



COMMISSION OF THE EUROPEAN COMMUNITIES

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93/0463 (CNS)

Amended proposal for a
COUNCIL REGULATION (EC)
on Community Design

(presented by the Commission pursuant to Article 250 (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

GENERAL PRESENTATION

In 1993 the Commission submitted to the Council and the European Parliament proposals for a Regulation on the Community design¹ ("the Regulation") and for a Directive on the legal protection of designs² ("the Directive").

The Economic and Social Committee adopted a first opinion on 6 July 1994³ and an additional opinion on 22 February 1995⁴.

In 1995, the European Parliament decided to discuss the proposal for the Directive first and to conduct the second reading when it adopts a position on the proposal for a Regulation. Following this decision, Parliament adopted its opinion on the Directive during its plenary session of 9 to 13 October, 1995⁵.

The Commission presented its amended proposal for the Directive on 21 February 1996⁶. Subsequently, the Council adopted its common position on the Directive on 17 June 1997⁷.

At the sitting of 22 October 1997 Parliament adopted amendments to the common position. By letter of 22 December 1997, however, the Council stated that it was unable to adopt all Parliament's amendments.

Consequently, the Conciliation procedure was initiated. After having proceeded in accordance with the procedure laid down in Article 251 of the Treaty, the Conciliation Committee approved a joint text on the Directive on 29 July 1998⁸.

The Directive was finally adopted on 13 October 1998⁹.

The ongoing discussions on the Directive constituted one of the reasons for which the work on the Regulation was temporary postponed.

Another reason for the temporary delay in the work on the Regulation was the delivery of an important Opinion¹⁰ by the Court of Justice in 1994. As a consequence of that opinion, the Community should, in creating a new and unitary Community

¹ OJ C 29, 31.1.1994, COM(1993) 342 final.

² OJ C 345, 23.12.1993, COM (1993) 344 final.

³ OJ C 388, 31.12.1994.

⁴ OJ C 110, 2.5.1995.

⁵ OJ C 287, 30.10.1995.

⁶ OJ C 142, 14.5.1996, COM (1996) 66 final.

⁷ OJ C 237, 4.8.1997.

⁸ Decision of the European Parliament of 22 October 1997 (OJ C 339, 10.11. 1997). Decision of the European Parliament of 15 September 1998. Decision of the Council of 24 September 1998.

⁹ Directive 98/71/EC of the European Parliament and of the Council on the legal protection of designs, OJ L 289, 28.10.1998.

¹⁰ Opinion 1/94 of the Court of Justice, 15.11.1994 (Uruguay Round).

design right through a Regulation, use the same legal basis as for the Regulation on the Community trade mark¹¹, i.e. Article 308 of the Treaty. The Commission's initial proposal for the Regulation, however, is based on Article 95 of the Treaty.

In November 1997 the President of the Legal Affairs' and Citizen's Committee of the European Parliament invited the Commission to withdraw its initial proposal for the Regulation and to replace it by a new proposal, based on Article 308 of the Treaty.

For the above reasons, the Commission decided to amend its proposal for the Regulation on Community Design.

The amended proposal is based on Article 308 of the Treaty.

Furthermore, the amended proposal includes all the relevant provisions on substantive design law, which are incorporated in the Design Directive. On certain issues, these provisions differ from the provisions on substantive design law, which were included in the Commission's initial proposal for the Regulation on Community Design.

The reason is that the provisions in the Commission's initial proposal for the Regulation incorporated the substantive provisions of the Commission's initial proposal for the Directive. Certain relevant provisions of the Directive were modified during the discussions on its adoption. For detailed comments on these changes, reference is made to the explanation as to the Articles.

The discussions within the framework of the Conciliation procedure on the Directive focused in particular on the free use of spare parts for repair purposes and the protection of their design. In design terms, the problem related in particular to component parts of complex products upon whose appearance the design is dependent. In such cases, the consumer would not have any choice as to the replacement of the spare part to permit the repair of the complex product so as to restore its original appearance. The so-called "repair" clause should avoid the creation of captive markets in spare parts, in particular in the motor vehicle sector.

After lengthy and complex discussions, the Conciliation Committee finally reached an agreement, which is often referred to as the "freeze plus" compromise. The compromise implies that the Member States shall maintain in force their existing legal provisions relating to the use of spare parts for the purpose of repair and shall introduce changes to those provisions only if the purpose is to liberalise the market for such parts. The Commission undertook to submit an analysis of the consequences of the Directive three years after the implementation date of the Directive and to propose, at the latest one year later, any changes to the Directive needed to complete the internal market in respect of spare parts. The agreement on spare parts is embodied in Articles 14 and 18 of the Directive, combined with certain recitals, relating thereto. Finally, the Commission undertook to launch a consultation exercise, immediately after the adoption of the Directive, involving the parties most concerned, and with a view to arrive at a voluntary agreement among these parties on the free use

¹¹ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark, OJ L 11, 14.1.1994.

of spare parts for repair purposes and their protection. The consultation exercise has in the meantime been initiated.

Given that full harmonization of the design laws of the Member States on the spare parts issue could not yet be introduced at the present stage, it would not seem appropriate nor realistic to expect that such harmonization could be achieved through this Regulation.

It would not be appropriate, because, the Commission has only just initiated the consultations with the parties most concerned with the spare parts issue, in accordance with the commitment, which it undertook vis-à-vis the Council and Parliament. Under these circumstances, it would be preferable to await the outcome of these consultations and, subsequently, the results of the review of the review of the consequences of the Directive for in particular the spare parts sector, in accordance with its Article 18, before presenting any proposals on the free use of spare parts and the protection of their design, within the context of this Regulation.

It would neither be realistic to expect that at this stage, and under the circumstances as described above, a concrete solution with regard to the use and protection of the design of spare parts can be found within the framework of this Regulation.

For these reasons, the amended proposal excludes, for the time being, the registration of the design of a component part of a complex product upon whose appearance the design of the component part is dependent (Article 10a). A proposal with regard to the use and protection of spare parts under this Regulation, shall be submitted by the Commission in parallel with the proposal, which the Commission shall make to complete the internal market in respect of spare parts within the framework of the Design Directive.

This approach may not be the ideal solution, but it fully respects what was agreed in October 1998 on the Design Directive.

It should be stressed that the suggested approach does not deprive the designers of spare parts from the filing of applications for the registration of their design in all circumstances.

First, spare parts, the design of which is not dependent on the appearance of the complex product can be filed for registration, if they fulfil the conditions set out in Article 4 of this Regulation.

Second, where the design of a given spare part cannot be registered as a Community design, pursuant to Article 10a, applications for the registration of such design may be filed in those Member States, which continue to provide such possibility, in accordance with Article 14 of the Directive.

