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of 12 December 2001

on Community designs

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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

Community design

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

2.A design shall be protected:

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

(b) by a ‘registered Community design’, if registered in the manner provided for in this Regulation.

3.A Community design shall have a unitary character. It shall have equal effect throughout the Community. It shall not be registered, transferred or surrendered or be the subject of a decision declaring it invalid, nor shall its use be prohibited, save in respect of the whole Community. This principle and its implications shall apply unless otherwise provided in this Regulation.

Article 2

Office

The Office for Harmonisation in the Internal Market (Trade Marks and Designs), hereinafter referred to as ‘the Office’, instituted by Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, hereinafter referred to as the ‘Regulation on the Community trade mark’, shall carry out the tasks entrusted to it by this Regulation.

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;

(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 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 design shall be considered to be new if no identical design has been made available to the public:

(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

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

Article 6

Individual character

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

(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

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 design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed, before the date referred to in Articles 5(1)(a) and 6(1)(a) or in Articles 5(1)(b) and 6(1)(b), as the case may be, 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 Community. 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.A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 and if a design for which protection is claimed under a registered Community design has been made available to the public:

(a) by the designer, his successor in title, or a third person as a result of information provided or action taken by the designer or his successor in title; and

(b) during the 12-month period preceding the date of filing of the application or, if a priority is claimed, the date of priority.

3.Paragraph 2 shall also apply if the design has been made available to the public as a consequence of an abuse in relation to the designer or his successor in title.

Article 8

Designs dictated by their technical function and designs of interconnections

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

2.A 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 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 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 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 an 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 Community.

2.For the purpose of paragraph 1, a design shall be deemed to have been made available to the public within the Community 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 Community. 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

Commencement and term of protection of the registered Community design

Upon registration by the Office, a design which meets the requirements under Section 1 shall be protected by a registered Community design for a period of five years as from the date of the filing of the application. The right holder may have the term of protection renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

Article 13

Renewal

1.Registration of the registered Community design shall be renewed at the request of the right holder or of any person expressly authorised by him, provided that the renewal fee has been paid.

2.The Office shall inform the right holder of the registered Community design and any person having a right entered in the register of Community designs, referred to in Article 72, hereafter referred to as the ‘register’ in respect of the registered Community design, of the expiry of the registration in good time before the said expiry. Failure to give such information shall not involve the responsibility of the Office.

3.The request for renewal shall be submitted and the renewal fee paid within a period of six months ending on the last day of the month in which protection ends. Failing this, the request may be submitted and the fee

paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period.

4.Renewal shall take effect from the day following the date on which the existing registration expires. The renewal shall be entered in the register.

Section 3

Right to the Community design

Article 14

Right to the Community design

1.The right to the 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 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 Community design shall vest in the employer, unless otherwise agreed or specified under national law.

Article 15

Claims relating to the entitlement to a Community design

1.If an unregistered Community design is disclosed or claimed by, or a registered Community design has been applied for or registered in the name of, 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 the Community design.

2.Where a person is jointly entitled to a 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 publication of a registered Community design or the date of disclosure of an unregistered Community design. This provision shall not apply if the person who is not entitled to the Community design was acting in bad faith at the time when such design was applied for or disclosed or was assigned to him.

4.In the case of a registered Community design, the following shall be entered in the register:

(a) the mention that legal proceedings under paragraph 1 have been instituted;

(b) the final decision or any other termination of the proceedings;

(c) any change in the ownership of the registered Community design resulting from the final decision.

Article 16

Effects of a judgement on entitlement to a registered Community design

1.Where there is a complete change of ownership of a registered Community design as a result of legal proceedings under Article 15(1), licences and other rights shall lapse upon the entering in the register of the person entitled.

2.If, before the institution of the legal proceedings under Article 15(1) has been registered, the holder of the registered Community design or a licensee has exploited the design within the Community or made serious and effective preparations to do so, he may continue such exploitation provided that he requests within the period prescribed by the implementing regulation a non-exclusive licence from the new holder whose name is entered in the register. The licence shall be granted for a reasonable period and upon reasonable terms.

3.Paragraph 2 shall not apply if the holder of the registered Community design or the licensee was acting in bad faith at the time when he began to exploit the design or to make preparations to do so.

Article 17

Presumption in favour of the registered holder of the design

The person in whose name the registered Community design is registered or, prior to registration, the person in whose name the application is filed, shall be deemed to be the person entitled in any proceedings before the Office as well as in any other proceedings.

Article 18

Right of the designer to be cited

The designer shall have the right, in the same way as the applicant for or the holder of a registered Community design, to be cited as such before the Office and in the register. If the design is the result of teamwork, the citation of the team may replace the citation of the individual designers.

Section 4

Effects of the Community design

Article 19

Rights conferred by the Community design

1.A registered 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.An 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.

3.Paragraph 2 shall also apply to a registered Community design subject to deferment of publication as long as the relevant entries in the register and the file have not been made available to the public in accordance with Article 50(4).

Article 20

Limitation of the rights conferred by a Community design

1.The rights conferred by a 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 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 the Community;

(b) the importation in the Community 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 Community design shall not extend to acts relating to a product in which a design included within the scope of protection of the Community design is incorporated or to which it is applied, when the product has been put on the market in the Community by the holder of the Community design or with his consent.

Article 22

Rights of prior use in respect of a registered Community design

1.A right of prior use shall exist for any third person who can establish that before the date of filing of the application, or, if a priority is claimed, before the date of priority, he has in good faith commenced use 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.

2.The right of prior use shall entitle the third person to exploit the design for the purposes for which its use had been effected, or for which serious and effective preparations had been made, before the filing or priority date of the registered Community design.

3.The right of prior use shall not extend to granting a licence to another person to exploit the design.

4.The right of prior use cannot be transferred except, where the third person is a business, along with that part of the business in the course of which the act was done or the preparations were made.

Article 23

Government use

Any provision in the law of a Member State allowing use of national designs by or for the government may be applied to Community designs, but only to the extent that the use is necessary for essential defence or security needs.

Section 5

Invalidity

Article 24

Declaration of invalidity

1.A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.

2.A Community design may be declared invalid even after the Community design has lapsed or has been surrendered.

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

Article 25

Grounds for invalidity

1.A 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 Community design under Article 14;

(d) if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date

  (i) by a registered Community design or an application for such a design,or

  (ii) by a registered design right of a Member State, or by an application for such a right,or

  (iii) by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999 , hereinafter referred to as ‘ the Geneva Act ’ , which was approved by Council Decision 954/2006 and which has effect in the Community, or by an application for such a right;

(e) if a distinctive sign is used in a subsequent design, and Community law or the law of the Member State 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 the copyright law of a Member State;

(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 a Member State.

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

3.The grounds provided for in paragraph (1)(d), (e) and (f) may be invoked solely by the applicant for or 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.

