

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Regulation (EC) No 6/2002 creates a system enabling a design having effect throughout the Community to be obtained on the basis of an application to the Office for Harmonisation in the Internal Market (trade marks and designs) (hereinafter 'the Office').
- (2) For this purpose, Regulation (EC) No 6/2002 contains the necessary provisions for a procedure leading to the registration of a Community design, as well as for the

administration of registered Community designs, for appeals against decisions of the Office and for proceedings for the invalidation of a Community design.

- (3) The present Regulation lays down the necessary measures for implementing the provisions of Regulation (EC) No 6/2002.
- (4) This Regulation should ensure the smooth and efficient operation of design proceedings before the Office.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 109 of Regulation (EC) No 6/2002,

HAS ADOPTED THIS REGULATION:

CHAPTER I

APPLICATION PROCEDURE

Article 1

Content of the application

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

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

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

- (c) a representation of the design in accordance with Article 4 of this Regulation or, if the application concerns a two-dimensional design and contains a request for deferment of

publication in accordance with Article 50 of Regulation (EC) No 6/2002, a specimen in accordance with Article 5 of this Regulation;

- (d) an indication, in accordance with Article 3(3), of the products in which the design is intended to be incorporated or to which it is intended to be applied;
- (e) if the applicant has appointed a representative, the name of that representative and the address of his/her place of business in accordance with point (b); if the representative has more than one business address or if there are two or more representatives with different business addresses, the application shall indicate which address shall be used as an address for service; where no such indication is made, only the first-mentioned address shall be taken into account as an address for service. If there is more than one applicant, the application may indicate the appointment of one applicant or representative as common representative. If an appointed representative has been given an identification number by the Office, it shall be sufficient to mention that number together with the name of the representative;
- (f) if applicable, a declaration that priority of a previous application is claimed pursuant to Article 42 of Regulation (EC) No 6/2002, stating the date on which the previous application was filed and the country in which or for which it was filed;
- (g) if applicable, a declaration that exhibition priority is claimed pursuant to Article 44 of Regulation (EC) No 6/2002, stating the name of the exhibition and the date of the first disclosure of the products in which the design is incorporated or to which it is applied;

⁽¹⁾ OJ L 3, 5.1.2002, p. 1.

- (h) a specification of the language in which the application is filed, and of the second language pursuant to Article 98(2) of Regulation (EC) No 6/2002;
- (i) the signature of the applicant or his/her representative in accordance with Article 65.
2. The application may contain:
- (a) a single description per design not exceeding 100 words explaining the representation of the design or the specimen; the description must relate only to those features which appear in the reproductions of the design or the specimen; it shall not contain statements as to the purported novelty or individual character of the design or its technical value;
- (b) a request for deferment of publication of registration in accordance with Article 50(1) of Regulation (EC) No 6/2002;
- (c) an indication of the 'Locarno classification' of the products contained in the application, that is to say, of the class or classes and the subclass or subclasses to which they belong in accordance with the Annex to the Agreement establishing an international classification for industrial designs, signed at Locarno on 8 October 1968 (hereinafter 'the Locarno Agreement'), referred to in Article 3 and subject to Article 2(2);
- (d) the citation of the designer or of the team of designers or a statement signed by the applicant to the effect that the designer or team of designers has waived the right to be cited under Article 36(3)(e) of Regulation (EC) No 6/2002.

Article 2

Multiple application

1. An application may be a multiple application requesting the registration of several designs.
2. When several designs other than ornamentation are combined in a multiple application, the application shall be divided if the products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno Classification.
3. For each design contained in the multiple application the applicant shall provide a representation of the design in accordance with Article 4 and the indication of the product in which the design is intended to be incorporated or to be applied.
4. The applicant shall number the designs contained in the multiple application consecutively, using arabic numerals.

Article 3

Classification and indication of products

1. Products shall be classified in accordance with Article 1 of the Locarno Agreement, as amended and in force at the date of filing of the design.
2. The classification of products shall serve exclusively administrative purposes.
3. The indication of products shall be worded in such a way as to indicate clearly the nature of the products and to enable each product to be classified in only one class of the Locarno classification, preferably using the terms appearing in the list of products set out therein.
4. The products shall be grouped according to the classes of the Locarno classification, each group being preceded by the number of the class to which that group of products belongs and presented in the order of the classes and subclasses under that classification.

Article 4

Representation of the design

1. The representation of the design shall consist in a graphic or photographic reproduction of the design, either in black and white or in colour. It shall meet the following requirements:
 - (a) save where the application is filed by electronic means pursuant to Article 67, the representation must be filed on separate sheets of paper or reproduced on the page provided for that purpose in the form made available by the Office pursuant to Article 68;
 - (b) in the case of separate sheets of paper, the design shall be reproduced on opaque white paper and either pasted or printed directly on it. Only one copy shall be filed and the sheets of paper shall not be folded or stapled;
 - (c) the size of the separate sheet shall be DIN A4 size (29,7 cm × 21 cm) and the space used for the reproduction shall be no larger than 26,2 cm × 17 cm. A margin of at least 2,5 cm shall be left on the left-hand side; at the top of each sheet of paper the number of views shall be indicated pursuant to paragraph 2 and, in the case of a multiple application, the consecutive number of the design; no explanatory text, wording or symbols, other than the indication 'top' or the name or address of the applicant, may be displayed thereon;
 - (d) where the application is filed by electronic means, the graphic or photographic reproduction of the designs shall be in a data format determined by the President of the Office; the manner of identifying the different designs contained in a multiple application, or the different views, shall be determined by the President of the Office;

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

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

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

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

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

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

Article 5

Specimens

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

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

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

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

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

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

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

Article 6

Fees for the application

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

- (a) the registration fee;
- (b) the publication fee or a deferment fee if deferment of publication has been requested;
- (c) an additional registration fee in respect of each additional design included in a multiple application;
- (d) an additional publication fee in respect of each additional design included in a multiple application, or an additional deferment fee in respect of each additional design included in a multiple application if deferment of publication has been requested.

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

Article 7

Filing of the application

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

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

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

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

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

The office of filing shall issue to the applicant without delay a receipt specifying the nature and the number of the documents and the date of their receipt.

3. If the Office receives an application forwarded by the central industrial property office of a Member State or the Benelux Design Office, it shall mark the application with the date of receipt and the file number and shall issue to the applicant without delay a receipt in accordance with the third and fourth subparagraphs of paragraph 1, indicating the date of receipt at the Office.

Article 8

Claiming priority

1. Where the priority of one or more previous applications is claimed in the application pursuant to Article 42 of Regulation (EC) No 6/2002, the applicant shall indicate the file number of the previous application and file a copy of it within three months of the filing date referred to in Article 38 of that Regulation. The President of the Office shall determine the evidence to be provided by the applicant.

2. Where, subsequent to the filing of the application, the applicant wishes to claim the priority of one or more previous applications pursuant to Article 42 of Regulation (EC) No 6/2002, he/she shall submit, within one month of the filing date, the declaration of priority, stating the date on which and the country in or for which the previous application was made.

The applicant shall submit to the Office the indications and evidence referred to in paragraph 1 within three months of receipt of the declaration of priority.

Article 9

Exhibition priority

1. Where exhibition priority has been claimed in the application pursuant to Article 44 of Regulation (EC) No 6/2002, the applicant shall, together with the application or at the latest within three months of the filing date, file a certificate issued at the exhibition by the authority responsible for the protection of industrial property at the exhibition.

That certificate shall declare that the design was incorporated in or applied to the product and disclosed at the exhibition, and shall state the opening date of the exhibition and, where

the first disclosure of the product did not coincide with the opening date of the exhibition, the date of such first disclosure. The certificate shall be accompanied by an identification of the actual disclosure of the product, duly certified by that authority.

2. Where the applicant wishes to claim an exhibition priority subsequent to the filing of the application, the declaration of priority, indicating the name of the exhibition and the date of the first disclosure of the product in which the design was incorporated or to which it was applied, shall be submitted within one month of the filing date. The indications and evidence referred to in paragraph 1 shall be submitted to the Office within three months of receipt of the declaration of priority.