EXPLANATION AS TO THE ARTICLES

Article 1

Paragraph 2 a. specifies that contrary to a copyright approach (under which a creation is protected independently of any "formalities"), the unregistered design must fulfil a

condition in order to benefit from the protection: the design must have been made available to the public.

Articles 3 and 4

Articles 3 and 4 have been aligned with respectively Articles 1 and 3 of the Directive.

Article 5

Article 5 has been aligned with Article 4 of the Directive. The new wording under a. and b. aims at avoiding the recourse to the notion of "date of reference" contained in the original proposal. The contents of paragraph 2 of the original proposal has been transferred to Article 8(1).

Article 6

Article 6 has been aligned with Article 5 of the Directive.

Article 7

This provision has been deleted as its contents has been partly incorporated in Article 5 a. and b., and Articles 6 (1) and 8.

Article 8

Article 8 has been aligned with Article 6 of the Directive. Paragraph 1 corresponds to Article 5(2) of the original proposal. The reference to Articles 5 and 6 is a necessary consequence of the abandon of the notion of date of reference. Paragraphs 2 and 3 correspond to Article 8 (1) and (2) of the original proposal.

Articles 9 and 10

These provisions have been aligned with respectively Articles 7 and 8 of the Directive.

Article 10a

This new provision provides a temporary exclusion of the protection of the design of component parts of complex products as Community designs. It is the consequence of the agreement on spare parts, which has been reached in the Conciliation procedure on the design Directive. Further comments on this subject are made in the general presentation, above.

Article 11

Article 11 has been aligned with Article 9 of the Directive.

Article 12

The fundamental amendment with respect to the original text lies in the fact that the date of commencement of protection of an unregistered Community design starts when the design is first made available to the public "within the Community". The

provision contains a new paragraph 2, which clarifies the concept of "making available to the public". This notion, when used in order to define the point in time from which the unregistered design right conferred may be invoked, does no longer coincide with the notion used in Art. 8 in order to define the point in time at which the requirements for protection must be assessed, as only disclosures taking place within the Community are relevant.

Article 13

This provision has been aligned with Article 10 of the Directive.

Article 15

The new second sentence of this provision establishes how a joint right to a design can be exercised.

Article 16

Paragraphs 1 and 2 of this provision have been amended to clarify that the aim of the legal proceedings relating to the entitlement to a Community design is to obtain a recognition of being the legitimate right holder. The possible consequences of this recognition would then be that, at the request of the legitimate holder, either the ownership of the Community design would be assigned to him or the Community design would be revoked. The first action ("action en revendication") would be governed by the *lex fori*, the second one (revocation action) by the Regulation.

Article 20

Art. 20 and 21 of the original proposal have been merged in this provision, which therefore covers both the unregistered and the registered Community design. Moreover, the provision has been aligned with Article 12 of the Directive.

Paragraph 2 reflects what was contained in Article 20 of the original proposal, i.e. that an unregistered Community design right provides only a right to prevent the use of the design if the use contested results from copying in bad faith of the protected design.

Article 22

This provision has been aligned with Article 13 of the Directive.

Article 26

Article 26 contains a rewording of paragraph 1 of the original proposal to specify that the declaration of invalidity by a Court is subject to the procedural requirement that such a declaration is requested by counterclaim in an infringement action.

The new paragraph 2 indicates by whom and how an Unregistered Community Design can be declared invalid.

Paragraph 3 contains a rewording of paragraph 2 of the original proposal and is aligned with Article 11(9) of the Directive.

Article 27

Article 27 has been restructured and has been aligned with Article 11 of the Directive.

Letter a. of paragraph 1 is a new provision, which represents an alignment on Article 11(1)(a) of the Directive. Furthermore, the letters (a), (b) and (c) of the original proposal have been merged in the present wording of letter b. This follows Article 11(1)(b) of the Directive.

New letter d. corresponds to Article 27(2) of the original proposal. The wording has been aligned on Art. 11(1)(d) of the Directive.

The new letters e., f., and g. correspond to the grounds of invalidity contained in Article 11(2)(a),(b) and (c) of the Directive. Whilst in the Directive the introduction of such grounds is an option for each Member State, in the case of the Community design it must be stated whether they belong to the exhaustive list of this Article or not. It is suggested to provide for these supplementary grounds as not being optional, taking also into consideration the special rules of paragraphs (3) to (6).

The new paragraphs 2 to 4 represent an alignment on Article 11(3) to (5) of the Directive and specify which persons or entities are entitled to invoke the specific grounds for invalidity.

The second sentence of paragraph 3 introduces a provision corresponding to paragraph 6 of Article 11 of the Directive, by offering to each Member State whose national prior rights are in conflict with the Community design the option of giving to its authorities the right to request of their own motion the invalidation of the Community design, even if the holders of the conflicting rights do not initiate such proceedings. A similar approach is suggested in relation to the items listed in Article 6ter of the Paris Convention (see new paragraph 4).

Paragraph 5 contains a new drafting of Article 27(3) of the original proposal. It extends the possibility of a territorially limited declaration of invalidity to the cases of conflict with an earlier trade mark, a copyrighted work, an emblem protected by Article 6ter of the Paris Convention, or of emblems other than those covered by the latter provision, which are of particular interest in a Member State.

The new paragraph 6 is an alignment on Article 11(7) of the Directive.

Article 34

The new paragraph 1a introduces a rule similar to Article 22(2) of the Community trademark Regulation

Article 37

Article 37 merges Articles 37 and 38 of the original proposal with some minor drafting changes.

Paragraph 1 specifies that the possibility of using a national industrial property office for the filing of a Community design application is, contrary to the provisions the

original proposal, no longer dependent upon a decision of the Member State concerned.

Another sentence has been added to paragraph 2, which obliges the national office or the Benelux Office to inform the applicant of the dispatching of the application to the Harmonization Office.

Article 39

This provision has been restructured with respect to the original proposal.

Paragraph 1 and the new paragraph 1a list all the elements which the application must contain to be valid, also incorporating an element which were contained in the deleted paragraph 4 of the original proposal.

Paragraph 2 of the original proposal has been deleted, given that the deposit of specimens and samples, even in respect of deferral of publication, would confront the Office with enormous storage problems. Moreover, this would not be feasible with the paperless processing of applications by the Office.

Paragraph 1a contains three compulsory elements. They are kept separate from the elements mentioned under paragraph 1 because different rules apply with regard to the failure to fulfil with these requirements (see Articles 48 and 49).

Paragraph 3 contains facultative elements.

The new paragraph 7 aims at avoiding that the obligation to make public certain elements of information by virtue of paragraph 1a could unduly restrict the scope of protection of the Community design (e.g. by indicating the product in which the design is incorporated one could be led to the conclusion that the use of the same design for a different product is free).