5.Paragraphs 3 and 4 shall be without prejudice to the freedom of Member States to provide that the grounds provided for in paragraphs 1(d) and (g) may also be invoked by the appropriate authority of the Member State in question on its own initiative.

6.A registered Community design which has been declared invalid pursuant to paragraph (1)(b), (e), (f) or (g) may be maintained in an amended form, if in that form it complies with the requirements for protection and the identity of the design is retained. 'Maintenance' in an amended form may include registration accompanied by a partial disclaimer by the holder of the registered Community design or entry in the register of a court decision or a decision by the Office declaring the partial invalidity of the registered Community design.

Article 26

Consequences of invalidity

1.A 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 the national provisions relating either to claims for compensation for damage caused by negligence or lack of good faith on the part of the holder of the Community design, or to unjust enrichment, the retroactive effect of invalidity of the 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

Dealing with Community designs as national design rights

1.Unless Articles 28, 29, 30, 31 and 32 provide otherwise, a Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State in which:

(a) the holder has his seat or his domicile on the relevant date; or

(b) where point (a) does not apply, the holder has an establishment on the relevant date.

2.In the case of a registered Community design, paragraph 1 shall apply according to the entries in the register.

3.In the case of joint holders, if two or more of them fulfil the condition under paragraph 1, the Member State referred to in that paragraph shall be determined:

(a) in the case of an unregistered Community design, by reference to the relevant joint holder designated by them by common agreement;

(b) in the case of a registered Community design, by reference to the first of the relevant joint holders in the order in which they are mentioned in the register.

4.Where paragraphs 1, 2 and 3 do not apply, the Member State referred to in paragraph 1 shall be the Member State in which the seat of the Office is situated.

Article 28

Transfer of the registered Community design

The transfer of a registered Community design shall be subject to the following provisions:

(a) at the request of one of the parties, a transfer shall be entered in the register and published;

(b) until such time as the transfer has been entered in the register, the successor in title may not invoke the rights arising from the registration of the Community design;

(c) where there are time limits to be observed in dealings with the Office, the successor in title may make the corresponding statements to the Office once the request for registration of the transfer has been received by the Office;

(d) all documents which by virtue of Article 66 require notification to the holder of the registered Community design shall be addressed by the Office to the person registered as holder or his representative, if one has been appointed.

Article 29

Rights in rem on a registered Community design

1.A registered Community design may be given as security or be the subject of rights *in rem*.

2.On request of one of the parties, the rights mentioned in paragraph 1 shall be entered in the register and published.

Article 30

Levy of execution

1.A registered Community design may be levied in execution.

2.As regards the procedure for levy of execution in respect of a registered Community design, the courts and authorities of the Member State determined in accordance with Article 27 shall have exclusive jurisdiction.

3.On request of one of the parties, levy of execution shall be entered in the register and published.

Article 31

Insolvency proceedings

1.The only insolvency proceedings in which a Community design may be involved shall be those opened in the Member State within the territory of which the centre of a debtor's main interests is situated.

2.In the case of joint proprietorship of a Community design, paragraph 1 shall apply to the share of the joint proprietor.

3.Where a Community design is involved in insolvency proceedings, on request of the competent national authority an entry to this effect shall be made in the register and published in the Community Designs Bulletin referred to in Article 73(1).

Article 32

Licensing

1.A Community design may be licensed for the whole or part of the Community. 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 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 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 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 Community design.

5.In the case of a registered Community design, the grant or transfer of a licence in respect of such right shall, at the request of one of the parties, be entered in the register and published.

Article 33

Effects vis-à-vis third parties

1.The effects vis-à-vis third parties of the legal acts referred to in Articles 28, 29, 30 and 32 shall be governed by the law of the Member State determined in accordance with Article 27.

2.However, as regards registered Community designs, legal acts referred to in Articles 28, 29 and 32 shall only have effect vis-à-vis third parties in all the Member States after entry in the register. Nevertheless, such an act, before it is so entered, shall have effect vis-à-vis third parties who have acquired rights in the registered Community design after the date of that act but who knew of the act at the date on which the rights were acquired.

3.Paragraph 2 shall not apply to a person who acquires the registered Community design or a right concerning the registered Community design by way of transfer of the whole of the undertaking or by any other universal succession.

4.Until such time as common rules for the Member States in the field of insolvency enter into force, the effects vis-à-vis third parties of insolvency proceedings shall be governed by the law of the Member State in which such proceedings are first brought under the national law or the regulations applicable in this field.

Article 34

The application for a registered Community design as an object of property

1.An application for a registered Community design as an object of property shall be dealt with in its entirety, and for the whole area of the Community, as a national design right of the Member State determined in accordance with Article 27.

2.Articles 28, 29, 30, 31, 32 and 33 shall apply *mutatis mutandis* to applications for registered Community designs. Where the effect of one of these provisions is conditional upon an entry in the register, that formality shall be performed upon registration of the resulting registered Community design.

TITLE IV

APPLICATION FOR A REGISTERED COMMUNITY DESIGN

Section 1

Filing of applications and the conditions which govern them

Article 35

Filing and forwarding of applications

1.An application for a registered Community design shall be filed, at the option of the applicant:

(a) at the Office; or

(b) at the central industrial property office of a Member State; or

(c) in the Benelux countries, at the Benelux Design Office.

2.Where the application is filed at the central industrial property office of a Member State or at the Benelux Design Office, that office shall take all steps to forward the application to the Office within two weeks after filing. It may charge the applicant a fee which shall not exceed the administrative costs of receiving and forwarding the application.

3.As soon as the Office has received an application which has been forwarded by a central industrial property office of a Member State or by the Benelux Design Office, it shall inform the applicant accordingly, indicating the date of its receipt at the Office.

4.No less than 10 years after the entry into force of this Regulation, the Commission shall draw up a report on the operation of the system of filing applications for registered Community designs, accompanied by any proposals for revision that it may deem appropriate.

Article 36

Conditions with which applications must comply

1.An application for a registered Community design shall contain:

(a) a request for registration;

(b) information identifying the applicant;

(c) a representation of the design suitable for reproduction. However, if the object of the application is a two-dimensional design and the application contains a request for deferment of publication in accordance with Article 50, the representation of the design may be replaced by a specimen.

2.The application shall further contain an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied.

3.In addition, the application may contain:

(a) a description explaining the representation or the specimen;

(b) a request for deferment of publication of the registration in accordance with Article 50;

(c) information identifying the representative if the applicant has appointed one;

(d) the classification of the products in which the design is intended to be incorporated or to which it is intended to be applied according to class;

(e) the citation of the designer or of the team of designers or a statement under the applicant's responsibility that the designer or the team of designers has waived the right to be cited.

4.The application shall be subject to the payment of the registration fee and the publication fee. Where a request for deferment under paragraph 3(b) is filed, the publication fee shall be replaced by the fee for deferment of publication.

5.The application shall comply with the conditions laid down in the implementing regulation.

