high costs and fees for the applicant. Directive 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs contributes to remedying this situation.

(4) The effect of design protection being limited to the territory of the individual Member States whether or not their laws are approximated, leads to a possible division of the internal market with respect to products incorporating a design which is the subject of national rights held by different individuals, and hence constitutes an obstacle to the free movement of goods.

(5) This calls for the creation of a Community design which is directly applicable in each Member State, because only in this way will it be possible to obtain, through one application made to the Office for Harmonisation in the Internal Market (Trade Marks and Design) in accordance with a single procedure under one law, one design right for one area encompassing all Member States.

(6) Since the objectives of the proposed action, namely, the protection of one design right for one area encompassing all the Member States, cannot be sufficiently achieved by the Member States by reason of the scale and the effects of the creation of a Community design and a Community design authority and can therefore, and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(7) Enhanced protection for industrial design not only promotes the contribution of individual designers to the sum of Community excellence in the field, but also encourages innovation and development of new products and investment in their production.

(8) Consequently a more accessible design-protection system adapted to the needs of the internal market is essential for Community industries.

(9) The substantive provisions of this Regulation on design law should be aligned with the respective provisions in Directive 98/71/EC.

(10) Technological innovation should not be hampered by granting design protection to features dictated solely by a technical function. It is understood that this does not entail that a design must have an aesthetic quality. Likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings. Consequently, those features of a design which are excluded from protection for those reasons should not be taken into consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.

(11) The mechanical fittings of modular products may nevertheless constitute an important element of the innovative characteristics of modular products and present a major marketing asset, and therefore should be eligible for protection.

(12) Protection should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such part which are not visible when the part is mounted, or which would not, in themselves, fulfil the requirements as to novelty and individual character. Therefore, those features of design which are excluded from protection for these reasons should not be taken into

consideration for the purpose of assessing whether other features of the design fulfil the requirements for protection.

(13) Full-scale approximation of the laws of the Member States on the use of protected designs for the purpose of permitting the repair of a complex product so as to restore its original appearance, where the design is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the protected design is dependent, could not be achieved through Directive 98/71/EC. Within the framework of the conciliation procedure on the said Directive, the Commission undertook to review the consequences of the provisions of that Directive three years after the deadline for transposition of the Directive in particular for the industrial sectors which are most affected. Under these circumstances, it is appropriate not to confer any protection as a Community design for a design which is applied to or incorporated in a product which constitutes a component part of a complex product upon whose appearance the design is dependent and which is used for the purpose of the repair of a complex product so as to restore its original appearance, until the Council has decided its policy on this issue on the basis of a Commission proposal.

(14) The assessment as to whether a design has individual character should be based on whether the overall impression produced on an informed user viewing the design clearly differs from that produced on him by the existing design corpus, taking into consideration the nature of the product to which the design is applied or in which it is incorporated, and in particular the industrial sector to which it belongs and the degree of freedom of the designer in developing the design.

(15) A Community design should, as far as possible, serve the needs of all sectors of industry in the Community.

(16) Some of those sectors produce large numbers of designs for products frequently having a short market life where protection without the burden of registration formalities is an advantage and the duration of protection is of lesser significance. On the other hand, there are sectors of industry which value the advantages of registration for the greater legal certainty it provides and which require the possibility of a longer term of protection corresponding to the foreseeable market life of their products.

(17) This calls for two forms of protection, one being a short-term unregistered design and the other being a longer term registered design.

(18) A registered Community design requires the creation and maintenance of a register in which will be registered all those applications which comply with formal conditions and which have been accorded a date of filing. This registration system should in principle not be based upon substantive examination as to compliance with requirements for protection prior to registration, thereby keeping to a minimum the registration and other procedural burdens on applicants.

(19) A Community design should not be upheld unless the design is new and unless it also possesses an individual character in comparison with other designs.

(20) It is also necessary to allow the designer or his successor in title to test the products embodying the design in the market place before deciding whether the protection resulting from a registered Community design is desirable. To this end it is necessary to provide that disclosures of the design by the designer or his successor in title, or abusive disclosures during a period of 12 months prior to the date of the filing of the application for a registered Community design should not be prejudicial in assessing the novelty or the individual character of the design in question.

(21) The exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty. It is appropriate that the unregistered Community design should, however, constitute a right only to prevent copying. Protection could not therefore extend to design products which are the result of a design arrived at independently by a second designer. This right should also extend to trade in products embodying infringing designs.