Article 41

The condition that the publication and registration fees must be paid in order to obtain a date of filing has been deleted from paragraph 1 of this provision.

Paragraph 2 is new and caters for the case that, notwithstanding the precautions taken under Article 37(2) and (3), an application forwarded by a national or the Benelux Office reaches the Harmonization Office with delay. Compared with a similar provision in the Community trade mark Regulation (Article 27), the delay within which such applications must be sent to the Harmonization Office to maintain, as a filing date, the date of filing at the central industrial property office of a Member State or with the Benelux Office, has been extended to two months.

Article 48

Article 48 has been substantially restructured and clarified with respect to the original proposal.

Paragraph 1 of the original proposal has been deleted. Its contents is now to be found in a more precise form under the new Article 49a. The new paragraph 1 corresponds

to paragraph 2(a) of the original proposal. It has been isolated in a separate provision, as it concerns a first separate stage in the examination by the Office in order to check whether a date of filing can be accorded.

The scope of application of paragraph 2(a) is broader than paragraph 2(b) of the original proposal, as it covers now the compulsory requirements under Article 39(1a) as well as the facultative requirements under Article 39(3).

The new provision under paragraph 2(b) spells out the need of compliance with the formal requirements established by the Implementing Regulation.

Paragraph 2(c) is a new provision, specifying the obligation for applicants, who are domiciled outside the territory of the Community, to appoint a representative.

The new provision under paragraph 2 (d) explicitly requires an examination to establish that the relevant fees have been paid. This was implicitly contained in paragraph 2(b) of the original proposal.

Article 49

The new wording of Article 49 results from the restructuring Article 48, as explained above.

Paragraph 1, whose contents, although in a different drafting, corresponds to that of the original proposal, sets out the principle that the Office must invite the applicant to remedy any remediable deficiency resulting from the examination under Art. 48.

The new paragraph 2 deals with the contents of the second sentence of paragraph 2 of the original proposal. The first sentence of paragraph 2 of the original proposal has been incorporated in a new paragraph 3. It includes the sanction in case of failure to remedy the deficiencies as contained in paragraph 3 of the original proposal.

Article 49a

The new Article 49a develops the provision contained in Article 48(1) of the original proposal.

The Office shall at its own motion check, in performing the formal checking provided in Article 48, whether the design for which protection is sought is a design within the meaning of the Regulation, or whether it is contrary to public policy or morality.

The provision intends to limit, as far as possible, the obligation for the Office to check substantive conditions for the registration of the design, as the principle on which the Regulation is based is that the control of the compliance with the requirements for protection should, in principle, be carried out a posteriori.

Article 52

In accordance with paragraph 1, the right holder can only request for a deferment of publication for a period of 30 months. If the right holder would wish so, he may request the Office to shorten this period and to proceed to earlier publication of the

design (paragraph 4). Paragraph 3 of the original proposal has been adapted accordingly.

The modification of paragraph 2 clarifies that, to obtain the registration of the design whose publication is deferred, all the conditions for registration must be fulfilled.

Paragraph 4(b) has been deleted as a consequence of the deletion of the possibility to file specimen or samples of the product in which the design is incorporated.

Paragraph 7 of the original proposal has been deleted as superfluous.

Article 53

Article 53 of the original proposal has been deleted as its contents is included in the new drafting of Article 13.

Article 56

The reference to the Commission and the Member States in paragraph 1 has been deleted. After further reflections, it is considered not to be appropriate nor opportune for the Commission and the Member States to have the possibility to introduce invalidity proceedings before the Office and to become a party to such proceedings.

The aims pursued by Article 56 of the original proposal could be attained by different means, either already available under Community law.

As to the right of intervention before the Office, it would be sufficient to rely on the right of the Commission and each Member State to bring an action before the Court of Justice under the first paragraph of Article 230 of the Treaty EC against any decision by the Office. Although this right is not expressly stated in the Treaty, it results from the principles enshrined in the Court's decision "Les Verts/European Parliament" (Case 294/83, ECR 1986, p.1339).

Moreover, the Commission and the Member States have a right of their own, according to Article 37 of the Statute of the Court of Justice, to intervene in any appeal brought before the Court of First Instance or the Court of Justice under Article 65 of this Regulation.

For the same reasons as explained above, the possibility for the Commission and the Member States to be joined as parties in invalidity proceedings, in accordance with Article 58(2) of the original proposal, has also been deleted.

Article 59

Paragraph 1 takes account of the redrafting of Articles 113 to 115.

Article 67

Paragraph 1 has been modified to take account of the new Article 49a. The Office can examine of its own motion, and beyond the facts, evidence and arguments brought by the parties, the question of the validity if the subject-matter of the protection does not correspond to the definition of design, if the design protected is contrary to public

policy or morality or if the design is a component part of a complex product in the sense of Article 10a(1). This is particularly necessary in the examination under Article 49a, where the procedure is *ex parte*.

Article 82

This provision has been considerably changed.

The amended provision would relieve the Office from carrying out any administrative work in respect of those representatives who are already on the list of professional representatives in Community trade mark matters, as established under Article 89 of the Community trade mark Regulation, given that these representatives would be equally entitled to represent in design matters (paragraph 1 b).

In addition, those persons who are entitled to represent in design matters before a design office of a Member State without qualifying for entry on the list of representatives, maintained under the Community trade mark Regulation, would be given a representation right, limited to design matters, before the Office (paragraph 1 c). In this respect, in paragraph 4(a) (paragraph 2 in the original proposal), the requirement of the nationality of a Member State has been added, thus aligning the proposal on the corresponding provision of the Community trademark Regulation.

The circle of persons entitled to be entered in the list according to paragraph 4 c. (paragraph 2 b of the original proposal) has been restricted to persons entitled to represent in design matters before the national offices of the Member States. However, the condition that the person concerned should be entitled to represent before the office of the Member State in which he has his place of business has been deleted as being too restrictive in the light of Articles 43 and 49 of the EC Treaty.

Paragraph 6 a introduces some flexibility with respect to the new requirement of nationality introduced by paragraph 4 a. The Commission expects the President of the Office to make positive use of the discretionary power conferred upon him by this provision to grant exemptions from the requirement of having the nationality of a Member State where the person seeking such an exemption fulfils the requirement under paragraph 4 c.

Article 83

This provision has been maintained substantially unchanged. It has, however, been supplemented by two new provisions, one in paragraph 1a and another in the new Article 83a.