6.The information contained in the elements mentioned in paragraph 2 and in paragraph 3(a) and (d) shall not affect the scope of protection of the design as such.

Article 37

Multiple applications

1.Several designs may be combined in one multiple application for registered Community designs. Except in cases of ornamentation, this possibility is subject to the condition that the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs.

2.Besides the fees referred to in Article 36(4), the multiple application shall be subject to payment of an additional registration fee and an additional publication fee. Where the multiple application contains a request for deferment of publication, the additional publication fee shall be replaced by the additional fee for deferment of publication. The additional fees shall correspond to a percentage of the basic fees for each additional design.

3.The multiple application shall comply with the conditions of presentation laid down in the implementing regulation.

4.Each of the designs contained in a multiple application or registration may be dealt with separately from the others for the purpose of applying this Regulation. It may in particular, separately from the others, be enforced, licensed, be the subject of a right *in rem*, a levy of execution or insolvency proceedings, be

surrendered, renewed or assigned, be the subject of deferred publication or be declared invalid. A multiple application or registration may be divided into separate applications or registrations only under the conditions set out in the implementing regulation.

Article 38

Date of filing

1.The date of filing of an application for a registered Community design shall be the date on which documents containing the information specified in Article 36(1) are filed with the Office by the applicant, or, if the application has been filed with the central industrial property office of a Member State or with the Benelux Design Office, with that office.

2.By derogation from paragraph 1, the date of filing of an application filed with the central industrial property office of a Member State or with the Benelux Design Office and reaching the Office more than two months after the date on which documents containing the information specified in Article 36(1) have been filed shall be the date of receipt of such documents by the Office.

Article 39

Equivalence of Community filing with national filing

An application for a registered Community design which has been accorded a date of filing shall, in the Member States, be equivalent to a regular national filing, including where appropriate the priority claimed for the said application.

Article 40

Classification

For the purpose of this Regulation, use shall be made of the Annex to the Agreement establishing an International Classification for Industrial Designs, signed at Locarno on 8 October 1968.

Section 2

Priority

Article 41

Right of priority

1.A person who has duly filed an application for a design right or for a utility model in or for any State party to the Paris Convention for the Protection of Industrial Property, or to the Agreement establishing the World Trade Organisation, or his successors in title, shall enjoy, for the purpose of filing an application for a registered Community design in respect of the same design or utility model, a right of priority of six months from the date of filing of the first application.

2.Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.

3.‘Regular national filing’ means any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.

4.A subsequent application for a design which was the subject of a previous first application, and which is filed in or in respect of the same State, shall be considered as the first application for the purpose of determining priority, provided that, at the date of the filing of the subsequent application, the previous application has been withdrawn, abandoned or refused without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

5.If the first filing has been made in a State which is not a party to the Paris Convention, or to the Agreement establishing the World Trade Organisation, paragraphs 1 to 4 shall apply only in so far as that State, according to published findings, grants, on the basis of a filing made at the Office and subject to conditions equivalent to those laid down in this Regulation, a right of priority having equivalent effect.

Article 42

Claiming priority

An applicant for a registered Community design desiring to take advantage of the priority of a previous application shall file a declaration of priority and a copy of the previous application. If the language of the latter is not one of the languages of the Office, the Office may require a translation of the previous application in one of those languages.

Article 43

Effect of priority right

The effect of the right of priority shall be that the date of priority shall count as the date of the filing of the application for a registered Community design for the purpose of Articles 5, 6, 7, 22, 25(1)(d) and 50(1).

Article 44

Exhibition priority

1.If an applicant for a registered Community design has disclosed products in which the design is incorporated, or to which it is applied, at an official or officially recognised international exhibition falling within the terms of the Convention on International Exhibitions signed in Paris on 22 November 1928 and last revised on 30 November 1972, he may, if he files the application within a period of six months from the date of the first disclosure of such products, claim a right of priority from that date within the meaning of Article 43.

2.An applicant who wishes to claim priority pursuant to paragraph 1, under the conditions laid down in the implementing regulation, must file evidence that he has disclosed at an exhibition the products in or to which the design is incorporated or applied.

3.An exhibition priority granted in a Member State or in a third country does not extend the period of priority laid down in Article 41.

TITLE V

REGISTRATION PROCEDURE

Article 45

Examination as to formal requirements for filing

1.The Office shall examine whether the application complies with the requirements laid down in Article 36(1) for the accordance of a date of filing.

2.The Office shall examine whether:

(a) the application complies with the other requirements laid down in Article 36(2), (3), (4) and (5) and, in the case of a multiple application, Article 37(1) and (2);

(b) the application meets the formal requirements laid down in the implementing regulation for the implementation of Articles 36 and 37;

(c) the requirements of Article 77(2) are satisfied;

(d) the requirements concerning the claim to priority are satisfied, if a priority is claimed.

3.The conditions for the examination as to the formal requirements for filing shall be laid down in the implementing regulation.

Article 46

Remediable deficiencies

1.Where, in carrying out the examination under Article 45, the Office notes that there are deficiencies which may be corrected, the Office shall request the applicant to remedy them within the prescribed period.

2.If the deficiencies concern the requirements referred to in Article 36(1) and the applicant complies with the Office's request within the prescribed period, the Office shall accord as the date of filing the date on which the deficiencies are remedied. If the deficiencies are not remedied within the prescribed period, the application shall not be dealt with as an application for a registered Community design.

3.If the deficiencies concern the requirements, including the payment of fees, as referred to in Article 45(2)(a), (b) and (c) and the applicant complies with the Office's request within the prescribed period, the Office shall accord as the date of filing the date on which the application was originally filed. If the deficiencies or the default in payment are not remedied within the prescribed period, the Office shall refuse the application.

4.If the deficiencies concern the requirements referred to in Article 45(2)(d), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

Article 47

Grounds for non-registrability

1.If the Office, in carrying out the examination pursuant to Article 45, notices that the design for which protection is sought:

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

(b) is contrary to public policy or to accepted principles of morality, it shall refuse the application.

2.The application shall not be refused before the applicant has been allowed the opportunity of withdrawing or amending the application or of submitting his observations.

Article 48

Registration

If the requirements that an application for a registered Community design must satisfy have been fulfilled and to the extent that the application has not been refused by virtue of Article 47, the Office shall register the application in the Community design Register as a registered Community design. The registration shall bear the date of filing of the application referred to in Article 38.

Article 49

Publication

Upon registration, the Office shall publish the registered Community design in the Community Designs Bulletin as mentioned in Article 73(1). The contents of the publication shall be set out in the implementing regulation.

Article 50

Deferment of publication

1.The applicant for a registered Community design may request, when filing the application, that the publication of the registered Community design be deferred for a period of 30 months from the date of filing the application or, if a priority is claimed, from the date of priority.

2.Upon such request, where the conditions set out in Article 48 are satisfied, the registered Community design shall be registered, but neither the representation of the design nor any file relating to the application shall, subject to Article 74(2), be open to public inspection.