Article 10

Examination of requirements for a filing date and of formal requirements

1. The Office shall notify the applicant that a date of filing cannot be granted if the application does not contain:

- (a) a request for registration of the design as a registered Community design;
- (b) information identifying the applicant;
- (c) a representation of the design pursuant to Article 4(1)(d) and (e) or, where applicable, a specimen.

2. If the deficiencies indicated in paragraph 1 are remedied within two months of receipt of the notification, the date on which all the deficiencies are remedied shall determine the date of filing.

If the deficiencies are not remedied before the time limit expires, the application shall not be dealt with as a Community design application. Any fees paid shall be refunded.

3. The Office shall call upon the applicant to remedy the deficiencies noted within a time limit specified by it where, although a date of filing has been granted, the examination reveals that:

- (a) the requirements set out in Articles 1, 2, 4 and 5 or the other formal requirements for applications laid down in the Regulation (EC) No 6/2002 or in this Regulation have not been complied with;
- (b) the full amount of the fees payable pursuant to Article 6(1), read in conjunction with Commission Regulation (EC) No 2246/2002⁽¹⁾, has not been received by the Office;
- (c) where priority has been claimed pursuant to Articles 8 and 9, either in the application itself or within one month after the date of filing, the other requirements set out in those Articles have not been complied with;

⁽¹⁾ See page 54 of this Official Journal.

(d) in the case of a multiple application, the products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno classification.

In particular, the Office shall call upon the applicant to pay the required fees within two months of the date of notification, together with the late payment fees provided for in Article 107(2)(a) to (d) of Regulation (EC) No 6/2002 and as set out in Regulation (EC) No 2246/2002.

In the case of the deficiency referred to in point (d) of the first subparagraph, the Office shall call upon the applicant to divide the multiple application in order to ensure compliance with the requirements under Article 2(2). It shall also call upon the applicant to pay the total amount of the fees for all the applications resulting from the separation of the multiple application, within such a time limit as it may specify.

After the applicant has complied with the request to divide the application within the time limit set, the date of filing of the resulting application or applications shall be the date of filing granted to the multiple application initially filed.

4. If the deficiencies referred to in paragraph 3(a) and (d) are not remedied before the time limit expires, the Office shall reject the application.

5. If the fees payable pursuant to Article 6(1)(a) and (b) are not paid before the time limit expires, the Office shall reject the application.

6. If any additional fees payable pursuant to Article 6(1)(c) or (d) in respect of multiple applications are not paid or not paid in full before the time limit expires, the Office shall reject the application in respect of all the additional designs which are not covered by the amount paid.

In the absence of any criteria for determining which designs are intended to be covered, the Office shall take the designs in the numerical order in which they are represented in accordance with Article 2(4). The Office shall reject the application in so far as it concerns designs for which additional fees have not been paid or have not been paid in full.

7. If the deficiencies referred to in paragraph 3(c) are not remedied before the time limit expires, the right of priority for the application shall be lost.

8. If any of the deficiencies referred to in paragraph 3 is not remedied before the time limit expires and such deficiency concerns only some of the designs contained in a multiple application, the Office shall reject the application, or the right of priority shall be lost, only in so far as those designs are concerned.

Article 11

Examination of grounds for non-registrability

1. Where, pursuant to Article 47 of Regulation (EC) No 6/2002, the Office finds, in the course of carrying out the examination under Article 10 of this Regulation, that the design for

which protection is sought does not correspond to the definition of design provided in Article 3(a) of Regulation (EC) No 6/2002 or that the design is contrary to public policy or to accepted principles of morality, it shall inform the applicant that the design is non-registrable, specifying the ground for non-registrability.

2. The Office shall specify a time limit within which the applicant may submit his/her observations, withdraw the application or amend it by submitting an amended representation of the design, provided that the identity of the design is retained.

3. Where the applicant fails to overcome the grounds for non-registrability within the time limit, the Office shall refuse the application. If those grounds concern only some of the designs contained in a multiple application, the Office shall refuse the application only in so far as those designs are concerned.

Article 12

Withdrawal or correction of the application

1. The applicant may at any time withdraw a Community design application or, in the case of a multiple application, withdraw some of the designs contained in the application.

2. Only the name and address of the applicant, errors of wording or of copying, or obvious mistakes may be corrected, at the request of the applicant and provided that such correction does not change the representation of the design.

3. An application for the correction of the application pursuant to paragraph 2 shall contain:

- (a) the file number of the application;
- (b) the name and the address of the applicant in accordance with Article 1(1)(b);
- (c) where the applicant has appointed a representative, the name and the business address of the representative in accordance with Article 1(1)(e);
- (d) the indication of the element of the application to be corrected and that element in its corrected version.

4. If the requirements for the correction of the application are not fulfilled, the Office shall communicate the deficiency to the applicant. If the deficiency is not remedied within the time limits specified by the Office, the Office shall reject the application for correction.

5. A single application may be made for the correction of the same element in two or more applications submitted by the same applicant.

6. Paragraphs 2 to 5 shall apply *mutatis mutandis* to applications to correct the name or the business address of a representative appointed by the applicant.

CHAPTER II

REGISTRATION PROCEDURE

Article 13

Registration of the design

1. If the application satisfies the requirements referred to in Article 48 of Regulation (EC) No 6/2002, the design contained in that application and the particulars set out in Article 69(2) of this Regulation shall be recorded in the Register.

2. If the application contains a request for deferment of publication pursuant to Article 50 of Regulation (EC) No 6/2002, that fact and the date of expiry of the period of deferment shall be recorded.

3. The fees payable pursuant to Article 6(1) shall not be refunded even if the design applied for is not registered.

Article 14

Publication of the registration

1. The registration of the design shall be published in the *Community Designs Bulletin*.

2. Subject to paragraph 3, the publication of the registration shall contain:

- (a) the name and address of the holder of the Community design (hereinafter 'the holder');
- (b) where applicable, the name and business address of the representative appointed by the holder other than a representative falling within the first subparagraph of Article 77(3) of Regulation (EC) No 6/2002; if more than one representative has the same business address, only the name and business address of the first-named representative shall be published, the name being followed by the words 'et al'; if there are two or more representatives with different business addresses, only the address for service determined pursuant to Article 1(1)(e) of this Regulation shall be published; where an association of representatives is appointed pursuant to Article 62(9) only the name and business address of the association shall be published;
- (c) the representation of the design pursuant to Article 4; where the representation of the design is in colour, the publication shall be in colour;
- (d) where applicable, an indication that a description has been filed pursuant to Article 1(2)(a);
- (e) an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied, preceded by the number of the relevant classes and subclasses of the Locarno classification, and grouped accordingly;
- (f) where applicable, the name of the designer or the team of designers;

(g) the date of filing and the file number and, in the case of a multiple application, the file number of each design;

(h) where applicable, particulars of the claim of priority pursuant to Article 42 of Regulation (EC) No 6/2002;

(i) where applicable, particulars of the claim of exhibition priority pursuant to Article 44 of Regulation (EC) No 6/2002;

(j) the date and the registration number and the date of the publication of the registration;

(k) the language in which the application was filed and the second language indicated by the applicant pursuant to Article 98(2) of Regulation (EC) No 6/2002.

3. If the application contains a request for deferment of publication pursuant to Article 50 of Regulation (EC) No 6/2002, a mention of the deferment shall be published in the *Community Designs Bulletin*, together with the name of the holder, the name of the representative, if any, the date of filing and registration, and the file number of the application. Neither the representation of the design nor any particulars identifying its appearance shall be published.

Article 15

Deferment of publication

1. Where the application contains a request for deferment of publication pursuant to Article 50 of Regulation (EC) No 6/2002, the holder shall, together with the request or at the latest three months before the 30-month deferment period expires:

- (a) pay the publication fee referred to in Article 6(1)(b);
- (b) in the case of a multiple registration, pay the additional publication fees, referred to in Article 6(1)(d);
- (c) in cases where a representation of the design has been replaced by a specimen in accordance with Article 5, file a representation of the design in accordance with Article 4. This applies to all the designs contained in a multiple application for which publication is requested;
- (d) in the case of a multiple registration, clearly indicate which of the designs contained therein is to be published or which of the designs are to be surrendered, or, if the period of deferment has not yet expired, for which designs deferment is to be continued.