The new paragraph 1a, inspired by Article 104 of the Community trademark Regulation, should cater for situations where the enforcement of a decision by a French court in Germany or Italy is governed by the Brussels Convention in the text resulting from the 1989 San Sebastian Convention of Accession of Spain and Portugal, whilst enforcement of the same decision by a Belgian court is still governed by the Brussels Convention in the previous text not taking into account the latter Convention. Such situations are likely to become more frequent in future, in the course of the progressive entry into force of the Convention of Accession of Austria,

Finland and Sweden, and even more in the framework of the future enlargement of the EU.

Paragraph 3 has been deleted as superfluous and misleading.

Article 83a

This new Article aims at clarifying the situation which would arise if this Regulation enters into force before Austria, Finland or Sweden (or in future any other perspective Member State) has ratified its own Convention of Accession to the Brussels Convention. The mention of the Brussels Convention in Article 83 cannot imply that the recent or future Member States should apply by anticipation that Convention in this specific field, before parliamentary approval or even conclusion of their Convention of Accession. The reference to multilateral or bilateral conventions aims in particular at covering the Lugano Convention, which could find application in a number of relationships between the newcomers and many earlier Member States.

Article 88

The amendments contained in paragraph 2 are consequential to the restructuring of Article 27.

Article 89

A distinction has been made with regard to the burden of proof that the Community design fulfils the requirements for protection, depending on whether the design is a registered Community design (paragraph 1) or an unregistered Community design (paragraph 2).

Article 93

This provision contains a number of new features with respect to the original proposal.

It does no longer contain the right to information (paragraph 2(a) of the original proposal), in conformity with the deletion of a corresponding provision in the Directive. The specific issue of a right to information will be handled in the context of the Commission initiative on the combat against counterfeiting¹².

Paragraph 1(c) is new and should help in fighting against indirect infringement.

Paragraph 1(d) contains a new formulation of the contents of paragraph 4 of the original proposal.

Article 100

This provision has been aligned on Articles 16 and 17 of the Directive.

¹² Green Paper on Combating Counterfeiting and Piracy in the Single Market, COM(1998) 569 of 15 October 1998.

TITLE XII (Articles 101 to 122)

The denomination of this Title has been amended to take into account the different approach to provisions relating to the Office.

The Harmonization Office (trade marks and designs) has been instituted by the Regulation on the Community trade mark and is operating since 1st September 1994. For this reason, it is proposed to limit the rules concerning the Office to only those, which are necessary for the carrying out of the Office's tasks in relation to design matters.

In view of this, the subdivision of this Title in various sections has become superfluous, consisting in issuing only a few supplementary provisions integrating those contained in the Community Trademark Regulation.

Articles 101 to 106

These provisions have been deleted as fully covered by the corresponding provisions in the Community Trademark Regulation.

Articles 107 to 112

Most of the provisions contained in the original Articles 107 to 112 have been dropped as fully covered by the Community Trademark Regulation. There are only a few elements which have been kept in a slightly modified form.

Articles 113 to 128

These provisions have also been deleted or they have undergone drafting changes, but basically, the approach is the same as in the original proposal and in the Community trade mark Regulation.

It seems more appropriate to enlarge the competence of the existing Administration of Trademarks and Legal Division and to amend consequently its name (Article 113).

Article 114 has been amended in two respects as compared with the original proposal. Following the first amendment the institution of a Formalities Division is no longer pursued and the decentralised power to take decisions in the procedure preceding the registration has been conferred to the single examiners. The examiners will also examine the grounds for non-registrability pursuant to the new Article 49a.

Articles. 118 to 122 have been deleted as fully covered by the corresponding provisions in the Community trademark Regulation.

Article 124 contains some provisions on the implementation of the Regulation: paragraph 1 has been considerably simplified by deleting the list of matters to be contained in the implementing regulation and paragraph 2 provides for the adoption of a Fees Regulation and contains the exhaustive list of fees which can be charged by the Office in addition to those mentioned in other places of the Regulation. Its contents covers therefore the subject-matter of Article 127 (1) and (2) of the original proposal.

The new Article 124a is a consequence of the new approach adopted under Article 117, according to which the competence to decide on appeals is entrusted to the Boards of Appeal instituted under the Community trademark Regulation.

Art. 125 of the initial proposal has been deleted as it was considered largely superfluous.

Amended proposal for a
COUNCIL REGULATION (EC)
on Community Design

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal¹³ from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee¹⁴,

- (1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe; whereas to that end the Treaty provides for the establishment of an internal market and includes the abolition of obstacles to the free movement of goods and the institution of a system ensuring that competition in the common market is not distorted; whereas 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 those objectives;
- (2) Whereas only the Benelux countries have introduced a uniform design protection law; whereas the only other design protection that exists in the Community is a matter for the relevant national law and is confined to the territory of the Member State concerned; whereas there is no such relevant law in any one Member State at the present time; whereas identical designs may be protected differently in different Member States and for the benefit of different owners; whereas this inevitably leads to conflicts in the course of trade between Member States;
- (3) Whereas the substantial differences between Member States' design laws prevent and distort Community-wide competition between the producers of protected goods, because 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

¹³ OJ C 29, 31.1.1994, p. 20

¹⁴ OJ C 110, 2.5.1995, p. 12

applications, offices, procedures, laws, nationally circumscribed exclusive rights and the combined administrative expense with correspondingly high costs and fees for the applicant;

- (4) Whereas 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 particular design in areas with different right owners, and hence constitutes an obstacle to the free movement of goods;
- (5) Whereas this calls for the creation of a Community design right which is directly applicable in each Member State, and of a Community design authority with Community-wide powers, because only in this way will it be possible to obtain, through one application made to the Office for Harmonization 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) Whereas it is thus for the Community to adopt measures to achieve those objectives, which cannot be achieved by the Member States acting individually and which by reason of the scale and the effects of the creation of a Community design right and a Community design authority can only be achieved by the Community;
- (7) Whereas superior design is an important attribute of Community industries in competition with industries from other countries, and is in many cases decisive in the commercial success of the associated product; whereas 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; whereas a more accessible design-protection system adapted to the needs of the internal market is therefore essential for Community industries;
- (8) Whereas such a design-protection system would constitute the prerequisite for seeking corresponding design protection in the most important export markets of the Community;
- (9) Whereas the substantive provisions of this regulation on design law, should be aligned with similar provisions in Directive 98/71/EC on the legal protection of designs¹⁵;
- (10) Whereas technological innovation should not be hampered by granting design protection to features dictated solely by a technical function; whereas it is understood that this does not entail that a design must have an aesthetic quality; whereas, likewise, the interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings; whereas features of a design which are excluded from protection for