(22) The enforcement of these rights is to be left to national laws. It is necessary therefore to provide for some basic uniform sanctions in all Member States. These should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts.

(23) Any third person who can establish that he has in good faith commenced use even for commercial purposes within the Community, or has made serious and effective preparations to that end, of a design included within the scope of protection of a registered Community design, which has not been copied from the latter, may be entitled to a limited exploitation of that design.

(24) It is a fundamental objective of this Regulation that the procedure for obtaining a registered Community design should present the minimum cost and difficulty to applicants, so as to make it readily available to small and medium-sized enterprises as well as to individual designers.

(25) Those sectors of industry producing large numbers of possibly short-lived designs over short periods of time of which only some may be eventually commercialised will find advantage in the unregistered Community design. Furthermore, there is also a need for these sectors to have easier recourse to the registered Community design. Therefore, the option of combining a number of designs in one multiple application would satisfy that need. However, the designs contained in a multiple application may be dealt with independently of each other for the purposes of enforcement of rights, licensing, rights in rem, levy of execution, insolvency proceedings, surrender, renewal, assignment, deferred publication or declaration of invalidity.

(26) The normal publication following registration of a Community design could in some cases destroy or jeopardise the success of a commercial operation involving the design. The facility of a deferment of publication for a reasonable period affords a solution in such cases.

(27) A procedure for hearing actions concerning validity of a registered Community design in a single place would bring savings in costs and time compared with procedures involving different national courts.

(28) It is therefore necessary to provide safeguards including a right of appeal to a Board of Appeal, and ultimately to the Court of Justice. Such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community designs.

(29) It is essential that the rights conferred by a Community design can be enforced in an efficient manner throughout the territory of the Community.

(30) The litigation system should avoid as far as possible 'forum shopping'. It is therefore necessary to establish clear rules of international jurisdiction.

(31) This Regulation does not preclude the application to designs protected by Community designs of the industrial property laws or other relevant laws of the Member States, such as those relating to design protection acquired by registration or those relating to unregistered designs, trade marks, patents and utility models, unfair competition or civil liability.

(32) In the absence of the complete harmonisation of copyright law, it is important to establish the principle of cumulation of protection under the Community design and under copyright law, whilst leaving Member States free to establish the extent of copyright protection and the conditions under which such protection is conferred.

(33) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission,

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Continuing unregistered Community design

1.A design which complies with the conditions contained in this Regulation is hereinafter referred to as a ' continuing unregistered Community design'.

2.A design shall be protected:

(a) by a 'continuing unregistered Community design', if made available to the public in the manner provided for in this Regulation;

(b) *Deleted*

Article 2

Deleted

TITLE II

THE LAW RELATING TO DESIGNS

Section 1

Requirements for protection

Article 3

Definitions

For the purposes of this Regulation:

(a) ‘design’ means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation;

(ab) “European Union” means the countries that were part of the European Union immediately before IP completion day;

(b) ‘product’ means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs;

(c) ‘complex product’ means a product which is composed of multiple components which can be replaced permitting disassembly and re-assembly of the product.

Article 4

Requirements for protection

1.A design shall be protected by a continuing unregistered Community design to the extent that it is new and has individual character.

2.A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.

3.‘Normal use’ within the meaning of paragraph (2)(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

Article 5

Novelty

1.A continuing unregistered Community design shall be considered to be new if no identical design has been made available to the public:

(a) before the date on which the design for which protection is claimed has first been made available to the public;

(b) *Deleted*

2.Designs shall be deemed to be identical if their features differ only in immaterial details.

Article 6

Individual character

1.A continuing unregistered Community design shall be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:

(a) before the date on which the design for which protection is claimed has first been made available to the public;

(b) *Deleted*

2.In assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

Article 7

Disclosure

1.For the purpose of applying Articles 5 and 6, a continuing unregistered Community design shall be deemed to have been made available to the public if it has been published or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

2. *Deleted*

Article 8

Designs dictated by their technical function and designs of interconnections

1.A continuing unregistered Community design shall not subsist in features of appearance of a product which are solely dictated by its technical function.

2.A continuing unregistered Community design shall not subsist in features of appearance of a product 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.

3.Notwithstanding paragraph 2, a continuing unregistered Community design shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

Article 9

Designs contrary to public policy or morality

A continuing unregistered Community design shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

Section 2

Scope and term of protection

Article 10

Scope of protection

1.The scope of the protection conferred by a continuing unregistered Community design shall include any design which does not produce on the informed user a different overall impression.