3.The Office shall publish in the Community Designs Bulletin a mention of the deferment of the publication of the registered Community design. The mention shall be accompanied by information identifying the right holder in the registered Community design, the date of filing the application and any other particulars prescribed by the implementing regulation.

4.At the expiry of the period of deferment, or at any earlier date on request by the right holder, the Office shall open to public inspection all the entries in the register and the file relating to the application and shall publish the registered Community design in the Community Designs Bulletin, provided that, within the time limit laid down in the implementing regulation:

(a) the publication fee and, in the event of a multiple application, the additional publication fee are paid;

(b) where use has been made of the option pursuant to Article 36(1)(c), the right holder has filed with the Office a representation of the design.

If the right holder fails to comply with these requirements, the registered Community design shall be deemed from the outset not to have had the effects specified in this Regulation.

5.In the case of multiple applications, paragraph 4 need only be applied to some of the designs included therein.

6.The institution of legal proceedings on the basis of a registered Community design during the period of deferment of publication shall be subject to the condition that the information contained in the register and in the file relating to the application has been communicated to the person against whom the action is brought.

TITLE VI

SURRENDER AND INVALIDITY OF THE REGISTERED COMMUNITY DESIGN

Article 51

Surrender

1.The surrender of a registered Community design shall be declared to the Office in writing by the right holder. It shall not have effect until it has been entered in the register.

2.If a Community design which is subject to deferment of publication is surrendered it shall be deemed from the outset not to have had the effects specified in this Regulation.

3.A registered Community design may be partially surrendered provided that its amended form complies with the requirements for protection and the identity of the design is retained.

4.Surrender shall be registered only with the agreement of the proprietor of a right entered in the register. If a licence has been registered, surrender shall be entered in the register only if the right holder in the registered Community design proves that he has informed the licensee of his intention to surrender. This entry shall be made on expiry of the period prescribed by the implementing regulation.

5.If an action pursuant to Article 14 relating to the entitlement to a registered Community design has been brought before a Community design court, the Office shall not enter the surrender in the register without the agreement of the claimant.

Article 52

Application for a declaration of invalidity

1.Subject to Article 25(2), (3), (4) and (5), any natural or legal person, as well as a public authority empowered to do so, may submit to the Office an application for a declaration of invalidity of a registered Community design.

2.The application shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the fee for an application for a declaration of invalidity has been paid.

3.An application for a declaration of invalidity shall not be admissible if an application relating to the same subject matter and cause of action, and involving the same parties, has been adjudicated on by a Community design court and has acquired the authority of a final decision.

Article 53

Examination of the application

1.If the Office finds that the application for a declaration of invalidity is admissible, the Office shall examine whether the grounds for invalidity referred to in Article 25 prejudice the maintenance of the registered Community design.

2.In the examination of the application, which shall be conducted in accordance with the implementing regulation, the Office shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Office, on communications from the other parties or issued by itself.

3.The decision declaring the registered Community design invalid shall be entered in the register upon becoming final.

Article 54

Participation in the proceedings of the alleged infringer

1.In the event of an application for a declaration of invalidity of a registered Community design being filed, and as long as no final decision has been taken by the Office, any third party who proves that proceedings for infringement of the same design have been instituted against him may be joined as a party in the invalidity proceedings on request submitted within three months of the date on which the infringement proceedings were instituted.

The same shall apply in respect of any third party who proves both that the right holder of the Community design has requested that he cease an alleged infringement of the design and that he has instituted proceedings for a court ruling that he is not infringing the Community design.

2.The request to be joined as a party shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the invalidity fee, referred to in Article 52(2), has been paid. Thereafter the request shall, subject to any exceptions laid down in the implementing regulation, be treated as an application for a declaration of invalidity.

TITLE VII

APPEALS

Article 55

Decisions subject to appeal

1.An appeal shall lie from decisions of the examiners, the Administration of Trade Marks and Designs and Legal Division and Invalidity Divisions. It shall have suspensive effect.

2.A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

Article 56

Persons entitled to appeal and to be parties to appeal proceedings

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 57

Time limit and form of appeal

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from. The notice shall be deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

Article 58

Interlocutory revision

1.If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

2.If the decision is not rectified within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay and without comment as to its merits.

Article 59

Examination of appeals

1.If the appeal is admissible, the Board of Appeal shall examine whether the appeal is to be allowed.

2.In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or issued by itself.

Article 60

Decisions in respect of appeals

1.Following the examination as to the merits of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed against or remit the case to that department for further prosecution.

2.If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the *ratio decidendi* of the Board of Appeal, in so far as the facts are the same.

3.The decisions of the Boards of Appeal shall take effect only from the date of expiry of the period referred to in Article 61(5) or, if an action has been brought before the Court of Justice within that period, from the date of rejection of such action.

Article 61

Actions before the Court of Justice

1.Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.

2.The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application

or misuse of power.

3.The Court of Justice has jurisdiction to annul or to alter the contested decision.

4.The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.

5.The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.

6.The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

TITLE VIII

PROCEDURE BEFORE THE OFFICE

Section 1

General provisions

Article 62

Statement of reasons on which decisions are based

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

Article 63

Examination of the facts by the Office of its own motion

1.In proceedings before it the Office shall examine the facts of its own motion. However, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

2.The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 64

Oral proceedings

1.If the Office considers that oral proceedings would be expedient, they shall be held either at the instance of the Office or at the request of any party to the proceedings.

2.Oral proceedings, including delivery of the decision, shall be public, unless the department before which the proceedings are taking place decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 65

Taking of evidence

1.In any proceedings before the Office the means of giving or obtaining evidence shall include the following:

(a) hearing the parties;

(b) requests for information;

(c) the production of documents and items of evidence;

(d) hearing witnesses;

(e) opinions by experts;

(f) statements in writing, sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.

2.The relevant department of the Office may commission one of its members to examine the evidence adduced.

3.If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.

4.The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

Article 66

Notification

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the implementing regulation, or of which notification has been ordered by the President of the Office.

Article 67

Restitutio in integrum

1.The applicant for or holder of a registered Community design or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any rights or means of redress.

2.The application must be filed in writing within two months of the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided for in the second sentence of Article 13(3) shall be deducted from the period of one year.

3.The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for the re-establishment of rights has been paid.

4.The department competent to decide on the omitted act shall decide upon the application.

5.The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 and Article 41(1).

6.Where the applicant for or holder of a registered Community design has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, in the course of the period between the loss of rights in the application for or registration of the registered Community design and publication of the mention of re-establishment of those rights, has put on the market products in which a design included within the scope of protection of the registered Community design is incorporated or to which it is applied.

7.A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or holder of the registered Community design within a period of two months as from the date of publication of the mention of re-establishment of those rights.

