Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs

COMMISSION REGULATION (EC) No 2245/2002

of 21 October 2002

implementing Council Regulation (EC) No 6/2002 on Community designs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs[(1)], and in particular Article 107(3) thereof,

Whereas:

(1) Regulation (EC) No 6/2002 creates a system enabling a design having effect throughout the Community to be obtained on the basis of an application to the Office for Harmonisation in the Internal Market (trade marks and designs) (hereinafter 'the Office').

(2) For this purpose, Regulation (EC) No 6/2002 contains the necessary provisions for a procedure leading to the registration of a Community design, as well as for the administration of registered Community designs, for appeals against decisions of the Office and for proceedings for the invalidation of a Community design.

(3) The present Regulation lays down the necessary measures for implementing the provisions of Regulation (EC) No 6/2002.

(4) This Regulation should ensure the smooth and efficient operation of design proceedings before the Office.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 109 of Regulation (EC) No 6/2002,

HAS ADOPTED THIS REGULATION:

CHAPTER I

APPLICATION PROCEDURE

Article 1

Content of the application

1 The application for a registered Community design shall contain:

a a request for registration of the design as a registered Community design;

b the name, address and nationality of the applicant and the State in which the applicant is domiciled or in which it has its seat or establishment. Names of natural persons shall take the form of the family name and the given name(s). Names of legal entities shall be indicated by their official designation, which may be abbreviated in a customary manner; furthermore, the State whose law governs such entities shall be indicated.

The telephone numbers as well as fax numbers and details of other data-communications links, such as electronic mail, may be given. Only one address shall, in principle, be indicated for each applicant; where several addresses are indicated, only the address mentioned first shall be taken into account, except where the applicant designates one of the addresses as an address for service. If the Office has given the applicant an identification number, it shall be sufficient to mention that number together with the name of the applicant;

c a representation of the design in accordance with Article 4 of this Regulation or, if the application concerns a two-dimensional design and contains a request for deferment of publication in accordance with Article 50 of Regulation (EC) No 6/2002, a specimen in accordance with Article 5 of this Regulation;

d an indication, in accordance with Article 3(3), of the products in which the design is intended to be incorporated or to which it is intended to be applied;

e if the applicant has appointed a representative, the name of that representative and the address of his/her place of business in accordance with point (b); if the representative has more than one business address or if there are two or more representatives with different business addresses, the application shall indicate which address shall be used as an address for service; where no such indication is made, only the first-mentioned address shall be taken into account as an address for service. If there is more than one applicant, the application may indicate the appointment of one applicant or representative as common representative. If an appointed representative has been given an identification number by the Office, it shall be sufficient to mention that number together with the name of the representative;

f if applicable, a declaration that priority of a previous application is claimed pursuant to Article 42 of Regulation (EC) No 6/2002, stating the date on which the previous application was filed and the country in which or for which it was filed;

g if applicable, a declaration that exhibition priority is claimed pursuant to Article 44 of Regulation (EC) No 6/2002, stating the name of the exhibition and the date of the first disclosure of the products in which the design is incorporated or to which it is applied;

h a specification of the language in which the application is filed, and of the second language pursuant to Article 98(2) of Regulation (EC) No 6/2002;

i the signature of the applicant or his/her representative in accordance with Article 65.

2 The application may contain:

a a single description per design not exceeding 100 words explaining the representation of the design or the specimen; the description must relate only to those features which appear in the reproductions of the design or the specimen; it shall not contain statements as to the purported novelty or individual character of the design or its technical value;

b a request for deferment of publication of registration in accordance with Article 50(1) of Regulation (EC) No 6/2002;

c an indication of the ‘Locarno classification’ of the products contained in the application, that is to say, of the class or classes and the subclass or subclasses to which they belong in accordance with the Annex to the Agreement establishing an international classification for industrial designs, signed at Locarno on 8 October 1968 (hereinafter ‘the Locarno Agreement’), referred to in Article 3 and subject to Article 2(2);

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 2245/2002. (See end of Document for details)*

d the citation of the designer or of the team of designers or a statement signed by the applicant to the effect that the designer or team of designers has waived the right to be cited under Article 36(3)(e) of Regulation (EC) No 6/2002.

Article 2

Multiple application

1 An application may be a multiple application requesting the registration of several designs.

2 When several designs other than ornamentation are combined in a multiple application, the application shall be divided if the products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno Classification.

3 For each design contained in the multiple application the applicant shall provide a representation of the design in accordance with Article 4 and the indication of the product in which the design is intended to be incorporated or to be applied.

4 The applicant shall number the designs contained in the multiple application consecutively, using arabic numerals.

Article 3

Classification and indication of products

1 Products shall be classified in accordance with Article 1 of the Locarno Agreement, as amended and in force at the date of filing of the design.

2 The classification of products shall serve exclusively administrative purposes.

3 The indication of products shall be worded in such a way as to indicate clearly the nature of the products and to enable each product to be classified in only one class of the Locarno classification, preferably using the terms appearing in the list of products set out therein.