Where the holder requests publication before the expiry of the 30-month deferment period, he/she shall, at the latest three months before the requested date of publication, comply with the requirements set out in points (a) to (d) of the first paragraph.

2. If the holder fails to comply with the requirements set out in paragraph 1(c) or (d), the Office shall call upon him/her to remedy the deficiencies within a specified time limit which shall in no case expire after the 30-month deferment period.

3. If the holder fails to remedy the deficiencies referred to in paragraph 2 within the applicable time limit:

- (a) the registered Community design shall be deemed from the outset not to have had the effects specified in Regulation (EC) No 6/2002;
- (b) where the holder has requested earlier publication as provided for under the second subparagraph of paragraph 1, the request shall be deemed not to have been filed.

4. If the holder fails to pay the fees referred to in paragraph 1(a) or (b), the Office shall call upon him/her to pay those fees together with the fees for late payment provided for in Article 107(2)(b) or (d) of Regulation (EC) No 6/2002 and as set out in Regulation (EC) No 2246/2002, within a specified time limit which shall in no case expire after the 30-month deferment period.

If no payment has been made within that time limit, the Office shall notify the holder that the registered Community design has from the outset not had the effects specified in Regulation (EC) No 6/2002.

If, in respect of a multiple registration, a payment is made within that time limit but is insufficient to cover all the fees payable pursuant to paragraph 1(a) and (b), as well as the applicable fee for late payment, all the designs in respect of which the fees have not been paid shall be deemed from the outset not to have had the effects specified in Regulation (EC) No 6/2002.

Unless it is clear which designs the amount paid is intended to cover, and in the absence of other criteria for determining which designs are intended to be covered, the Office shall take the designs in the numerical order in which they are represented in accordance with Article 2(4).

All designs for which the additional publication fee has not been paid or has not been paid in full, together with the applicable fee for late payment, shall be deemed from the outset not to have had the effects specified in Regulation (EC) No 6/2002.

Article 16

Publication after the period for deferment

1. Where the holder has complied with the requirements laid down in Article 15, the Office shall, at the expiry of the period for deferment or in the case of a request for earlier publication, as soon as is technically possible:

- (a) publish the registered Community design in the *Community Designs Bulletin*, with the indications set out in Article 14(2), together with an indication of the fact that the application contained a request for deferment of publication pursuant to Article 50 of Regulation (EC) No 6/2002 and, where applicable, that a specimen was filed in accordance with Article 5 of this Regulation;

- (b) make available for public inspection any file relating to the design;

- (c) open to public inspection all the entries in the Register, including any entries withheld from inspection pursuant to Article 73.

2. Where Article 15(4) applies, the actions referred to in paragraph 1 of this Article shall not take place in respect of those designs contained in the multiple registration which are deemed from the outset not to have had the effects specified in Regulation (EC) No 6/2002.

Article 17

Certificate of registration

1. After publication, the Office shall issue to the holder a certificate of registration which shall contain the entries in the Register provided for in Article 69(2) and a statement to the effect that those entries have been recorded in the Register.

2. The holder may request that certified or uncertified copies of the certificate of registration be supplied to him/her upon payment of a fee.

Article 18

Maintenance of the design in an amended form

1. Where, pursuant to Article 25(6) of Regulation (EC) No 6/2002, the registered Community design is maintained in an amended form, the Community design in its amended form shall be entered in the Register and published in the *Community Designs Bulletin*.

2. Maintenance of a design in an amended form may include a partial disclaimer, not exceeding 100 words, by the holder or an entry in the Register of Community Designs of a court decision or a decision by the Office declaring the partial invalidity of the design right.

Article 19

Change of the name or address of the holder or of his/her registered representative

1. A change of the name or address of the holder which is not the consequence of a transfer of the registered design shall, at the request of the holder, be recorded in the Register.

2. An application for a change of the name or address of the holder shall contain:

- (a) the registration number of the design;
- (b) the name and the address of the holder as recorded in the Register. If the holder has been given an identification number by the Office, it shall be sufficient to indicate that number together with the name of the holder;

- (c) the indication of the name and address of the holder, as changed, in accordance with Article 1(1)(b);
- (d) where the holder has appointed a representative, the name and business address of the representative, in accordance with Article 1(1)(e).

3. The application referred to in paragraph 2 shall not be subject to payment of a fee.

4. A single application may be made for a change of the name or address in respect of two or more registrations of the same holder.

5. If the requirements set out in paragraphs 1 and 2 are not fulfilled, the Office shall communicate the deficiency to the applicant.

If the deficiency is not remedied within the time limits specified by the Office, the Office shall reject the application.

6. Paragraphs 1 to 5 shall apply *mutatis mutandis* to a change of the name or address of the registered representative.

7. Paragraphs 1 to 6 shall apply *mutatis mutandis* to applications for Community designs. The change shall be recorded in the files kept by the Office concerning the Community design application.

Article 20

Correction of mistakes and errors in the Register and in the publication of the registration

Where the registration of a design or the publication of the registration contains a mistake or error attributable to the Office, the Office shall correct the error or mistake of its own motion or at the request of the holder.

Where such a request is made by the holder, Article 19 shall apply *mutatis mutandis*. The request shall not be subject to payment of a fee.

The Office shall publish the corrections made pursuant to this Article.

CHAPTER III

RENEWAL OF REGISTRATION

Article 21

Notification of expiry of registration

At least six months before expiry of the registration, the Office shall inform the holder, and any person having a right entered in the Register, including a licence, in respect of the Community design, that the registration is approaching expiry. Failure to give notification shall not affect the expiry of the registration.

Article 22

Renewal of registration

1. An application for renewal of registration shall contain:
 - (a) where the application is filed by the holder, his/her name and address in accordance with Article 1(1)(b);
 - (b) where the application is filed by a person expressly authorised to do so by the holder, the name and address of that person and evidence that he/she is authorised to file the application;
 - (c) where the applicant has appointed a representative, the name and business address of the representative in accordance with Article 1(1)(e);
 - (d) the registration number;
 - (e) where applicable, an indication that renewal is requested for all the designs covered by a multiple registration or, if the renewal is not requested for all such designs, an indication of those designs for which renewal is requested.

2. The fees payable pursuant to Article 13 of Regulation (EC) No 6/2002 for the renewal of a registration shall consist of:

- (a) a renewal fee, which, in cases where several designs are covered by a multiple registration, shall be proportionate to the number of designs covered by the renewal;
- (b) where applicable, the additional fee for late payment of the renewal fee or late submission of the request for renewal, pursuant to Article 13 of Regulation (EC) No 6/2002, as specified in Regulation (EC) No 2246/2002.

3. Where the application for renewal is filed within the time limits provided for in Article 13(3) of Regulation (EC) No 6/2002, but the other conditions for renewal provided for in Article 13 thereof and in this Regulation are not satisfied, the Office shall inform the applicant of the deficiencies.

If the application is filed by a person whom the holder has expressly authorised to do so, the holder of the design shall receive a copy of the notification.

4. Where an application for renewal is not submitted or is submitted after expiry of the time limit provided for in the second sentence of Article 13(3) of Regulation (EC) No 6/2002, or if the fees are not paid or are paid only after expiry of the relevant time limit, or if the deficiencies are not remedied within the time limit specified by the Office, the Office shall determine that the registration has expired and shall notify accordingly the holder and, where appropriate, the applicant for renewal and the person recorded in the Register as having rights in the design.

In the case of a multiple registration, where the fees paid are insufficient to cover all the designs for which renewal is requested, such a determination shall be made only after the Office has established which designs the amount paid is intended to cover.

In the absence of other criteria for determining which designs are intended to be covered, the Office shall take the designs in the numerical order in which they are represented in accordance with Article 2(4).

The Office shall determine that the registration has expired with regard to all designs for which the renewal fees have not been paid or have not been paid in full.

5. Where the determination made pursuant to paragraph 4 has become final, the Office shall cancel the design from the Register with effect from the day following the day on which the existing registration expired.

6. Where the renewal fees provided for in paragraph 2 have been paid but the registration is not renewed, those fees shall be refunded.