8.Nothing in this Article shall limit the right of a Member State to grant *restitutio in integrum* in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

Article 68

Reference to general principles

In the absence of procedural provisions in this Regulation, the implementing regulation, the fees regulation or the rules of procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognised in the Member States.

Article 69

Termination of financial obligations

1.Rights of the Office to the payment of fees shall be barred four years from the end of the calendar year in which the fee fell due.

2.Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be barred after four years from the end of the calendar year in which the right arose.

3.The periods laid down in paragraphs 1 and 2 shall be interrupted, in the case covered by paragraph 1, by a request for payment of the fee and, in the case covered by paragraph 2, by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless in the meantime judicial proceedings to enforce the right have begun. In this case the period shall end at the earliest one year after the judgment has acquired the authority of a final decision.

Section 2

Costs

Article 70

Apportionment of costs

1.The losing party in proceedings for a declaration of invalidity of a registered Community design or appeal proceedings shall bear the fees incurred by the other party as well as all costs incurred by him essential to the proceedings, including travel and subsistence and the remuneration of an agent, adviser or advocate, within

the limits of scales set for each category of costs under the conditions laid down in the implementing regulation.

2.However, where each party succeeds on some and fails on other heads, or if reasons of equity so dictate, the Invalidity Division or Board of Appeal shall decide a different apportionment of costs.

3.A party who terminates the proceedings by surrendering the registered Community design or by not renewing its registration or by withdrawing the application for a declaration of invalidity or the appeal, shall bear the fees and the costs incurred by the other party as stipulated in paragraphs 1 and 2.

4.Where a case does not proceed to judgment, the costs shall be at the discretion of the Invalidity Division or Board of Appeal.

5.Where the parties conclude before the Invalidity Division or Board of Appeal a settlement of costs differing from that provided for in paragraphs 1, 2, 3 and 4, the body concerned shall take note of that agreement.

6.On request, the registry of the Invalidity Division or Board of Appeal shall fix the amount of the costs to be paid pursuant to the preceding paragraphs. The amount so determined may be reviewed by a decision of the Invalidity Division or Board of Appeal on a request filed within the period prescribed by the implementing regulation.

Article 71

Enforcement of decisions fixing the amount of costs

1.Any final decision of the Office fixing the amount of costs shall be enforceable.

2.Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without any other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Office and to the Court of Justice.

3.When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

4.Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the Member State concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Section 3

Informing the public and the official authorities of the Member States

Article 72

Register of Community designs

The Office shall keep a register to be known as the register of Community designs, which shall contain those particulars of which the registration is provided for by this Regulation or by the implementing regulation. The register shall be open to public inspection, except to the extent that Article 50(2) provides otherwise.

Article 73

Periodical publications

1.This Office shall periodically publish a Community Designs Bulletin containing entries open to public inspection in the register as well as other particulars the publication of which is prescribed by this Regulation or by the implementing regulation.

2.Notices and information of a general character issued by the President of the Office, as well as any other information relevant to this Regulation or its implementation, shall be published in the Official Journal of the Office.

Article 74

Inspection of files

1.The files relating to applications for registered Community designs which have not yet been published or the files relating to registered Community designs which are subject to deferment of publication in accordance with Article 50 or which, being subject to such deferment, have been surrendered before or on the expiry of that period, shall not be made available for inspection without the consent of the applicant for or the right holder in the registered Community design.

2.Any person who can establish a legitimate interest may inspect a file without the consent of the applicant for or holder of the registered Community design prior to the publication or after the surrender of the latter in the case provided for in paragraph 1.

This shall in particular apply if the interested person proves that the applicant for or the holder of the registered Community design has taken steps with a view to invoking against him the right under the registered Community design.

3.Subsequent to the publication of the registered Community design, the file may be inspected on request.

4.However, where a file is inspected pursuant to paragraph 2 or 3, certain documents in the file may be withheld from inspection in accordance with the provisions of the implementing regulation.

Article 75

Administrative cooperation

Unless otherwise provided in this Regulation or in national laws, the Office and the courts or authorities of the Member States shall on request give assistance to each other by communicating information or opening files for inspection.

Where the Office opens files to inspection by courts, public prosecutors' offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 74.

Article 76

Exchange of publications

1.The Office and the central industrial property offices of the Member States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge.

2.The Office may conclude agreements relating to the exchange or supply of publications.

Section 4

Representation

Article 77

General principles of representation

1.Subject to paragraph 2, no person shall be compelled to be represented before the Office.

2.Without prejudice to the second subparagraph of paragraph 3, natural or legal persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must be represented before the Office in accordance with Article 78(1) in all proceedings before the Office established by this Regulation, other than in filing an application for a registered Community design; the implementing regulation may permit other exceptions.

3.Natural or legal persons having their domicile or principal place of business or a real and effective industrial or commercial establishment in the Community may be represented before the Office by one of their employees, who must file with it a signed authorisation for inclusion in the files, the details of which are set out in the implementing regulation.

An employee of a legal person to which this paragraph applies may also represent other legal persons which have economic connections with the first legal person, even if those other legal persons have neither their domicile nor their principal place of business nor a real and effective industrial or commercial establishment within the Community.

Article 78

Professional representation

1.Representation of natural or legal persons in proceedings before the Office under this Regulation may only be undertaken by:

(a) any legal practitioner qualified in one of the Member States and having his place of business within the Community, to the extent that he is entitled, within the said State, to act as a representative in industrial property matters; or

(b) any professional representatives whose name has been entered on the list of professional representatives referred to in Article 89(1)(b) of the Regulation on the Community trade mark; or

(c) persons whose names are entered on the special list of professional representatives for design matters referred to in paragraph 4.

2.The persons referred to in paragraph 1(c) shall only be entitled to represent third persons in proceedings on design matters before the Office.

3.The implementing regulation shall provide whether and under what conditions representatives must file with the Office a signed authorisation for insertion on the files.

4.Any natural person may be entered on the special list of professional representatives in design matters, if he fulfils the following conditions:

(a) he must be a national of one of the Member States;

(b) he must have his place of business or employment in the Community;

(c) he must be entitled to represent natural or legal persons in design matters before the central industrial property office of a Member State or before the Benelux Design Office. Where, in that State, the entitlement to represent in design matters is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list must have habitually acted in design matters before the central industrial property office of the said State for at least five years. However, persons whose professional qualification to represent natural or legal persons in design matters before the central industrial property office of one of the Member States is officially recognised in accordance with the regulations laid by such State shall not be subject to the condition of having exercised the profession.

5.Entry on the list referred to in paragraph 4 shall be effected upon request, accompanied by a certificate furnished by the central industrial property office of the Member State concerned, which must indicate that the conditions laid down in the said paragraph are fulfilled.

6.The President of the Office may grant exemption from:

(a) the requirement of paragraph 4(a) in special circumstances;

(b) the requirement of paragraph 4(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

7.The conditions under which a person may be removed from the list shall be laid down in the implementing regulation.