4 The products shall be grouped according to the classes of the Locarno classification, each group being preceded by the number of the class to which that group of products belongs and presented in the order of the classes and subclasses under that classification.

Article 4

Representation of the design

1 The representation of the design shall consist in a graphic or photographic reproduction of the design, either in black and white or in colour. It shall meet the following requirements:

a save where the application is filed by electronic means pursuant to Article 67, the representation must be filed on separate sheets of paper or reproduced on the page provided for that purpose in the form made available by the Office pursuant to Article 68;

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b in the case of separate sheets of paper, the design shall be reproduced on opaque white paper and either pasted or printed directly on it. Only one copy shall be filed and the sheets of paper shall not be folded or stapled;

c the size of the separate sheet shall be DIN A4 size (29,7 cm × 21 cm) and the space used for the reproduction shall be no larger than 26,2 cm × 17 cm. A margin of at least 2,5 cm shall be left on the left-hand side; at the top of each sheet of paper the number of views shall be indicated pursuant to paragraph 2 and, in the case of a multiple application, the consecutive number of the design; no explanatory text, wording or symbols, other than the indication 'top' or the name or address of the applicant, may be displayed thereon;

d where the application is filed by electronic means, the graphic or photographic reproduction of the designs shall be in a data format determined by the President of the Office; the manner of identifying the different designs contained in a multiple application, or the different views, shall be determined by the President of the Office;

e the design shall be reproduced on a neutral background and shall not be retouched with ink or correcting fluid. It shall be of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished and permitting it to be reduced or enlarged to a size no greater than 8 cm by 16 cm per view for entry in the Register of Community Designs provided for in Article 72 of Regulation (EC) No 6/2002, hereinafter 'the Register', and for direct publishing in the *Community Designs Bulletin* referred to in Article 73 of that Regulation.

2 The representation may contain no more than seven different views of the design. Any one graphic or photographic reproduction may contain only one view. The applicant shall number each view using arabic numerals. The number shall consist of separate numerals separated by a point, the numeral to the left of the point indicating the number of the design, that to the right indicating the number of the view.

In cases where more than seven views are provided, the Office may disregard for registration and publication any of the extra views. The Office shall take the views in the consecutive order in which the views are numbered by the applicant.

3 Where an application concerns a design that consists in a repeating surface pattern, the representation of the design shall show the complete pattern and a sufficient portion of the repeating surface.

The size limits set out in paragraph 1(c) shall apply.

4 Where an application concerns a design consisting in a typographic typeface, the representation of the design shall consist in a string of all the letters of the alphabet, in both upper and lower case, and of all the arabic numerals, together with a text of five lines produced using that typeface, both letters and numerals being in the size pitch 16.

Article 5

Specimens

1 Where the application concerns a two-dimensional design and contains a request for a deferment of publication, in accordance with Article 50(1) of Regulation (EC) No 6/2002, the representation of the design may be replaced by a specimen pasted on a sheet of paper.

Applications for which a specimen is submitted must be sent by a single mail or directly delivered to the office of filing.

Both the application and the specimen shall be submitted at the same time.

2 The specimens shall not exceed 26,2 cm × 17 cm in size, 50 grams in weight or 3 mm in thickness. The specimen shall be capable of being stored, unfolded, alongside documents of the size prescribed in Article 4(1)(c).

3 Specimens that are perishable or dangerous to store shall not be filed.

The specimen shall be filed in five copies; in the case of a multiple application, five copies of the specimen shall be filed for each design.

4 Where the design concerns a repeating surface pattern, the specimen shall show the complete pattern and a sufficient portion of the repeating surface in length and width. The limits set out in paragraph 2 shall apply.

Article 6

Fees for the application

1 The following fees shall be paid at the time when the application is submitted to the Office:

a the registration fee;

b the publication fee or a deferment fee if deferment of publication has been requested;

c an additional registration fee in respect of each additional design included in a multiple application;

d an additional publication fee in respect of each additional design included in a multiple application, or an additional deferment fee in respect of each additional design included in a multiple application if deferment of publication has been requested.

2 Where the application includes a request for deferment of publication of registration, the publication fee and any additional publication fee in respect of each additional design included in a multiple application shall be paid within the time limits specified in Article 15(4).

Article 7

Filing of the application

1 The Office shall mark the documents making up the application with the date of its receipt and the file number of the application.

Each design contained in a multiple application shall be numbered by the Office in accordance with a system determined by the President.

The Office shall issue to the applicant without delay a receipt which shall specify the file number, the representation, description or other identification of the design, the nature and the number of the documents and the date of their receipt.

In the case of a multiple application, the receipt issued by the Office shall specify the first design and the number of designs filed.

2 If the application is filed with the central industrial property office of a Member State or at the Benelux Design Office in accordance with Article 35 of Regulation (EC) No 6/2002, the office of filing shall number each page of the application, using arabic numerals. The office of filing shall mark the documents making up the application with the date of receipt and the number of pages before forwarding the application to the Office.