CHAPTER IV

TRANSFER, LICENCES AND OTHER RIGHTS, CHANGES

Article 23

Transfer

1. An application for registration of a transfer pursuant to Article 28 of Regulation (EC) No 6/2002 shall contain:

- (a) the registration number of the Community design;
- (b) particulars of the new holder in accordance with Article 1(1)(b);
- (c) where not all of the designs covered by a multiple registration are included in the transfer, particulars of the registered designs to which the transfer relates;
- (d) documents duly establishing the transfer.

2. The application may contain, where applicable, the name and business address of the representative of the new holder, to be set out in accordance with Article 1(1)(e).

3. The application shall not be deemed to have been filed until the required fee has been paid. If the fee is not paid or is not paid in full, the Office shall notify the applicant accordingly.

4. The following shall constitute sufficient proof of transfer under paragraph 1(d):

- (a) the application for registration of the transfer is signed by the registered holder or his/her representative and by the successor in title or his/her representative; or
- (b) the application, if submitted by the successor in title, is accompanied by a declaration, signed by the registered holder or his/her representative, that he/she agrees to the registration of the successor in title; or
- (c) the application is accompanied by a completed transfer form or document, signed by the registered holder or his/her representative and by the successor in title or his/her representative.

5. Where the conditions applicable to the registration of a transfer are not fulfilled, the Office shall notify the applicant of the deficiencies.

If the deficiencies are not remedied within the time limit specified by the Office, it shall reject the application for registration of the transfer.

6. A single application for registration of a transfer may be submitted for two or more registered Community designs, provided that the registered holder and the successor in title are the same in each case.

7. Paragraphs 1 to 6 shall apply *mutatis mutandis* to the transfer of applications for registered Community designs. The transfer shall be recorded in the files kept by the Office concerning the Community design application.

Article 24

Registration of licences and other rights

1. Article 23(1)(a), (b) and (c) and Article 23(2), (3), (5) and (6) shall apply *mutatis mutandis* to the registration of the grant or transfer of a licence, to registration of the creation or transfer of a right *in rem* in respect of a registered Community design, and to registration of enforcement measures. However, where a registered Community design is involved in insolvency proceedings, the request of the competent national authority for an entry in the Register to this effect shall not be subject to payment of a fee.

In the case of a multiple registration, each registered Community design may, separately from the others, be licensed, the subject of a right *in rem*, levy of execution or insolvency proceedings.

2. Where the registered Community design is licensed for only a part of the Community, or for a limited period of time, the application for registration of the licence shall indicate the part of the Community or the period of time for which the licence is granted.

3. Where the conditions applicable to registration of licences and other rights, set out in Articles 29, 30 or 32 of Regulation (EC) No 6/2002, in paragraph 1 of this Article, and in the other applicable Articles of this Regulation are not fulfilled, the Office shall notify the applicant of the deficiencies.

If the deficiencies are not remedied within a time limit specified by the Office, it shall reject the application for registration.

4. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* to licences and other rights concerning applications for registered Community designs. Licences, rights *in rem* and enforcement measures shall be recorded in the files kept by the Office concerning the Community design application.

5. The request for a non-exclusive licence pursuant to Article 16(2) of Regulation (EC) No 6/2002 shall be made within three months of the date of the entry in the Register of the newly entitled holder.

Article 25

Special provisions for the registration of a licence

1. A licence in respect of a registered Community design shall be recorded in the Register as an exclusive licence if the holder of the design or the licensee so requests.
2. A licence in respect of a registered Community design shall be recorded in the Register as a sub-licence where it is granted by a licensee whose licence is recorded in the Register.
3. A licence in respect of a registered Community design shall be recorded in the Register as a territorially limited licence if it is granted for a part of the Community.
4. A licence in respect of a registered Community design shall be recorded in the Register as a temporary licence if it is granted for a limited period of time.

Article 26

Cancellation or modification of the registration of licences and other rights

1. A registration effected under Article 24 shall be cancelled upon application by one of the persons concerned.
2. The application shall contain:
 - (a) the registration number of the registered Community design, or in the case of a multiple registration, the number of each design; and

(b) particulars of the right whose registration is to be cancelled.

3. Application for cancellation of the registration of a licence or other right shall not be deemed to have been filed until the required fee has been paid.

If the fee is not paid or is not paid in full, the Office shall notify the applicant accordingly. A request from a competent national authority for cancellation of an entry where a registered Community design is involved in insolvency proceedings shall not be subject to payment of a fee.

4. The application shall be accompanied by documents showing that the registered right no longer exists or by a statement by the licensee or the holder of another right to the effect that he/she consents to cancellation of the registration.

5. Where the requirements for cancellation of the registration are not satisfied, the Office shall notify the applicant of the deficiencies. If the deficiencies are not remedied within the time limit specified by the Office, it shall reject the application for cancellation of the registration.

6. Paragraphs 1, 2, 4 and 5 shall apply *mutatis mutandis* to a request for modification of a registration effected pursuant to Article 24.

7. Paragraphs 1 to 6 shall apply *mutatis mutandis* to entries made in the files pursuant to Article 24(4).

CHAPTER V

SURRENDER AND INVALIDITY

Article 27

Surrender

1. A declaration of surrender pursuant to Article 51 of Regulation (EC) No 6/2002 shall contain:
 - (a) the registration number of the registered Community design;
 - (b) the name and address of the holder in accordance with Article 1(1)(b);
 - (c) where a representative has been appointed, the name and business address of the representative in accordance with Article 1(1)(e);
 - (d) where surrender is declared only for some of the designs contained in a multiple registration, an indication of the designs for which the surrender is declared or the designs which are to remain registered;
 - (e) where, pursuant to Article 51(3) of Regulation (EC) No 6/2002, the registered Community design is partially surrendered, a representation of the amended design in accordance with Article 4 of this Regulation.
2. Where a right of a third party relating to the registered Community design is entered in the Register, it shall be sufficient proof of his/her agreement to the surrender that a declaration of consent to the surrender is signed by the holder of that right or his/her representative.

Where a licence has been registered, surrender of the design shall be registered three months after the date on which the holder satisfies the Office that he/she has informed the licensee of his/her intention to surrender it. If the holder proves to the Office before the expiry of that period that the licensee has given his/her consent, the surrender shall be registered forthwith.

3. Where a claim relating to the entitlement to a registered Community design has been brought before a court pursuant to Article 15 of Regulation (EC) No 6/2002, a declaration of consent to the surrender, signed by the claimant or his/her representative, shall be sufficient proof of his/her agreement to the surrender.

4. If the requirements governing surrender are not fulfilled, the Office shall communicate the deficiencies to the declarant. If the deficiencies are not remedied within the time limit specified by the Office, the Office shall reject the entry of the surrender in the Register.

Article 28

Application for a declaration of invalidity

1. An application to the Office for a declaration of invalidity pursuant to Article 52 of Regulation (EC) No 6/2002 shall contain:

Article 29

(a) as concerns the registered Community design for which the declaration of invalidity is sought:

- (i) its registration number;
- (ii) the name and address of its holder;

(b) as regards the grounds on which the application is based:

- (i) a statement of the grounds on which the application for a declaration of invalidity is based;
- (ii) additionally, in the case of an application pursuant to Article 25(1)(d) of Regulation (EC) No 6/2002, the representation and particulars identifying the prior design on which the application for a declaration of invalidity is based and showing that the applicant is entitled to invoke the earlier design as a ground for invalidity pursuant to Article 25(3) of that Regulation;
- (iii) additionally, in the case of an application pursuant to Article 25(1)(e) or (f) of Regulation (EC) No 6/2002, the representation and particulars identifying the distinctive sign or the work protected by copyright on which the application for a declaration of invalidity is based and particulars showing that the applicant is the holder of the earlier right pursuant to Article 25(3) of that Regulation;
- (iv) additionally, in the case of an application pursuant to Article 25(1)(g) of the Regulation (EC) No 6/2002, the representation and particulars of the relevant item as referred to in that Article and particulars showing that the application is filed by the person or entity concerned by the improper use pursuant to Article 25(4) of that Regulation;
- (v) where the ground for invalidity is that the registered Community design does not fulfil the requirements set out in Article 5 or 6 of Regulation (EC) No 6/2002, the indication and the reproduction of the prior designs that could form an obstacle to the novelty or individual character of the registered Community design, as well as documents proving the existence of those earlier designs;
- (vi) an indication of the facts, evidence and arguments submitted in support of those grounds;

(c) as concerns the applicant:

- (i) his/her name and address in accordance with Article 1(1)(b);
- (ii) if the applicant has appointed a representative, the name and the business address of the representative, in accordance with Article 1(1)(e);
- (iii) additionally, in the case of an application pursuant to Article 25(1)(c) of Regulation (EC) No 6/2002, particulars showing that the application is made by a person or by persons duly entitled pursuant to Article 25(2) of that Regulation.