TITLE IX

JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO COMMUNITY DESIGNS

Section 1

Jurisdiction and enforcement

Article 79

Application of the Convention on Jurisdiction and Enforcement

1.Unless otherwise specified in this Regulation, the Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters, signed in Brussels on 27 September 1968, hereinafter referred to as the ‘Convention on Jurisdiction and Enforcement’, shall apply to proceedings relating to Community designs and applications for registered Community designs, as well as to proceedings relating to actions on the basis of Community designs and national designs enjoying simultaneous protection.

2.The provisions of the Convention on Jurisdiction and Enforcement which are rendered applicable by the paragraph 1 shall have effect in respect of any Member State solely in the text which is in force in respect of that State at any given time.

3.In the event of proceedings in respect of the actions and claims referred to in Article 85:

(a) Articles 2, 4, 5(1), (3), (4) and (5), 16(4) and 24 of the Convention on Jurisdiction and Enforcement shall not apply;

(b) Articles 17 and 18 of that Convention shall apply subject to the limitations in Article 82(4) of this Regulation;

(c) the provisions of Title II of that Convention which are applicable to persons domiciled in a Member State shall also be applicable to persons who do not have a domicile in any Member State but have an establishment therein.

4.The provisions of the Convention on Jurisdiction and Enforcement shall not have effect in respect of any Member State for which that Convention has not yet entered into force. Until such entry into force, proceedings referred to in paragraph 1 shall be governed in such a Member State by any bilateral or multilateral convention governing its relationship with another Member State concerned, or, if no such convention exists, by its domestic law on jurisdiction, recognition and enforcement of decisions.

Section 2

Disputes concerning the infringement and validity of Community designs

Article 80

Community design courts

1.The Member States shall designate in their territories as limited a number as possible of national courts and tribunals of first and second instance (Community design courts) which shall perform the functions assigned to them by this Regulation.

2.Each Member State shall communicate to the Commission not later than 6 March 2005 a list of Community design courts, indicating their names and their territorial jurisdiction.

3.Any change made after communication of the list referred to in paragraph 2 in the number, names or territorial jurisdiction of the Community design courts shall be notified without delay by the Member State concerned to the Commission.

4.The information referred to in paragraphs 2 and 3 shall be notified by the Commission to the Member States and published in the *Official Journal of the European Communities*.

5.As long as a Member State has not communicated the list as stipulated in paragraph 2, jurisdiction for any proceedings resulting from an action covered by Article 81 for which the courts of that State have jurisdiction pursuant to Article 82 shall lie with that court of the State in question which would have jurisdiction *ratione loci* and *ratione materiae* in the case of proceedings relating to a national design right of that State.

Article 81

Jurisdiction over infringement and validity

The Community design courts shall have exclusive jurisdiction:

(a) for infringement actions and — if they are permitted under national law — actions in respect of threatened infringement of Community designs;

(b) for actions for declaration of non-infringement of Community designs, if they are permitted under national law;

(c) for actions for a declaration of invalidity of an unregistered Community design;

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

Article 82

International jurisdiction

1.Subject to the provisions of this Regulation and to any provisions of the Convention on Jurisdiction and Enforcement applicable by virtue of Article 79, proceedings in respect of the actions and claims referred to in Article 81 shall be brought in the courts of the Member State in which the defendant is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.

2.If the defendant is neither domiciled nor has an establishment in any of the Member States, such proceedings shall be brought in the courts of the Member State in which the plaintiff is domiciled or, if he is not domiciled in any of the Member States, in any Member State in which he has an establishment.

3.If neither the defendant nor the plaintiff is so domiciled or has such an establishment, such proceedings shall be brought in the courts of the Member State where the Office has its seat.

4.Notwithstanding paragraphs 1, 2 and 3:

(a) Article 17 of the Convention on Jurisdiction and Enforcement shall apply if the parties agree that a different Community design court shall have jurisdiction;

(b) Article 18 of that Convention shall apply if the defendant enters an appearance before a different Community design court.

5.Proceedings in respect of the actions and claims referred to in Article 81(a) and (d) may also be brought in the courts of the Member State in which the act of infringement has been committed or threatened.

Article 83

Extent of jurisdiction on infringement

1.A Community design court whose jurisdiction is based on Article 82(1), (2) (3) or (4) shall have jurisdiction in respect of acts of infringement committed or threatened within the territory of any of the Member States.

2.A Community design court whose jurisdiction is based on Article 82(5) shall have jurisdiction only in respect of acts of infringement committed or threatened within the territory of the Member State in which that court is situated.

Article 84

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

1.An action or a counterclaim for a declaration of invalidity of a 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), (4) and (5) 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 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 conditions set out in the law of the Member State where the court is situated.

4.The validity of a 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.In proceedings in respect of an infringement action or an action for threatened infringement of a registered Community design, the Community design court shall treat the Community design as valid. Validity may be challenged only with a counterclaim for a declaration of invalidity. However, a plea relating to the invalidity of a Community design, submitted otherwise than by way of counterclaim, shall be admissible in so far as the defendant claims that the Community design could be declared invalid on account of an earlier national design right, within the meaning of Article 25(1)(d), belonging to him.

2.In proceedings in respect of an infringement action or an action for threatened infringement of an unregistered Community design, the Community design court shall treat the 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 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 a Community design court the 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 the Community design, 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 the Community design, the court shall reject the counterclaim.

2.The Community design court with which a counterclaim for a declaration of invalidity of a registered Community design has been filed shall inform the Office of the date on which the counterclaim was filed. The latter shall record this fact in the register.

3.The Community design court hearing a counterclaim for a declaration of invalidity of a registered Community design may, on application by the right holder of the registered Community design and after hearing the other parties, stay the proceedings and request the defendant to submit an application for a declaration of invalidity to the Office within a time limit which the court shall determine. If the application is not made within the time limit, the proceedings shall continue; the counterclaim shall be deemed withdrawn. Article 91(3) shall apply.

4.Where a Community design court has given a judgment which has become final on a counterclaim for a declaration of invalidity of a registered Community design, a copy of the judgment shall be sent to the Office. Any party may request information about such transmission. The Office shall mention the judgment in the register in accordance with the provisions of the implementing regulation.

5.No counterclaim for a declaration of invalidity of a registered Community design may be made if an application relating to the same subject matter and cause of action, and involving the same parties, has already been determined by the Office in a decision which has become final.

Article 87

Effects of the judgement on invalidity

When it has become final, a judgment of a Community design court declaring a Community design invalid shall have in all the Member States the effects specified in Article 26.

Article 88

Applicable law

1.The Community design courts shall apply the provisions of this Regulation.

2.On all matters not covered by this Regulation, a Community design court shall apply its national law, including its private international law.

3.Unless otherwise provided in this Regulation, a Community design court shall apply the rules of procedure governing the same type of action relating to a national design right in the Member State where it is situated.