¹⁵ OJ L 289, 28.10.1998, p. 28

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) Whereas 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) Whereas full-scale approximation of the laws of the Member States on the use of protected design of component parts of complex products for repair purposes could not be achieved through Directive 98/71/EC on the legal protection of designs; whereas, within the framework of the Conciliation procedure on the said Directive, the Commission undertook to review the consequences of the provisions of the Directive three years after the implementation date of the Directive for, in particular, the industrial sectors which are most affected by the ongoing discussions on the issue of a repair clause for component parts of complex products; whereas, under these circumstances, it is appropriate to exclude the design of component parts of complex products from protection under this Regulation until the Council has decided its policy on this issue on the basis of a Commission proposal;
- (13) Whereas the provisions of this Regulation are without prejudice to the application of the competition rules pursuant to Articles 81 and 82 of the Treaty;
- (14) Whereas a Community design right should, *as far as possible*, serve the needs of all sectors of industry in the Community; whereas those sectors are many and varied;
- (15) Whereas some of the 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; whereas 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;
- (16) Whereas this calls for two forms of protection, one being a short-term unregistered design right and the other being a longer term registered design right;
- (17) Whereas a registered Community design right 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; whereas the 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;

- (18) Whereas a Community design right shall not be upheld unless the design is new in the sense that it is not identical to any other design previously made available to the public, and unless it also possesses an individual character in comparison with other designs;
- (19) Whereas 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; whereas it is therefore 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;
- (20) Whereas the exclusive nature of the right conferred by the registered Community design is consistent with its greater legal certainty; whereas it is appropriate that the unregistered Community design should, however, constitute a right only to prevent copying; whereas this right should also extend to trade in products embodying infringing designs;
- (21) Whereas the enforcement of these rights is to be left to national laws and it is necessary therefore to provide for some basic uniform sanctions in all Member States; whereas these should make it possible, irrespective of the jurisdiction under which enforcement is sought, to stop the infringing acts;
- ~~(22)~~ Whereas 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; whereas, if the single place were to be a court in the country where the design right holder is domiciled, undue costs and difficulties could still be encountered by a challenger to validity from another country;
- deleted -
- (23) Whereas it is necessary to provide safeguards including a right of appeal to a Board of Appeal, and ultimately to the Court of Justice of the European Communities; whereas such a procedure would assist the development of uniform interpretation of the requirements governing the validity of Community designs;
- (24) Whereas it is a fundamental objective 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) Whereas 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; whereas there is also a need for these sectors to have easier recourse to the registered Community design; whereas the option of combining a number of designs in one multiple application would satisfy that need;

- (26) Whereas 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; whereas the facility of an adjournment of publication for a reasonable time affords a solution in such cases;
- (27) Whereas it is essential that the rights conferred by the Community designs be enforced in an efficient manner throughout the territory of the Community; whereas specific rules concerning litigation based on Community designs must be provided in order to guarantee such a result; whereas for infringement actions and for actions for a declaration of invalidity a limitation in the number of national courts having jurisdiction may promote the specialisation of the judges; whereas to that end Member States should designate Community Design Courts;
- (28) Whereas the litigation system should avoid as far as possible 'forum shopping'; whereas it is therefore necessary to establish clear rules of international jurisdiction;
- (29) Whereas this Regulation does not preclude the application to designs protected by Community designs or other relevant laws of the Member States, such as those relating to design protection acquired by registration or those relating to unregistered design rights, trade marks, patents and utility models, unfair competition or civil liability;
- (30) Whereas, pending 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;

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Community design

1. Designs which comply with the conditions contained in this Regulation, hereinafter referred to as 'Community designs', shall be protected by a Community system of rights.
2. A design shall be protected under the terms of this Regulation:
 - 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, 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 (trademarks and designs), hereinafter referred to as "the Office", instituted by Council Regulation (EC) N° 40/94 of 20 December 1993 on the Community trade mark, hereinafter referred to as the "Regulation on the Community Trademark", 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 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

Protection requirements

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 any use other than maintenance, servicing or repair.

Article 5

Novelty

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

- a) in 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 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.

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

2. – deleted –

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

Article 7

Date of reference

(deleted)

Article 8

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(a) and 6(1)(a) or in Articles 5(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 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 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 9

Designs dictated by their technical function and designs of interconnections

1. A Community design right shall not subsist in features of appearance of a product which are solely dictated by its technical function.
2. A Community design right 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 right shall under the conditions set out in Articles 5 and 6 subsist in a design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

Article 10

Designs contrary to public policy or morality

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

Article 10a

Transitional provision

1. Until such time as amendments to this Regulation are adopted on a proposal from the Commission on this subject, a Community design shall not exist in a design applied to or incorporated in a product, which constitutes a component part of a complex product upon whose appearance the design is dependent.
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 on the legal protection of designs¹⁶.

¹⁶

OJ L 289, 28.10.1998, p. 28

Section 2

Scope and term of protection

Article 11

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 12

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 applying paragraph (1) a design shall be deemed to have been made available to the public within the Community if it has been published following registration or otherwise, exhibited, used in trade or otherwise disclosed therein, 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.

Article 13

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.

Section 3

Entitlement 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. 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 provided by contract.

Article 15

Plurality of designers

If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly. The conditions of exercise of this right shall be established by contractual agreement between co-owners or, failing this, by application of the law of the Member State where the exercise of the right is carried out.

Article 16

Claims relating to the entitlement to a Community design

1. If the right to an unregistered Community design is claimed by, or a registered Community design has been 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 paragraph 1. may be instituted only within a period of not more than two years after the date on which the Community design came into existence. This provision shall not apply if the person who is not entitled to the Community design was in bad faith at the time when such design came into existence or was assigned to him.

4. In 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 17

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 16 (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 16 (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 right holder 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 18

Presumption in favour of the registered person

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.

Article 19

Right of the designer to be cited

The designer shall have the right, as against 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 team-work, the citation of the team may replace the citation of the individual designers.

Section 4

Effects of the Community design

Article 20

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 mentioned in paragraph (1) only if the use contested results from copying in bad faith the design protected.
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 52 paragraph (4).

Article 21

Rights conferred by the registered Community design

- deleted -

Article 22

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 another 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 23

Use of a registered Community design for repair purposes

-deleted -

Article 24

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 25

Rights of prior use in respect of a registered Community design

The rights conferred by a registered Community design shall not become effective against any third person who can establish that:

- a. before the date of filing the application; or
- b. if a priority is claimed, before the date of priority,

he has, in good faith, commenced use within the Community – or has made serious preparations to that end – of a design included within the scope of protection of the registered Community design, which has been developed independently of the latter and which at the date of filing or at the date of priority of the Community design, had not yet been made available to the public within the meaning of Article 12 paragraph 2. Such a person shall be entitled to exploit the design for the needs of the undertaking

in which the use was effected or anticipated. That right cannot be transferred separately from the undertaking.