2. The application shall be subject to the fee referred to in Article 52(2) of Regulation (EC) No 6/2002.

3. The Office shall inform the holder that an application for declaration of invalidity has been filed.

Languages used in invalidity proceedings

1. The application for a declaration of invalidity shall be filed in the language of proceedings pursuant to Article 98(4) of Regulation (EC) No 6/2002.

2. Where the language of proceedings is not the language used for filing the application and the holder has filed his/her observations in the language of filing, the Office shall arrange to have those observations translated into the language of proceedings.

3. Three years after the date fixed in accordance with Article 111(2) of Regulation (EC) No 6/2002, the Commission will submit to the Committee mentioned in Article 109 of Regulation (EC) No 6/2002 a report on the application of paragraph 2 of this Article and, if appropriate, proposals for fixing a limit for the expenses borne by the Office in this respect as provided for in the fourth subparagraph of Article 98(4) of Regulation (EC) No 6/2002.

4. The Commission may decide to submit the report and possible proposals referred to in paragraph 3 at an earlier date, and the Committee shall discuss them as a matter of priority if the facilities in paragraph 2 lead to disproportionate expenditure.

5. Where the evidence in support of the application is not filed in the language of the invalidity proceedings, the applicant shall file a translation of that evidence into that language within two months of the filing of such evidence.

6. Where the applicant for a declaration of invalidity or the holder informs the Office, within two months of receipt by the holder of the communication referred to in Article 31(1) of this Regulation, that they have agreed on a different language of proceedings pursuant to Article 98(5) of Regulation (EC) No 6/2002, the applicant shall, where the application was not filed in that language, file a translation of the application in that language within one month of the said date.

Article 30

Rejection of the application for declaration of invalidity as inadmissible

1. If the Office finds that the application for declaration of invalidity does not comply with Article 52 of Regulation (EC) No 6/2002, Article 28(1) of this Regulation or any other provision of Regulation (EC) No 6/2002 or this Regulation, it shall inform the applicant accordingly and shall call upon him/her to remedy the deficiencies within such time limit as it may specify.

If the deficiencies are not remedied within the specified time limit, the Office shall reject the application as inadmissible.

2. Where the Office finds that the required fees have not been paid, it shall inform the applicant accordingly and shall inform him/her that the application will be deemed not to have been filed if the required fees are not paid within a specified time limit.

If the required fees are paid after the expiry of the time limit specified, they shall be refunded to the applicant.

3. Any decision to reject an application for a declaration of invalidity pursuant to paragraph 1 shall be communicated to the applicant.

Where, pursuant to paragraph 2, an application is deemed not to have been filed, the applicant shall be informed accordingly.

Article 31

Examination of the application for a declaration of invalidity

1. If the Office does not reject the application for declaration of invalidity in accordance with Article 30, it shall communicate such application to the holder and shall request him/her to file his/her observations within such time limits as it may specify.

2. If the holder files no observations, the Office may base its decision concerning invalidity on the evidence before it.

3. Any observations filed by the holder shall be communicated to the applicant, who may be called upon by the Office to reply within specified time limits.

4. All communications pursuant to Article 53(2) of Regulation (EC) No 6/2002 and all observations filed in that respect shall be sent to the parties concerned.

5. The Office may call upon the parties to make a friendly settlement.

Article 32

Multiple applications for a declaration of invalidity

1. Where a number of applications for a declaration of invalidity have been filed relating to the same registered Community design, the Office may deal with them in one set of proceedings.

The Office may subsequently decide no longer to deal with them in that way.

2. If a preliminary examination of one or more applications reveals that the registered Community design may be invalid, the Office may suspend the other invalidity proceedings.

The Office shall inform the remaining applicants of any relevant decisions taken during such proceedings as are continued.

3. Once a decision declaring the invalidity of the design has become final, the applications in respect of which the proceedings have been suspended in accordance with paragraph 2 shall be deemed to have been disposed of and the applicants concerned shall be informed accordingly. Such disposition shall be considered to constitute a case which has not proceeded to judgment for the purposes of Article 70(4) of Regulation (EC) No 6/2002.

4. The Office shall refund 50 % of the invalidity fee referred to in Article 52(2) of Regulation (EC) No 6/2002 paid by each applicant whose application is deemed to have been disposed of in accordance with paragraphs 1, 2 and 3 of this Article.

Article 33

Participation of an alleged infringer

Where, pursuant to Article 54 of Regulation (EC) No 6/2002, an alleged infringer seeks to join the proceedings, he/she shall be subject to the relevant provisions of Articles 28, 29 and 30 of this Regulation, and shall in particular file a reasoned statement and pay the fee referred to in Article 52(2) of Regulation (EC) No 6/2002.

CHAPTER VI

APPEALS

Article 34

Content of the notice of appeal

1. The notice of appeal shall contain:
 - (a) the name and address of the appellant in accordance with Article 1(1)(b);
 - (b) where the appellant has appointed a representative, the name and the business address of the representative in accordance with Article 1(1)(e);
 - (c) a statement identifying the decision which is contested and the extent to which amendment or cancellation of the decision is requested.

2. The notice of appeal shall be filed in the language of the proceedings in which the decision subject to the appeal was taken.

Article 35

Rejection of the appeal as inadmissible

1. If the appeal does not comply with Articles 55, 56 and 57 of Regulation (EC) No 6/2002 and Article 34(1)(c) and (2) of this Regulation, the Board of Appeal shall reject it as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 57 of Regulation (EC) No 6/2002 has expired.

2. If the Board of Appeal finds that the appeal does not comply with other provisions of Regulation (EC) No 6/2002 or other provisions of this Regulation, in particular with Article 34(1)(a) and (b), it shall inform the appellant accordingly and shall request him/her to remedy the deficiencies noted within such time limit as it may specify. If the deficiencies are not remedied in good time, the Board of Appeal shall reject the appeal as inadmissible.

3. If the fee for appeal has been paid after expiry of the time limits for the filing of an appeal pursuant to Article 57 of Regulation (EC) No 6/2002, the appeal shall be deemed not to have been filed and the appeal fee shall be refunded to the appellant.

Article 36

Examination of appeals

1. Save as otherwise provided, the provisions relating to proceedings before the department which has made the decision against which the appeal is brought shall be applicable to appeal proceedings *mutatis mutandis*.

2. The Board of Appeal's decision shall contain:

- (a) a statement that it is delivered by the Board;
- (b) the date when the decision was taken;
- (c) the names of the Chairman and the other members of the Board of Appeal taking part;
- (d) the name of the competent employee of the registry;

- (e) the names of the parties and of their representatives;
- (f) a statement of the issues to be decided;
- (g) a summary of the facts;
- (h) the reasons;
- (i) the order of the Board of Appeal, including, where necessary, a decision on costs.

3. The decision shall be signed by the Chairman and the other members of the Board of Appeal and by the employee of the registry of the Board of Appeal.

Article 37

Reimbursement of appeal fees

The reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the event of interlocutory revision, reimbursement shall be ordered by the department whose decision has been impugned, and in other cases by the Board of Appeal.

CHAPTER VII

DECISIONS AND COMMUNICATIONS OF THE OFFICE

Article 38

Form of decisions

1. Decisions of the Office shall be in writing and shall state the reasons on which they are based.

Where oral proceedings are held before the Office, the decision may be given orally. Subsequently, the decision in writing shall be notified to the parties.

2. Decisions of the Office which are open to appeal shall be accompanied by a written communication indicating that notice of appeal must be filed in writing at the Office within two months of the date of notification of the decision from which appeal is to be made. The communications shall also draw the attention of the parties to the provisions laid down in Articles 55, 56 and 57 of Regulation (EC) No 6/2002.