Article 89

Sanctions in actions for infringement

1.Where in an action for infringement or for threatened infringement a Community design court finds that the defendant has infringed or threatened to infringe a 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 the Community 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 the law of the Member State in which the acts of infringement or threatened infringement are committed, including its private international law.

2.The Community design court shall take such measures in accordance with its national law as are aimed at ensuring that the orders referred to in paragraph 1 are complied with.

Article 90

Provisional measures, including protective measures

1.Application may be made to the courts of a Member State, including Community design courts, for such provisional measures, including protective measures, in respect of a Community design as may be available under the law of that State in respect of national design rights even if, under this Regulation, a Community design court of another Member State has jurisdiction as to the substance of the matter.

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

3.A Community design court whose jurisdiction is based on Article 82(1), (2), (3) or (4) shall have jurisdiction to grant provisional measures, including protective measures, which, subject to any necessary procedure for recognition and enforcement pursuant to Title III of the Convention on Jurisdiction and Enforcement, are applicable in the territory of any Member State. No other court shall have such jurisdiction.

Article 91

Specific rules on related actions

1.A Community design court hearing an action referred to in Article 81, other than an action for a declaration of non-infringement, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the Community design is already in issue before another Community design court on account of a counterclaim or, in the case of a registered Community design, where an application for a declaration of invalidity has already been filed at the Office.

2.The Office, when hearing an application for a declaration of invalidity of a registered Community design, shall, unless there are special grounds for continuing the hearing, of its own motion after hearing the parties, or at the request of one of the parties and after hearing the other parties, stay the proceedings where the validity of the registered Community design is already in issue on account of a counterclaim before a Community design court. However, if one of the parties to the proceedings before the Community design court so requests, the court may, after hearing the other parties to these proceedings, stay the proceedings. The Office shall in this instance continue the proceedings pending before it.

3.Where the Community design court stays the proceedings it may order provisional measures, including protective measures, for the duration of the stay.

Article 92

Jurisdiction of Community design courts of second instance — further appeal

1.An appeal to the Community design courts of second instance shall lie from judgments of the Community design courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 81.

2.The conditions under which an appeal may be lodged with a Community design court of second instance shall be determined by the national law of the Member State in which that court is located.

3.The national rules concerning further appeal shall be applicable in respect of judgments of Community design courts of second instance.

Section 3

Other disputes concerning Community designs

Article 93

Supplementary provisions on the jurisdiction of national courts other than Community design courts

1.Within the Member State whose courts have jurisdiction under Article 79(1) or (4), those courts shall have jurisdiction for actions relating to Community designs other than those referred to in Article 81 which would have jurisdiction *ratione loci* and *ratione materiae* in the case of actions relating to a national design right in that State.

2.Actions relating to a Community design, other than those referred to in Article 81, for which no court has jurisdiction pursuant to Article 79(1) and (4) and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office has its seat.

Article 94

Obligation of the national court

A national court which is dealing with an action relating to a 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

EFFECTS ON THE LAWS OF THE MEMBER STATES

Article 95

Parallel actions on the basis of Community designs and national design rights

1.Where actions for infringement or for threatened infringement involving the same cause of action and between the same parties are brought before the courts of different Member States, one seized on the basis of a Community design and the other seized on the basis of a national design right providing simultaneous protection, the court other than the court first seized shall of its own motion decline jurisdiction in favour of that court. The court which would be required to decline jurisdiction may stay its proceedings if the jurisdiction of the other court is contested.

2.The Community design court hearing an action for infringement or threatened infringement on the basis of a Community design shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of a design right providing simultaneous protection.

3.The court hearing an action for infringement or for threatened infringement on the basis of a national design right shall reject the action if a final judgment on the merits has been given on the same cause of action and between the same parties on the basis of a Community design providing simultaneous protection.

4.Paragraphs 1, 2 and 3 shall not apply in respect of provisional measures, including protective measures.

Article 96

Relationship to other forms of protection under national law

1.The provisions of this Regulation shall be without prejudice to any provisions of Community law or of the law of the Member States concerned relating to unregistered designs, trade marks or other distinctive signs, patents and utility models, typefaces, civil liability and unfair competition.

2.A design protected by a Community design shall also be eligible for protection under the law of copyright of Member States as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Member State.

TITLE XI

SUPPLEMENTARY PROVISIONS CONCERNING THE OFFICE

Section 1

General provisions

Article 97

General provision

Unless otherwise provided in this Title, Title XII of the Regulation on the Community trade mark shall apply to the Office with regard to its tasks under this Regulation.

Article 98

Language of proceedings

1.The application for a registered Community design shall be filed in one of the official languages of the Community.

2.The applicant must indicate a second language which shall be a language of the Office the use of which he accepts as a possible language of proceedings before the Office.

If the application was filed in a language which is not one of the languages of the Office, the Office shall arrange to have the application translated into the language indicated by the applicant.

3.Where the applicant for a registered Community design is the sole party to proceedings before the Office, the language of proceedings shall be the language used for filing the application. If the application was made in a language other then the languages of the Office, the Office may send written communications to the applicant in the second language indicated by the applicant in his application.

4.In the case of invalidity proceedings, the language of proceedings shall be the language used for filing the application for a registered Community design if this is one of the languages of the Office. If the application was made in a language other than the languages of the Office, the language of proceedings shall be the second language indicated in the application.

The application for a declaration of invalidity shall be filed in the language of proceedings.

Where the language of proceedings is not the language used for filing the application for a registered Community design, the right holder of the Community design may file observations in the language of filing. The Office shall arrange to have those observations translated into the language of proceedings.

The implementing regulation may provide that the translation expenses to be borne by the Office may not, subject to a derogation granted by the Office where justified by the complexity of the case, exceed an amount to be fixed for each category of proceedings on the basis of the average size of statements of case received by the Office. Expenditure in excess of this amount may be allocated to the losing party in accordance with Article 70.

5.Parties to invalidity proceedings may agree that a different official language of the Community is to be the language of the proceedings.

Article 99

Publication and register

1.All information the publication of which is prescribed by this Regulation or the implementing regulation shall be published in all the official languages of the Community.

2.All entries in the Register of Community designs shall be made in all the official languages of the Community.

3.In cases of doubt, the text in the language of the Office in which the application for a registered Community design was filed shall be authentic. If the application was filed in an official language of the Community other than one of the languages of the Office, the text in the second language indicated by the applicant shall be authentic.

Article 100

Supplementary powers of the President

In addition to the functions and powers conferred on the President of the Office by Article 119 of the Regulation on the Community trade mark, the President may place before the Commission any proposal to amend this Regulation, the implementing regulation, the fees regulation and any other rule to the extent that they apply to registered Community designs, after consulting the Administrative Board and, in the case of the fees regulation, the Budget Committee.