2.In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration.

Article 11

Commencement and term of protection of the unregistered Community design

1.A design which meets the requirements under Section 1 shall be protected by a continuing unregistered Community design for a period of three years as from the date on which the design was first made available to the public within the European Union.

2.For the purpose of paragraph 1, a design shall be deemed to have been made available to the public within the European Union if it has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned, operating within the European Union. The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

Article 12

Deleted

Article 13

Deleted

Section 3

Right to the continuing unregistered **Community design**

Article 14

Right to the continuing unregistered **Community design**

1.The right to the continuing unregistered Community design shall vest in the designer or his successor in title.

2.If two or more persons have jointly developed a design, the right to the continuing unregistered Community design shall vest in them jointly.

3.However, where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the continuing unregistered Community design shall vest in the employer, unless otherwise agreed.

Article 15

Claims relating to the entitlement to a continuing unregistered **Community design**

1.If a continuing unregistered Community design is disclosed or claimed by a person who is not entitled to it under Article 14, the person entitled to it under that provision may, without prejudice to any other remedy which may be open to him, claim to become recognised as the legitimate holder of that design.

2.Where a person is jointly entitled to a continuing unregistered Community design, that person may, in accordance with paragraph 1, claim to become recognised as joint holder.

3.Legal proceedings under paragraphs 1 or 2 shall be barred three years after the date of disclosure of a continuing unregistered Community design. This provision shall not apply if the person who is not entitled to that design was acting in bad faith at the time when such design disclosed or was assigned to him.

Articles 16 to 18

Deleted

Section 4

Effects of the continuing unregistered **Community design**

Article 19

Rights conferred by the continuing unregistered **Community design**

1.A continuing unregistered Community design shall confer on its holder the exclusive right to use it and to prevent any third party not having his consent from using it. The aforementioned use shall cover, in particular, the making, offering, putting on the market, importing, exporting or using of a product in which

the design is incorporated or to which it is applied, or stocking such a product for those purposes.

2.A continuing unregistered Community design shall, however, confer on its holder the right to prevent the acts referred to in paragraph 1 only if the contested use results from copying the protected design.

The contested use shall not be deemed to result from copying the protected design if it results from an independent work of creation by a designer who may be reasonably thought not to be familiar with the design made available to the public by the holder.

Article 20

Limitation of the rights conferred by a continuing unregistered **Community design**

1.The rights conferred by a continuing unregistered Community design shall not be exercised in respect of:

(a) acts done privately and for non-commercial purposes;

(b) acts done for experimental purposes;

(c) acts of reproduction for the purpose of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.

2.In addition, the rights conferred by a continuing unregistered Community design shall not be exercised in respect of:

(a) the equipment on ships and aircraft registered in a third country when these temporarily enter the territory of Gibraltar;

(b) the importation in Gibraltar of spare parts and accessories for the purpose of repairing such craft;

(c) the execution of repairs on such craft.

Article 21

Exhaustion of rights

The rights conferred by a continuing unregistered Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the continuing unregistered Community design is incorporated or to which it is applied, when the product has been put on the market in Gibraltar, the United Kingdom or the European Union by the holder of the continuing unregistered Community design or with his consent.

Article 22

Deleted

Article 23

Deleted

Section 5

Invalidity

Article 24

Declaration of invalidity

1. Deleted

2.A continuing unregistered Community design may be declared invalid even after the continuing unregistered Community design has lapsed.

3.A continuing unregistered Community design shall be declared invalid by the Supreme Court on application to such a court or on the basis of a counterclaim in infringement proceedings.

Article 25

Grounds for invalidity

1.A continuing unregistered Community design may be declared invalid only in the following cases:

(a) if the design does not correspond to the definition under Article 3(a);

(b) if it does not fulfil the requirements of Articles 4 to 9;

(c) if, by virtue of a court decision, the right holder is not entitled to the design under Article 14;

(d) *Deleted*

(e) if a distinctive sign is used in a subsequent design, and the law governing that sign confers on the right holder of the sign the right to prohibit such use;

(f) if the design constitutes an unauthorised use of a work protected under copyright law;

(g) if the design constitutes an improper use of any of the items listed in Article 6ter of the 'Paris Convention' for the Protection of Industrial Property hereafter referred to as the 'Paris Convention', or of badges, emblems and escutcheons other than those covered by the said Article 6ter and which are of particular public interest in the European Union.