The parties may not plead any failure to communicate the availability of such appeal proceedings.

Article 39

Correction of errors in decisions

In decisions of the Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected. They shall be corrected by the department which took the decision, acting of its own motion or at the request of an interested party.

Article 40

Noting of loss of rights

1. If the Office finds that the loss of any rights results from Regulation (EC) No 6/2002 or this Regulation without any decision having been taken, it shall communicate this to the person concerned in accordance with Article 66 of Regulation (EC) No 6/2002, and shall draw his/her attention to the legal remedies set out in paragraph 2 of this Article.

2. If the person concerned considers that the finding of the Office is inaccurate, he/she may, within two months of notification of the communication referred to in paragraph 1, apply for a decision on the matter by the Office.

Such decision shall be given only if the Office disagrees with the person requesting it; otherwise the Office shall amend its finding and inform the person requesting the decision.

Article 41

Signature, name, seal

1. Any decision, communication or notice from the Office shall indicate the department or division of the Office as well as the name or the names of the official or officials responsible. They shall be signed by the official or officials, or, instead of a signature, carry a printed or stamped seal of the Office.

2. The President of the Office may determine that other means of identifying the department or division of the Office and the name of the official or officials responsible or an identification other than a seal may be used where decisions, communications or notices are transmitted by fax or any other technical means of communication.

CHAPTER VIII

ORAL PROCEEDINGS AND TAKING OF EVIDENCE

Article 42

Summons to oral proceedings

1. The parties shall be summoned to oral proceedings provided for in Article 64 of Regulation (EC) No 6/2002 and their attention shall be drawn to paragraph 3 of this Article. At least one month's notice of the summons shall be given unless the parties agree to a shorter time limit.
2. When issuing the summons, the Office shall draw attention to the points which in its opinion need to be discussed in order for the decision to be taken.
3. If a party who has been duly summoned to oral proceedings before the Office does not appear as summoned, the proceedings may continue without him/her.

Article 43

Taking of evidence by the Office

1. Where the Office considers it necessary to hear the oral evidence of parties, of witnesses or of experts or to carry out an inspection, it shall take a decision to that end, stating the means by which it intends to obtain evidence, the relevant facts to be proved and the date, time and place of the hearing or inspection.

If oral evidence from witnesses and experts is requested by a party, the decision of the Office shall determine the period of time within which the party filing the request must make known to the Office the names and addresses of the witnesses and experts whom the party wishes to be heard.

2. The period of notice given in the summons of a party, witness or expert to give evidence shall be at least one month, unless they agree to a shorter time limit.

The summons shall contain:

- (a) an extract from the decision mentioned in the first subparagraph of paragraph 1, indicating in particular the date, time and place of the hearing ordered and stating the facts regarding which the parties, witnesses and experts are to be heard;
- (b) the names of the parties to proceedings and particulars of the rights which the witnesses or experts may invoke pursuant to Article 45(2) to (5).

Article 44

Commissioning of experts

1. The Office shall decide in what form the report made by an expert whom it appoints shall be submitted.
2. The terms of reference of the expert shall include:
 - (a) a precise description of his/her task;
 - (b) the time limit laid down for the submission of the expert's report;
 - (c) the names of the parties to the proceedings;

- (d) particulars of the claims which the expert may invoke pursuant to Article 45(2), (3) and (4).

3. A copy of any written report shall be submitted to the parties.

4. The parties may object to an expert on grounds of incompetence or on the same grounds as those on which objection may be made to an examiner or to a member of a Division or Board of Appeal pursuant to Article 132(1) and (3) of Council Regulation (EC) No 40/94⁽¹⁾. The department of the Office concerned shall rule on the objection.

Article 45

Costs of taking of evidence

1. The taking of evidence by the Office may be made conditional upon deposit with it, by the party who has requested the evidence to be taken, of a sum which shall be fixed by reference to an estimate of the costs.

2. Witnesses and experts who are summoned by and appear before the Office shall be entitled to reimbursement of reasonable expenses for travel and subsistence. An advance for those expenses may be granted to them by the Office. The first sentence shall apply also to witnesses and experts who appear before the Office without being summoned by it and who are heard as witnesses or experts.

3. Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts shall be entitled to fees for their services. Those payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks, where such witnesses and experts have been summoned by the Office on its own initiative.

4. The amounts and the advances for expenses to be paid pursuant to paragraphs 1, 2 and 3 shall be determined by the President of the Office and shall be published in the Official Journal of the Office.

The amounts shall be calculated on the same basis as the compensation and salaries received by officials in grades A 4 to A 8 as laid down in the Staff Regulations of officials of the European Communities and in Annex VII thereto.

5. Final liability for the amounts due or paid pursuant to paragraphs 1 to 4 shall lie with:

- (a) the Office where the Office, on its own initiative, considered it necessary to hear the oral evidence of witnesses or experts; or
- (b) the party concerned where that party requested the giving of oral evidence by witnesses or experts, subject to the decision on apportionment and fixing of costs pursuant to Articles 70 and 71 of Regulation (EC) No 6/2002 and Article 79 of this Regulation.

The party referred to in point (b) of the first subparagraph shall reimburse the Office for any advances duly paid.

⁽¹⁾ OJ L 11, 14.1.1994, p. 1.

*Article 46***Minutes of oral proceedings and of evidence**

1. Minutes of oral proceedings or the taking of evidence shall be drawn up, containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection.

2. The minutes of the testimony of a witness, expert or party shall be read out or submitted to him/her so that he/she may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. Where his/her approval is not given, his/her objections shall be noted.

3. The minutes shall be signed by the employee who drew them up and by the employee who conducted the oral proceedings or taking of evidence.

4. The parties shall be provided with a copy of the minutes.

5. Upon request, the Office shall make available to the parties transcripts of recordings of the oral proceedings, in typescript or in any other machine-readable form.

The release of transcripts of those recordings shall be subject to the payment of the costs incurred by the Office in making such transcript. The amount to be charged shall be determined by the President of the Office.

CHAPTER IX

NOTIFICATIONS*Article 47***General provisions on notifications**

1. In proceedings before the Office, any notifications to be made by the Office shall take the form of the original document, of a copy thereof certified by, or bearing the seal of, the Office or of a computer print-out bearing such seal. Copies of documents emanating from the parties themselves shall not require such certification.

2. Notifications shall be made:

- (a) by post in accordance with Article 48;
- (b) by hand delivery in accordance with Article 49;
- (c) by deposit in a post box at the Office in accordance with Article 50;
- (d) by fax and other technical means in accordance with Article 51;
- (e) by public notification in accordance with Article 52.

Notification shall be deemed to have been effected when the posting has taken place.

3. Where notification is effected by registered letter, whether or not with acknowledgement of delivery, it shall be deemed to be delivered to the addressee on the 10th day following that of its posting, unless the letter has failed to reach the addressee or has reached him/her at a later date.

In the event of any dispute, it shall be for the Office to establish that the letter has reached its destination or to establish the date on which it was delivered to the addressee, as the case may be.

4. Notification by registered letter, with or without acknowledgement of delivery, shall be deemed to have been effected even if the addressee refuses to accept the letter.

5. To the extent that notification by post is not covered by paragraphs 1 to 4, the law of the State on the territory of which notification is made shall apply.

*Article 48***Notification by post**

1. Decisions subject to a time limit for appeal, summonses and other documents as determined by the President of the Office shall be notified by registered letter with acknowledgement of delivery.

Decisions and communications subject to another time limit shall be notified by registered letter, unless the President of the Office determines otherwise.

All other communications shall be ordinary mail.

2. Notifications to addressees having neither their domicile nor their principal place of business nor an establishment in the Community and who have not appointed a representative in accordance with Article 77(2) of Regulation (EC) No 6/2002 shall be effected by posting the document requiring notification by ordinary mail to the last address of the addressee known to the Office.

*Article 49***Notification by hand delivery**

Notification may be effected on the premises of the Office by hand delivery of the document to the addressee, who shall on delivery acknowledge its receipt.