Section 5

Invalidity

Article 26

Declaration of invalidity

1. *A registered Community design shall be declared invalid on application to the Office in accordance with the procedure in Titles VII and VIII or by a Community design Court on the basis of a counterclaim in infringement proceedings.*
2. *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.*
3. *A Community design may be declared invalid* even after the Community design has lapsed or has been surrendered.

Article 27

Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:
 - a. if the design *is not a design within the meaning of Article 3 (a),*
 - b. *if it does not fulfil the requirements of Articles 4 to 10a,*
 - c. if the right holder in the Community design is, by virtue of a court decision, *not entitled to it under Articles 14 and 15,*
 - 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 by a registered Community design or an application for such a design, or by a registered design right of a Member State, 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, or of badges, emblems and escutcheons other than those covered by Article 6ter of the said Convention 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 Articles 14 and 15.
 3. The grounds provided for in paragraph (1) (d), (e) and (f) may be invoked solely by the applicant for or holder of the conflicting right. If the conflicting right is a right of a Member State and that Member State has availed itself of this option, the ground provided for in paragraph (1) (d) may be also invoked by an appropriate authority designated by that Member State.
 4. The ground provided for in paragraph (1) (g) may be invoked solely by the person or entity concerned by the use. If the Member State whose public interest is at stake has availed itself of this option, this ground may be also invoked by an appropriate authority designated by that Member State.
 5. By derogation from Article 1 paragraph (3), where the design is in breach of Article 10 and in the in the cases specified in paragraph (1)(d), (e), (f) and (g), if the ground for invalidation obtains only in respect of one or some Member States, invalidity shall be declared only in respect of such a Member State or States.
 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 or of a court decision declaring the partial invalidity of the registered Community design.

Article 28

Effects of invalidity

1. A Community design which has been declared invalid shall be deemed not to have had, from the outset, the effects specified in this Regulation.
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 29

Dealing with Community designs as national design rights

1. Save where Articles 30 to 34 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 subparagraph (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 (a) or, where that provision does not apply, the condition under paragraph 1 (b), the Member State referred to in paragraph 1 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 Office is situated.

Article 30

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 registered 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 70 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 31

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

Article 32

Levy of execution on a registered Community design

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

Article 33

Bankruptcy or like proceedings

1. Until such time as common rules for the Member States in this field enter into force, the only Member State in which a Community design may be involved in bankruptcy or like proceedings shall be that in which such proceedings are first brought under national law or conventions applicable in this field.

2. Where a registered Community design is involved in bankruptcy or like proceedings, an entry to that effect shall be made in the register at the request of the competent national authority and shall be published.

Article 34

Licensing

1. A Community design may be licensed for the whole or part of the Community. A licence may be exclusive or non-exclusive.
- 1a. *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 the products for which the license granted and the quality of the products manufactured by the licensee.*
2. 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.
3. 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.
4. 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 35

Effects vis-à-vis third parties

1. The effects vis-à-vis third parties of the legal acts referred to in Articles 30, 31, 32 and 34 shall be governed by the law of the Member State determined in accordance with Article 29.
2. However, as regards registered Community designs, legal acts referred to in Article 30, 31 and 34 shall have effect only 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 relating to it 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 bankruptcy enter into force, the effects vis-à-vis third parties of bankruptcy or like proceedings shall be governed by the law of the Member State in which such proceedings are first brought under national law or the conventions applicable in this field.

Article 36

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 29.
2. Articles 30 to 35 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 have to 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 37

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 As soon as the application has been forwarded, it shall inform the applicant accordingly. 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.

3. No less than ten 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 38

Forwarding of the application

- deleted -

Article 39

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.
- 1a The application shall further contain:
 - a. an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied;
 - b. 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;
 - c. 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.
2. - deleted -
3. In addition, the application may contain:
 - a. a description explaining the representation;
 - b. a request for deferment of publication of the application in accordance with Article 52.
4. - deleted -

5. 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.
6. The application shall comply with the conditions laid down in the implementing Regulation.
7. The information contained in the elements mentioned in paragraph (1a) (a) and (b) and in paragraph (3) (a) does not affect the scope of protection of the design as such.

Article 40

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.
2. Besides the fees referred to in Article 39(5), 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.

Article 41

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 39 (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 39(1) have been filed, shall be the date of receipt of such documents by the Office.

Article 42

Classification

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

Section 2

Priority

Article 43

Right of priority

1. A person who has duly filed an application for a design *right* in or for any State party to the Paris Convention for the Protection of Industrial Property, hereinafter referred to as 'the Paris Convention', or to the Agreement establishing the World Trade Organization 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, a right of priority of six months from the date of filing of the first application.
2. Every filing that is equivalent to a lawful national filing under the national law of the State where it took place or under bilateral or multilateral agreements shall be recognised as giving rise to a right of priority.
3. Lawful 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 *right* 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 right 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 Organization, 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 44

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 latter may require a translation of the previous application in one of the languages of the Office.

Article 45

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, 8, 25, 27(1)(d) and 52(1).

Article 46

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 lawful national filing, including where appropriate the priority claimed for the said application.

Article 47

Exhibition priority

1. If an applicant for a registered Community design has displayed 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 display of such products, claim a right of priority from that date within the meaning of Article 45.
2. An applicant who wishes to claim priority pursuant to paragraph 1 must file evidence of the display of the products in which the design is incorporated or to which it is applied under the conditions laid down in the implementing Regulation.
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 43.

TITLE V

REGISTRATION PROCEDURE

Article 48

Examination as to formal requirements for filing

1. The office shall examine whether the application complies with the requirements laid down in Article 39 (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 39 and, in the case of a multiple application, Article 40;
 - b. the application meets the formal requirements laid down in the implementing Regulation for the implementation of Articles 39 and 40;
 - c. the requirements of Article 81(2) are satisfied;
 - d. the fees referred to in Article 39(5) and, in the case of a multiple application, Article 40(2), have been paid;
 - e. the requirements concerning the claim to priority are satisfied, if a priority is claimed.

Article 49

Remediable deficiencies

1. Where, in carrying out the examination under Article 48 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 39(1) and the applicant complies with the Office's request in due time, the Office shall allow 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 referred to in Article 48(2)(a) to (c) or the payment of the fees referred to in Article 48(2)(d) and the applicant complies with the Office's request in due time, the Office shall allow as the date of filing the date on which the deficient 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 48(2)(e), failure to remedy them within the prescribed period shall result in the loss of the right of priority for the application.

Article 49a

Examination of grounds for non-registrability

1. Where the Office, in carrying out the examination pursuant to Article 48, finds that the design for which protection is sought
 - a does not fulfil the requirement under Article 3, or
 - b) is contrary to public policy or to accepted principles of morality,the application shall be refused.
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 50

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 as a result of a procedure under Article 49a, the Office shall register the application in the Community design register as a registered Community design. The registration shall bear the date on which the date of filing was accorded.