Article 101

Supplementary powers of the Administrative Board

In addition to the powers conferred on it by Article 121 *et seq* of the Regulation on the Community trade mark or by other provisions of this Regulation, the Administrative Board;

(a) shall set the date for the first filing of applications for registered Community designs pursuant to Article 111(2);
(b) shall be consulted before adoption of the guidelines for examination as to formal requirements, examination as to grounds for refusal of registration and invalidity proceedings in the Office and in the other cases provided for in this Regulation.

Section 2

Procedures

Article 102

Competence

For taking decisions in connection with the procedures laid down in this Regulation the following shall be competent:

(a) examiners;
(b) the Administration of Trade Marks and Designs and Legal Division;

(c) Invalidity Divisions;

(d) Boards of Appeal.

Article 103

Examiners

An examiner shall be responsible for taking decisions on behalf of the Office in relation to an application for a registered Community design.

Article 104

The Administration of Trade Marks and Designs and Legal Division

1.The Administration of Trade Marks and Legal Division provided for by Article 128 of the Regulation on the Community trade mark shall become the Administration of Trade Marks and Designs and Legal Division.

2.In addition to the powers conferred upon it by the Regulation on the Community trade mark, it shall be responsible for taking those decisions required by this Regulation which do not fall within the competence of an examiner or an Invalidity Division. It shall in particular be responsible for decisions in respect of entries in the register.

Article 105

Invalidity Divisions

1.An Invalidity Division shall be responsible for taking decisions in relation to applications for declarations of invalidity of registered Community designs.

2.An Invalidity Division shall consist of three members. At least one of the members must be legally qualified.

Article 106

Boards of Appeal

In addition to the powers conferred upon it by Article 131 of the Regulation on the Community trade mark, the Boards of Appeal instituted by that Regulation shall be responsible for deciding on appeals from decisions of the examiners, the Invalidity Divisions and from the decisions of the Administration of Trade Marks and Designs and Legal Division as regards their decisions concerning Community designs.

TITLE XIa

INTERNATIONAL REGISTRATION OF DESIGNS

Section 1

General provisions

Article 106a

Application of provisions

1. Unless otherwise specified in this title, this Regulation and any Regulations implementing this Regulation adopted pursuant to Article 109 shall apply, mutatis mutandis, to registrations of industrial designs in the international register maintained by the International Bureau of the World Intellectual Property Organisation (hereinafter referred to as ‘ international registration ’ and ‘ the International Bureau ’) designating the Community, under the Geneva Act.

2. Any recording of an international registration designating the Community in the International Register shall have the same effect as if it had been made in the register of Community designs of the Office, and any publication of an international registration designating the Community in the Bulletin of the International Bureau shall have the same effect as if it had been published in the Community Designs Bulletin.

Section 2

International registrations designating the community

Article 106b

Procedure for filing the international application

International applications pursuant to Article 4(1) of the Geneva Act shall be filed directly at the International Bureau.

Article 106c

Designation fees

The prescribed designation fees referred to in Article 7(1) of the Geneva Act are replaced by an individual designation fee.

Article 106d

Effects of international registration designating the European Community

1. An international registration designating the Community shall, from the date of its registration referred to in Article 10(2) of the Geneva Act, have the same effect as an application for a registered Community design.

2. If no refusal has been notified or if any such refusal has been withdrawn, the international registration of a design designating the Community shall, from the date referred to in paragraph 1, have the same effect as the registration of a design as a registered Community design.

3. The Office shall provide information on international registrations referred to in paragraph 2, in accordance with the conditions laid down in the Implementing Regulation.

Article 106e

Refusal

1. The Office shall communicate to the International Bureau a notification of refusal not later than six months from the date of publication of the international registration, if in carrying out an examination of an international registration, the Office notices that the design for which protection is sought does not correspond to the definition under Article 3(a), or is contrary to public policy or to accepted principles of morality.

The notification shall state the grounds on which the refusal is based.

2. The effects of an international registration in the Community shall not be refused before the holder has been allowed the opportunity of renouncing the international registration in respect of the Community or of submitting observations.

3. The conditions for the examination as to the grounds for refusal shall be laid down in the Implementing Regulation.

Article 106f

Invalidation of the effects of an international registration

1. The effects of an international registration in the Community may be declared invalid partly or in whole in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.

2. Where the Office is aware of the invalidation, it shall notify it to the International Bureau.

TITLE XII

FINAL PROVISIONS

Article 107

Implementing regulation

1.The rules implementing this Regulation shall be adopted in an implementing regulation.

2.In addition to the fees already provided for in this Regulation, fees shall be charged, in accordance with the detailed rules of application laid down in the implementing regulation and in a fees regulation, in the cases listed below:

(a) late payment of the registration fee;
(b) late payment of the publication fee;
(c) late payment of the fee for deferment of publication;
(d) late payment of additional fees for multiple applications;
(e) issue of a copy of the certificate of registration;
(f) registration of the transfer of a registered Community design;
(g) registration of a licence or another right in respect of a registered Community design;
(h) cancellation of the registration of a licence or another right;

(i) issue of an extract from the register;

(j) inspection of the files;

(k) issue of copies of file documents;

(l) communication of information in a file;

(m) review of the determination of the procedural costs to be refunded;

(n) issue of certified copies of the application.

3.The implementing regulation and the fees regulation shall be adopted and amended in accordance with the procedure laid down in Article 109(2).

Article 108

Rules of procedure of the Boards of Appeal

The rules of procedure of the Boards of Appeal shall apply to appeals heard by those Boards under this Regulation, without prejudice to any necessary adjustment or additional provision, adopted in accordance with the procedure laid down in Article 109(2).

Article 109

Committee

1.The Commission shall be assisted by a Committee.

2.Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3.The Committee shall adopt its rules of procedure

Article 110

Transitional provision

1.Until such time as amendments to this Regulation enter into force on a proposal from the Commission on this subject, protection as a 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.The proposal from the Commission referred to in paragraph 1 shall be submitted together with, and take into consideration, any changes which the Commission shall propose on the same subject pursuant to Article 18 of Directive 98/71/EC.

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 ‘ new Member State(s) ’), a Community design protected or applied for pursuant to this Regulation before their respective date of accession shall be extended to the territory of those Member States in order to have equal effect throughout the Community.

2. The application for a registered Community design may not be refused on the basis of any of the grounds for non-registrability listed in Article 47(1), if these grounds became applicable merely because of the accession of a new Member State.

3. A 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 a new Member State.

4. The applicant or the holder of an earlier right in a new Member State may oppose the use of a Community design falling under Article 25(1)(d), (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. Paragraphs 1, 3 and 4 above shall also apply to unregistered Community designs. Pursuant to Article 11, a design which has not been made public within the territory of the Community shall not enjoy protection as an 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.Applications for registered Community designs may be filed at the Office from the date fixed by the Administrative Board on the recommendation of the President of the Office.

3.Applications for registered Community designs filed within three months before the date referred to in paragraph 2 shall be deemed to have been filed on that date.

This Regulation shall be binding in its entirety and directly applicable in all Member States.