2.The ground provided for in paragraph (1)(c) may be invoked solely by the person who is entitled to the continuing unregistered Community design under Article 14.

3.The grounds provided for in paragraph (1)(e) and (f) may be invoked solely by the holder of the earlier right.

4.The ground provided for in paragraph (1)(g) may be invoked solely by the person or entity concerned by the use.

Article 26

Consequences of invalidity

1.A continuing unregistered Community design shall be deemed not to have had, as from the outset, the effects specified in this Regulation, to the extent that it has been declared invalid.

2.Subject to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the continuing unregistered Community design, or to unjust enrichment, the retroactive effect of invalidity of the continuing unregistered Community design shall not affect:

(a) any decision on infringement which has acquired the authority of a final decision and been enforced prior to the invalidity decision;

(b) any contract concluded prior to the invalidity decision, in so far as it has been performed before the decision; however, repayment, to an extent justified by the circumstances, of sums paid under the relevant contract may be claimed on grounds of equity.

TITLE III

COMMUNITY DESIGNS AS OBJECTS OF PROPERTY

Article 27

Property right

A continuing unregistered Community design right is personal property which subsists in accordance with this Regulation.

Articles 28 to 31

Deleted

Article 32

Licensing

1.A continuing unregistered Community design may be licensed. A licence may be exclusive or non-exclusive.

2.Without prejudice to any legal proceedings based on the law of contract, the holder may invoke the rights conferred by the continuing unregistered Community design against a licensee who contravenes any provision in his licensing contract with regard to its duration, the form in which the design may be used, the range of products for which the licence is granted and the quality of products manufactured by the licensee.

3.Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of a continuing unregistered Community design only if the right holder consents thereto. However, the holder of an exclusive licence may bring such proceedings if the right holder in the continuing unregistered Community design, having been given notice to do so, does not himself bring infringement proceedings within an appropriate period.

4.A licensee shall, for the purpose of obtaining compensation for damage suffered by him, be entitled to intervene in an infringement action brought by the right holder in a continuing unregistered Community design.

Articles 33 to 34

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TITLE IV

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Articles 35 to 44

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TITLE V

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Articles 45 to 50

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TITLE VI

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Articles 51 to 54

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TITLE VII

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Articles 55 to 61

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TITLE VIII

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Articles 62 to 78

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TITLE IX

JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO COMMUNITY DESIGNS

Section 1

Deleted

Article 79

Deleted

Section 2

Disputes concerning the infringement and validity of Community designs

Article 80

Deleted

Article 81

Jurisdiction over infringement and validity

The Supreme Court shall have exclusive jurisdiction-

(a) for infringement actions and actions in respect of threatened infringement of continuing unregistered Community designs;

(b) for actions for declaration of non-infringement of continuing unregistered Community designs;

(c) for actions for a declaration of invalidity of a continuing unregistered Community design.

(d) for counterclaims for a declaration of invalidity of a continuing unregistered Community design raised in connection with actions under (a).

Article 82

Pending proceedings concerning a continuing unregistered Community design

1.This Article applies where on IP completion day a continuing unregistered Community design is the subject of proceedings which are pending ("pending proceedings") before the Supreme Court.

2. Subject to paragraphs 3 and 4, the provisions contained or referred to in Title IX of the Design Regulation (with the exception of Articles 86(2), (3), (4) and (5) and 91) shall continue to apply to the pending proceedings as if Gibraltar were still a Member State with effect from IP completion day.

3. Where the pending proceedings involve a claim for infringement or for threatened infringement of a continuing unregistered Community design, without prejudice to any other relief by way of damages, accounts or otherwise available to the proprietor of the design, the Supreme Court may grant an injunction to prohibit unauthorised use of the continuing unregistered Community design.

4. For the purposes of this Article proceedings are treated as pending on IP completion day if they were instituted but not finally determined before IP completion day.

Article 83

Effect of injunction protecting an unregistered Community design

1. This Article applies where immediately before IP completion day an injunction is in force prohibiting the performance of acts in Gibraltar which infringe or would infringe a continuing unregistered Community design (a "relevant injunction").

2. Subject to any order of the court to the contrary, a relevant injunction will continue to have effect and be enforceable to prohibit the performance of acts which infringe or would infringe the right in a continuing unregistered Community design to the same extent as before IP completion day.

Article 84

Action or counterclaim for a declaration of invalidity of a continuing unregistered Community design

1.An action or a counterclaim for a declaration of invalidity of a continuing unregistered Community design may only be based on the grounds for invalidity mentioned in Article 25.