Article 51

Publication

Upon registration, the Office shall publish the registered Community design in the Community design Bulletin as mentioned in Article 77(1). The contents of the publication shall be set out in the implementing Regulation.

Article 52

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 50 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 78(2), be open to public inspection.
3. The Office shall publish in the Community Design 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 Design Bulletin, provided that, within the time limit laid down in the implementing Regulation the publication fee and, in the event of a multiple application, the additional publication fee are paid.

If the right holder fails to comply with these requirements, the registered Community design shall, unless surrendered in accordance with the provisions of Article 55, be deemed from the outset not to have had the effects specified in this Regulation.

5. In the case of a multiple application, the provisions of paragraph 4 may be applied to only 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

TERM OF PROTECTION OF THE REGISTERED COMMUNITY DESIGN

Article 53

Term of protection

- deleted -

Article 54

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 in the registered Community design and any person having a registered right 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 before 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 registered.

TITLE VII

SURRENDER AND INVALIDITY OF THE REGISTERED COMMUNITY DESIGN

Article 55

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 registered.
2. Surrender shall be registered only with the agreement of the holder 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.

Article 56

Application for a declaration of invalidity

1. Any natural or legal person may submit to the Office an application for a declaration of invalidity of a registered Community design. *However,*
 - a) in the case envisaged in Article 27(1)(c)(e) or (f), the application may be filed only by the person or persons entitled, and
 - b) in the case of Article 27(1)(d) by the right holder of the earlier right, and
 - c) in the case envisaged in Article 27(1)(g), by the person or persons or entities concerned by the use.
2. The application shall be filed in a written reasoned statement. It shall not deem to have been filed until the fee has been paid.
3. The 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 57

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 27 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 by the other parties or those issued by itself.
3. The decision declaring the registered Community design invalid shall be entered in the register upon becoming final.

Article 58

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 an Invalidity Division, 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 56(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 VIII

APPEALS FROM DECISIONS OF THE OFFICE

Article 59

Decisions subject to appeal

1. An appeal shall lie from decisions of the examiners of the Administration of Trade marks and Designs and Legal Division and Invalidity Divisions. It shall have suspending effect.
2. A decision which does not terminate proceedings as regards one of the parties can only be appealed against if joined with the final decision, unless the decision allows separate appeal.

Article 60

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 61

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 against. The notice shall not be deemed to have been filed until after the appeal fee 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 62

Interlocutory revision

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

2. If the decision is not amended 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 63

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 those issued by itself.

Article 64

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 action.
2. If the Board of Appeal remits the case for further action to the department whose decision was appealed against, 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 as from the date of expiration of the period referred to in Article 65 (5) or, if an action has been brought before the Court of Justice within that period, as from the date of dismissal of such action.

Article 65

Actions before the Court of Justice

1. Actions may be brought before the Court of Justice against decisions of the Office taken by 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 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 judgement of the Court of Justice.

TITLE IX

PROCEDURE BEFORE THE OFFICE

Section 1

General provisions

Article 66

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 67

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, except to the extent that the grounds of invalidity specified in Articles 27(1)(a), 10 and 10a are involved.
2. The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 68

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 Office decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 69

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 information;
 - d) hearing the 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 70

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.

Article 71

Restitutio in integrum

1. The applicant for or right 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 in dealings with 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 infringed 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 54 (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 of the Office empowered 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 in Article 43 (1).
6. Where the applicant for or right holder in 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, during the period between the loss of rights in the application or in the registered Community design and publication of the mention of re-establishment of those rights, has put products on the market in which a design is incorporated or to which it is applied, which is comprised within the scope of protection of the registered Community design.

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 right holder in 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 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 72

Reference to general principles

In the absence of procedural provisions in this Regulation, the implementing Regulation, the fees Regulations 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 73

Termination of financial obligations

1. Rights of the Office to payment of a fee shall be extinguished after 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 extinguished 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 such case the period shall end no earlier than one year after the judgement has acquired the authority of a final decision.

Section 2

Costs

Article 74

Allocation 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. The 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 paragraph 1 and 2.
4. Where a case does not proceed to judgement, the costs shall be in 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 to 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 75

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 improperly.

Section 3

Information of the public and of the official authorities of the Member States

Article 76

Register

The Office shall keep a register to be known as the Community design register, 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 52 (2) provides otherwise in relation to entries relating to registered Community designs subject to deferment of publication.

Article 77

Periodical publications

1. This Office shall periodically publish a Community design 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 for Harmonization in the Internal Market (trademarks and designs)", referred to in Article 85 of the Regulation on the Community Trademark.

Article 78

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 52 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 right holder in the registered Community design prior to the publication or after the surrender of the latter in the case provided for pursuant to paragraph 1. This shall in particular apply if the interested person proves that the applicant for, or the right holder in, a 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 79

Administrative co-operation

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 78.

Article 80

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 81

General principles of representation

- 1 Subject to the provisions of paragraph 2, no person shall be compelled to be represented before the Office.
2. Without prejudice to the second sentence 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 82 (1) in all proceedings before the Office established by this Regulation, other than in filing an application for a registered Community design.
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 82

Professional representatives

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 Regulation (EC) No 40/94 of 20.12.1993 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 . 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 X

JURISDICTION AND PROCEDURE IN LEGAL ACTIONS RELATING TO COMMUNITY DESIGNS

Section 1

Jurisdiction and Enforcement

Article 83

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, as amended by the Conventions on the Accession to that Convention of the States acceding to the European Communities, the whole of which Convention and of which Conventions of Accession are 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 design rights enjoying simultaneous protection.
 - 1a) *The provisions of the Convention on Jurisdiction and Enforcement which are rendered applicable by the preceding paragraph 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.*
2. 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), *Articles 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 86 (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.
3. - deleted -

Article 83a

Transitional provision

The provisions of the Convention on Jurisdiction and Enforcement rendered applicable by virtue of Article 83 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 Article 83 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 84

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 within three years of the entry into force of this Regulation 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, the 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 85 for which the courts of that State have jurisdiction pursuant to Article 86, 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 85

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 counter-claims for a declaration of invalidity of a Community design raised in connection with actions under (a).

Article 86

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 83, proceedings in respect of the actions and claims referred to in Article 85 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 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 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 States where the Office is situated.
4. Notwithstanding the provisions of 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 85 (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 87

Extent of jurisdiction on infringement

1. A Community design Court whose jurisdiction is based on Article 86 (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 86 (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 88

Action or counter-claim for a declaration of invalidity of a Community design

1. An action or a counter-claim for a declaration of invalidity of a Community design may only be based on the grounds for invalidity mentioned in Article 27.
2. The action or the counterclaim may be brought:
 - a) in the cases specified in Article 27(1)(c), (e) and (f) only by the person entitled to the right in question,
 - b) in the case specified in Article 27 paragraph (1) (g), only by the person or entity concerned by the use,
 - c) in the case specified in Article 27 paragraph (1) (d), only by the right holder of the earlier right.
3. If the counter-claim 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 89

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 unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.
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, if the right holder presents evidence to sustain his claim that the design has an individual character, treat the design as valid, unless its validity is put in issue by the defendant with a counterclaim for a declaration of invalidity.
3. In proceedings referred to in paragraph 1 and 2, a plea relating to the invalidity of a Community design submitted otherwise than by way of counter-claim shall be admissible in so far as the defendant claims that the Community design should be declared invalid on account of an earlier national design right within the meaning of Article 27(1)(d) belonging to him.

Article 90

Judgements of validity

1. Where in a proceeding before a Community design Court the Community design has been put in issue by way of a counter-claim for a declaration of invalidity:
 - a) if any of the grounds mentioned in Article 27 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 27 is found to prejudice the maintenance of the Community design, the Court shall reject the counter-claim.
2. The Community design Court with which a counter-claim for a declaration of invalidity of a registered Community design has been filed shall inform the Office of the date on which the counter-claim was filed. The latter shall record this fact in the register.
3. The Community design Court hearing a counter-claim 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 counter-claim shall be deemed withdrawn. Article 95 (3) shall apply.

4. Where a Community design Court has given a judgement which has become final on a counter-claim for a declaration of invalidity of a registered Community design, a copy of the judgement shall be sent to the Office. Any party may request information about such transmission. The Office shall mention the judgement in the register in accordance with the provisions of the implementing Regulation.
5. No counter-claim 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 91

Effects of the judgement on validity

When it has become final, a judgement of a Community design Court declaring a Community design invalid shall have, subject to Article 27 (5), in all the Member States the effects specified in Article 28.

Article 92

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 93

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, issue the following orders:
 - a) an order prohibiting the defendant from proceeding with the acts which have infringed or would infringe the Community design;
 - b) ~~issue~~ 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 the orders referred to in paragraphs 1 ~~and 2~~ are complied with.

Article 94

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 on 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 counter-claim relating to the invalidity of a Community design submitted by the defendant shall be admissible. Article 89 (2) shall, however, apply *mutatis mutandis*.
3. A Community design Court whose jurisdiction is based on Article 86 (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 95

Specific rules on related actions

1. A Community Design Court hearing an action referred to in Article 85, 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 counter-claim 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 counter-claim 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 96

Jurisdiction of Community Design Courts of second instance – further appeal

1. An appeal to the Community Design Courts of second instance shall lie from judgements of the Community Design Courts of first instance in respect of proceedings arising from the actions and claims referred to in Article 85.
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 judgements of Community Design Courts of second instance.

Section 3

Other disputes concerning Community designs

Article 97

Supplementary provisions on the jurisdiction of national courts other than Community Design Courts

1. Within the Member State whose courts have jurisdiction pursuant to Articles 83(1) or 83a, the courts having jurisdiction for actions relating to Community designs other than those referred to in Article 85 shall be those which would have jurisdiction *ratione loci* and *ratione materiae* in actions relating to a national design right in that State.
2. Actions relating to Community designs other than those referred to in Article 85, for which no court has jurisdiction pursuant to Articles 83(1), 83a and paragraph 1 of this Article may be heard before the courts of the Member State in which the Office is situated.

Article 98

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 85 shall treat the design as valid. Articles 89(2) and 94(2) shall, however, apply *mutatis mutandis*.

TITLE XI

EFFECTS ON THE LAWS OF THE MEMBER STATES

Article 99

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 being 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 judgement 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 judgement 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. The preceding paragraphs shall not apply in respect of provisional measures, including protective measures.

Article 100

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 design rights, 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 XII

SUPPLEMENTARY PROVISIONS CONCERNING THE OFFICE

Section 1

General provisions

Article 101

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 102

Administrative services

- deleted -

Article 103

Staff

- deleted -

Article 104

Privileges and immunities

- deleted -

Article 105

Liability

- deleted -

Article 106

Jurisdiction of the Court of Justice

- deleted -

Section 2

Management of the Office

Article 107

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 108

Appointment of senior officials

- deleted -

Section 3

Administrative Board

Article 109

Supplementary powers of the Administrative Board

In addition to any powers conferred on the Administrative Board by the Regulation on the Community trade mark or by other provisions of this Regulation,

- a. The Administrative Board shall set the date for the first filing of applications for registered Community designs pursuant to Article 128 (2);
- b. it 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;

Article 110

Composition

- deleted -

Article 111

Chairmanship

- deleted -

Article 112

Meetings

- deleted -

Section 4

Implementation of procedures

Article 113

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 Design and Legal Division;
- (c) Invalidity Divisions;
- (d) Boards of Appeal.

Article 114

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 115

The Administration of Trade marks and Design and Legal Division

1. The Administration of Trademarks and Legal Division instituted by the Regulation on the Community trade mark shall become the Administration of Trade marks and Design 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 116

Invalidity Divisions

1. An Invalidity Division shall be responsible for taking decisions in relation to an application for a declaration of invalidity of a registered Community design.
2. An Invalidity Division shall consist of three members. At least two of these members must be legally qualified.

Article 117

Boards of Appeal

In addition to the powers conferred upon it by the Regulation on the Community trade mark, a Board 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 Design and Legal Division.

Article 118

Independence of the members of the Boards of Appeal

- deleted -

Article 119

Exclusion and objection

- deleted -

Article 120

Appointment of members of Invalidity Divisions and Boards of Appeal during a transitional period

- deleted -

Section 5

Financial Provisions

deleted

Article 121

Budget

- deleted -

Article 122

Fees

- deleted -

TITLE XIII

FINAL PROVISIONS

Article 123

Official languages

- deleted -

Article 124

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 the preceding Articles, fees shall be charged, in accordance with the detailed rules of application laid down in the Implementing Regulation and 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 of a file;
 - m) review of the determination of the procedural costs to be refunded;
 - n) issue of certified 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 141 of the Regulation on the Community Trademark.

Article 124a

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 141 of the Regulation on the Community trade mark.

Article 125

System of exchange of information

- deleted -

Article 126

Establishment of a committee and procedure for the adoption of implementing regulations

- deleted -

Article 127

Fees Regulation

- deleted -

Article 128

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 by 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 filed on that date.

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

Done at Brussels,

For the Council
The President

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