2.In the cases referred to in Article 25(2), (3), and (4) the action or the counterclaim may be brought solely by the person entitled under those provisions.

3.If the counterclaim is brought in a legal action to which the right holder of the continuing unregistered Community design is not already a party, he shall be informed thereof and may be joined as a party to the action in accordance with the laws applying to the Supreme Court.

4.The validity of a continuing unregistered Community design may not be put in issue in an action for a declaration of non-infringement.

Article 85

Presumption of validity — defence as to the merits

1. *Deleted*

2.In proceedings in respect of an infringement action or an action for threatened infringement of a continuing unregistered unregistered Community design, the Supreme Court shall treat the continuing unregistered Community design as valid if the right holder produces proof that the conditions laid down in Article 11 have been met and indicates what constitutes the individual character of his continuing unregistered Community design. However, the defendant may contest its validity by way of a plea or with a counterclaim for a declaration of invalidity.

Article 86

Judgements of invalidity

1.Where in a proceeding before the Supreme Court the continuing unregistered Community design has been put in issue by way of a counterclaim for a declaration of invalidity:

(a) if any of the grounds mentioned in Article 25 are found to prejudice the maintenance of that, the court shall declare the Community design invalid;

(b) if none of the grounds mentioned in Article 25 is found to prejudice the maintenance of that, the court shall reject the counterclaim.

2. *Deleted*

Articles 87 & 88

Deleted

Article 89

Sanctions in actions for infringement

1.Where in an action for infringement or for threatened infringement the Supreme Court finds that the defendant has infringed or threatened to infringe a continuing unregistered Community design, it shall, unless there are special reasons for not doing so, order the following measures:

(a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe that design;

(b) an order to seize the infringing products;

(c) an order to seize materials and implements predominantly used in order to manufacture the infringing goods, if their owner knew the effect for which such use was intended or if such effect would have been obvious in the circumstances;

(d) any order imposing other sanctions appropriate under the circumstances which are provided by law.

2. *Deleted*

Article 90

Provisional measures, including protective measures

1.Application may be made to the Supreme Court for such provisional measures, including protective measures, in respect of a continuing unregistered Community design as may be available.

2.In proceedings relating to provisional measures, including protective measures, a plea otherwise than by way of counterclaim relating to the invalidity of a continuing unregistered Community design submitted by the defendant shall be admissible. Article 85(2) shall, however, apply *mutatis mutandis*.

3.The Supreme Court shall have jurisdiction to grant provisional measures, including protective measures.

Articles 91 & 92

Deleted

Section 3

Other disputes concerning Community designs

Article 93

Deleted

Article 94

Obligation of the Supreme Court

The court which is dealing with an action relating to a continuing unregistered Community design other than the actions referred to in Article 81 shall treat the design as valid. Articles 85(2) and 90(2) shall, however, apply *mutatis mutandis*.

TITLE X

Deleted

Articles 95 to 96

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TITLE XI

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Articles 97 106

Deleted

TITLE XIa

Deleted

Articles 106a to 106f

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TITLE XII

FINAL PROVISIONS

Articles 107 to 109

Deleted

Article 110

Transitional provision

1.Protection as a continuing unregistered Community design shall not exist for a design which constitutes a component part of a complex product used within the meaning of Article 19(1) for the purpose of the repair of that complex product so as to restore its original appearance.

2. *Deleted*

Article 110a

Provisions relating to the enlargement of the Community

1. As of the date of accession of Bulgaria, the Czech Republic, Estonia, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia and Slovakia (hereinafter referred to as "specified countries"), a continuing unregistered Community design protected pursuant to this Regulation before their respective date of accession shall be extended to the territory of those specified countries.

2. *Deleted*

3. A continuing unregistered Community design as referred to in paragraph 1 may not be declared invalid pursuant to Article 25(1) if the grounds for invalidity became applicable merely because of the accession of one or more specified countries.

4. The holder of an earlier right in one or more specified countries may oppose the use of a continuing unregistered Community design falling under Article 25(1)(e) or (f) within the territory where the earlier right is protected. For the purpose of this provision, ‘ earlier right ’ means a right acquired or applied for in good faith before accession.

5. Pursuant to Article 11, a design which has not been made public within the territory of the European Union shall not enjoy protection as a continuing unregistered Community design.

Article 111

Entry into force

1.This Regulation shall enter into force on the 60th day following its publication in the *Official Journal of the European Communities*.

2. *Deleted*