*Article 50***Notification by deposit in a post box at the Office**

Notification may also be effected to addressees who have been provided with a post box at the Office, by depositing the document therein. A written notification of deposit shall be inserted in the files. The date of deposit shall be recorded on the document. Notification shall be deemed to have taken place on the fifth day following deposit of the document in the post box at the Office.

*Article 51***Notification by fax and other technical means**

1. Notification by fax shall be effected by transmitting either the original or a copy, as provided for in Article 47(1), of the document to be notified. The details of such transmission shall be determined by the President of the Office.
2. Details of notification by other technical means of communication shall be determined by the President of the Office.

*Article 52***Public notification**

1. If the address of the addressee cannot be established, or if notification in accordance with Article 48(1) has proved to be impossible even after a second attempt by the Office, notification shall be effected by public notice.

Such notice shall be published at least in the *Community Designs Bulletin*.

2. The President of the Office shall determine how the public notice is to be given and shall fix the beginning of the time limit of one month on the expiry of which the document shall be deemed to have been notified.

*Article 53***Notification to representatives**

1. If a representative has been appointed or where the applicant first named in a common application is considered to be the common representative pursuant to Article 61(1), notifications shall be addressed to that appointed or common representative.

*Article 56***Calculation of time limits**

1. Time limits shall be laid down in terms of full years, months, weeks or days.
2. The beginning of any time limit shall be calculated starting on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another time limit. Where that procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided.
3. Where a time limit is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the relevant event occurred. Where the relevant month has no day with the same number the time limit shall expire on the last day of that month.
4. Where a time limit is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the relevant event occurred. Where the day on which the relevant event occurred was the last day of a month or

2. If several representatives have been appointed for a single interested party, notification to any one of them shall be sufficient, unless a specific address for service has been indicated in accordance with Article 1(1)(e).

3. If several interested parties have appointed a common representative, notification of a single document to the common representative shall be sufficient.

*Article 54***Irregularities in notification**

Where a document has reached the addressee, if the Office is unable to prove that it has been duly notified or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the Office as the date of receipt.

*Article 55***Notification of documents in the case of several parties**

Documents emanating from parties which contain substantive proposals, or a declaration of withdrawal of a substantive proposal, shall be notified to the other parties as a matter of course. Notification may be dispensed with where the document contains no new pleadings and the matter is ready for decision.

CHAPTER X

TIME LIMITS

where the relevant subsequent month has no day with the same number the time limit shall expire on the last day of that month.

5. Where a time limit is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the relevant event occurred.

*Article 57***Duration of time limits**

1. Where Regulation (EC) No 6/2002 or this Regulation provide for a time limit to be specified by the Office, such time limit shall, when the party concerned has its domicile or its principal place of business or an establishment within the Community, be not less than one month, or, when those conditions are not fulfilled, not less than two months, and no more than six months.

The Office may, when this is appropriate under the circumstances, grant an extension of a time limit specified if such extension is requested by the party concerned and the request is submitted before the original time limit expires.

2. Where there are two or more parties, the Office may make the extension of a time limit subject to the agreement of the other parties.

Article 58

Expiry of time limits in special cases

1. If a time limit expires on a day on which the Office is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered in the locality in which the Office is located, the time limit shall extend until the first day thereafter on which the Office is open for receipt of documents and on which ordinary mail is delivered.

The days on which the Office is not open for receipt of documents shall be determined by the President of the Office before the commencement of each calendar year.

2. If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Member State or between a Member State and the Office, the time limit shall extend until the first day following the end of the period of interruption or dislocation, for parties having their residence or registered office in the State concerned or who have appointed representatives with a place of business in that State.

In the event of the Member State concerned being the State in which the Office is located, the first subparagraph shall apply to all parties.

The period referred to in the first subparagraph shall be as determined by the President of the Office.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the time limits provided for in Regulation (EC) No 6/2002 or this Regulation in the case of transactions to be carried out with the competent authority within the meaning of Article 35(1)(b) and (c) of Regulation (EC) No 6/2002.

4. If an exceptional occurrence such as natural disaster or strike interrupts or dislocates the proper functioning of the Office so that any communication from the Office to parties concerning the expiry of a time limit is delayed, acts to be completed within such a time limit may still be validly completed within one month of the notification of the delayed communication.

The date of commencement and the end of any such interruption or dislocation shall be as determined by the President of the Office.

CHAPTER XI

INTERRUPTION OF PROCEEDINGS AND WAIVING OF ENFORCED RECOVERY PROCEDURES

Article 59

Interruption of proceedings

1. Proceedings before the Office shall be interrupted:
 - (a) in the event of the death or legal incapacity of the applicant for or holder of a registered Community design or of the person authorised by national law to act on his/her behalf;
 - (b) in the event that the applicant for or holder of a registered Community design is, as a result of some action taken against his/her property, prevented for legal reasons from continuing the proceedings before the Office;
 - (c) in the event of the death or legal incapacity of the representative of an applicant for or holder of a registered Community design or of his/her being prevented for legal reasons resulting from action taken against his/her property from continuing the proceedings before the Office.

To the extent that the events referred to in point (a) of the first subparagraph do not affect the authorisation of a representative appointed under Article 78 of Regulation (EC) No 6/2002, proceedings shall be interrupted only on application by such representative.

2. When, in the cases referred to in points (a) and (b) of the first subparagraph of paragraph 1, the Office has been informed of the identity of the person authorised to continue the proceedings before the Office, the Office shall communicate to such person and to any interested third parties that the proceedings shall be resumed as from a date to be fixed by the Office.

3. In the case referred to in paragraph 1(c), the proceedings shall be resumed when the Office has been informed of the appointment of a new representative of the applicant or when

the Office has notified to the other parties the communication of the appointment of a new representative of the holder of the design.

If, three months after the beginning of the interruption of the proceedings, the Office has not been informed of the appointment of a new representative, it shall communicate that fact to the applicant for or holder of the registered Community design:

- (a) where Article 77(2) of Regulation (EC) No 6/2002 is applicable, that the Community design application will be deemed to be withdrawn if the information is not submitted within two months after that communication is notified; or
- (b) where Article 77(2) of Regulation (EC) No 6/2002 is not applicable, that the proceedings will be resumed with the applicant for or holder as from the date on which that communication is notified.

4. The time limits, other than the time limit for paying the renewal fees, in force as regards the applicant for or holder of the Community design at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed.

Article 60

Waiving of enforced recovery procedures

The President of the Office may waive action for the enforced recovery of any sum due where the sum to be recovered is minimal or where such recovery is too uncertain.

CHAPTER XII

REPRESENTATION

Article 61

Appointment of a common representative

1. If there is more than one applicant and the application for a registered Community design does not name a common representative, the applicant first named in the application shall be considered to be the common representative.

However, if one of the applicants is obliged to appoint a professional representative, such representative shall be considered to be the common representative unless the applicant named first in the application has also appointed a professional representative.

The first and second subparagraphs shall apply *mutatis mutandis* to third parties acting in common in applying for a declaration of invalidity, and to joint holders of a registered Community design.

2. If, during the course of proceedings, transfer is made to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply.

If such application is not possible, the Office shall require such persons to appoint a common representative within two months. If this request is not complied with, the Office shall appoint the common representative.

Article 62

Authorisations

1. Legal practitioners and professional representatives entered on the lists maintained by the Office pursuant to Article 78(1)(b) or (c) of Regulation (EC) No 6/2002 may file with the Office a signed authorisation for inclusion in the files.

Such authorisation shall be filed if the Office expressly requires it or, where there are several parties to the proceedings in which the representative acts before the Office, one of the parties expressly request it.

2. Employees acting on behalf of natural or legal persons pursuant to Article 77(3) of Regulation (EC) No 6/2002 shall file with the Office a signed authorisation for insertion in the files.

3. The authorisation may be filed in any of the official languages of the Community. It may cover one or more applications or registered Community designs or may be in the form of a general authorisation allowing the representative to act in respect of all proceedings before the Office to which the person who has issued it is a party.

4. Where, pursuant to paragraphs 1 or 2, an authorisation has to be filed, the Office shall specify a time limit within which such authorisation shall be filed. If the authorisation is not filed in due time, proceedings shall be continued with the

represented person. Any procedural steps other than the filing of the application taken by the representative shall be deemed not to have been taken if the represented person does not approve them. The application of Article 77(2) of Regulation (EC) No 6/2002 shall remain unaffected.

5. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* to a document withdrawing an authorisation.

6. Any representative who has ceased to be authorised shall continue to be regarded as the representative until the termination of his/her authorisation has been communicated to the Office.

7. Subject to any provisions to the contrary contained therein, an authorisation shall not terminate vis-à-vis the Office upon the death of the person who gave it.

8. Where several representatives are appointed by the same party, they may, notwithstanding any provisions to the contrary in their authorisations, act either collectively or individually.

9. The authorisation of an association of representatives shall be deemed to be an authorisation of any representative who can establish that he/she practises within that association.

Article 63

Representation

Any notification or other communication addressed by the Office to the duly authorised representative shall have the same effect as if it had been addressed to the represented person.

Any communication addressed to the Office by the duly authorised representative shall have the same effect as if it originated from the represented person.

Article 64

Amendment of the special list of professional representatives for design matters

1. The entry of a professional representative in the special list of professional representatives for design matters, as referred to in Article 78(4) of Regulation (EC) No 6/2002, shall be deleted at his/her request.

2. The entry of a professional representative shall be deleted automatically:

- (a) in the event of the death or legal incapacity of the professional representative;
- (b) where the professional representative is no longer a national of a Member State, unless the President of the Office has granted an exemption pursuant to Article 78(6)(a) of Regulation (EC) No 6/2002;

- (c) where the professional representative no longer has his/her place of business or employment in the Community;
- (d) where the professional representative no longer possesses the entitlement referred to in the first sentence of Article 78(4)(c) of Regulation (EC) No 6/2002.
3. The entry of a professional representative shall be suspended of the Office's own motion where his/her entitlement to represent natural or legal persons before the Benelux Design Office or the central industrial property office of the Member State as referred to in the first sentence of Article 78(4)(c) of Regulation (EC) No 6/2002 has been suspended.

4. A person whose entry has been deleted shall, upon request pursuant to Article 78(5) of Regulation (EC) No 6/2002, be reinstated in the list of professional representatives if the conditions for deletion no longer exist.
5. The Benelux Design Office and the central industrial property offices of the Member States concerned shall, where they are aware thereof, promptly inform the Office of any relevant events referred to in paragraphs 2 and 3.
6. The amendments of the special list of professional representatives for design matters shall be published in the Official Journal of the Office.

CHAPTER XIII

WRITTEN COMMUNICATIONS AND FORMS

Article 65

Communication in writing or by other means

1. Subject to paragraph 2, applications for the registration of a Community design as well as any other application or declaration provided for in Regulation (EC) No 6/2002 and all other communications addressed to the Office shall be submitted as follows:
- (a) by submitting a signed original of the document in question to the Office, by post, personal delivery, or by any other means; annexes to documents submitted need not be signed;
- (b) by transmitting a signed original by fax in accordance with Article 66; or
- (c) by transmitting the contents of the communication by electronic means in accordance with Article 67.
2. Where the applicant avails himself of the possibility provided for in Article 36(1)(c) of Regulation (EC) No 6/2002 of filing a specimen of the design, the application and the specimen shall be submitted to the Office by a single mail in the form prescribed in paragraph 1(a) of this Article. If the application and the specimen, or specimens in the case of a multiple application, are not submitted by a single mail the Office shall not give a filing date until the last item has been received pursuant to Article 10(1) of this Regulation.

Article 66

Communication by fax

1. Where an application for registration of a Community design is submitted by fax and the application contains a reproduction of the design pursuant to Article 4(1) which does not satisfy the requirements of that Article, the required reproduction suitable for registration and publication shall be submitted to the Office in accordance with Article 65(1)(a).

Where the reproduction is received by the Office within a time limit of one month from the date of the receipt of the fax, the application shall be deemed to have been received by the Office on the date on which the fax was received.

Where the reproduction is received by the Office after the expiry of that time limit, the application shall be deemed to have been received by the Office on the date on which the reproduction was received.

2. Where a communication received by fax is incomplete or illegible, or where the Office has reasonable doubts as to the accuracy of the transmission, the Office shall inform the sender accordingly and shall call upon him/her, within a time limit to be specified by the Office, to retransmit the original by fax or to submit the original in accordance with Article 65(1)(a).

Where that request is complied with within the time limit specified, the date of the receipt of the retransmission or of the original shall be deemed to be the date of the receipt of the original communication, provided that where the deficiency concerns the granting of a filing date for an application to register a Community design, the provisions on the filing date shall apply.

Where the request is not complied with within the time limit specified, the communication shall be deemed not to have been received.

3. Any communication submitted to the Office by fax shall be considered to be duly signed if the reproduction of the signature appears on the printout produced by the fax.
4. The President of the Office may determine additional requirements for communication by fax, such as the equipment to be used, technical details of communication, and methods of identifying the sender.

Article 67

Communication by electronic means

1. Applications for registration of a Community design may be submitted by electronic means, including the representation of the design, and notwithstanding Article 65(2) in the case of filing a specimen.

The conditions shall be laid down by the President of the Office.

2. The President of the Office shall determine the requirements for communication by electronic means, such as the equipment to be used, technical details of communication, and methods of identifying the sender.

3. Where a communication is sent by electronic means, Article 66(2) shall apply *mutatis mutandis*.

4. Where a communication is sent to the Office by electronic means, the indication of the name of the sender shall be deemed to be equivalent to the signature.

Article 68

Forms

1. The Office shall make available free of charge forms for the purpose of:

- (a) filing an application for a registered Community design;
- (b) applying for the correction of an application or a registration;
- (c) applying for the registration of a transfer and the transfer form and transfer document referred to in Article 23(4);
- (d) applying for the registration of a licence;
- (e) applying for renewal of registration of a registered Community design;

- (f) applying for a declaration of invalidity of a registered Community design;
- (g) applying for *restitutio in integrum*;
- (h) taking an appeal;
- (i) authorising a representative, in the form of an individual authorisation and in the form of a general authorisation.

2. The Office may make other forms available free of charge.

3. The Office shall make available the forms referred to in paragraphs 1 and 2 in all the official languages of the Community.

4. The Office shall place the forms at the disposal of the Benelux Design Office and of the Member States' central industrial property offices free of charge.

5. The Office may also make available the forms in machine-readable form.

6. Parties to proceedings before the Office should use the forms provided by the Office, or copies of those forms, or forms with the same content and format as those forms, such as forms generated by means of electronic data processing.

7. Forms shall be completed in such a manner as to permit an automated input of the content into a computer, such as by character recognition or scanning.

CHAPTER XIV

INFORMATION TO THE PUBLIC

Article 69

Register of Community Designs

1. The Register may be maintained in the form of an electronic database.

2. The Register shall contain the following entries:

- (a) the date of filing the application;
- (b) the file number of the application and the file number of each individual design included in a multiple application;
- (c) the date of the publication of the registration;
- (d) the name, the address and the nationality of the applicant and the State in which he/she is domiciled or has his/her seat or establishment;
- (e) the name and business address of the representative, other than an employee acting as representative in accordance with the first subparagraph of Article 77(3) of Regulation (EC) No 6/2002; where there is more than one representative, only the name and business address of the first named representative, the name being followed by the words 'et al', shall be recorded; where an association of representatives is appointed, only the name and address of the association shall be recorded;
- (f) the representation of the design;

(g) an indication of the products by their names, preceded by the numbers of the classes and subclasses of the Locarno classification, and grouped accordingly;

(h) particulars of claims of priority pursuant to Article 42 of Regulation (EC) No 6/2002;

(i) particulars of claims of exhibition priority pursuant to Article 44 of Regulation (EC) No 6/2002;

(j) where applicable, the citation of the designer or of the team of designers pursuant to Article 18 of Regulation (EC) No 6/2002, or a statement that the designer or the team of designers has waived the right to be cited;

(k) the language in which the application was filed and the second language which the applicant has indicated in his/her application, pursuant to Article 98(2) of Regulation (EC) No 6/2002;

(l) the date of registration of the design in the Register and the registration number;

(m) a mention of any request for deferment of publication pursuant to Article 50(3) of Regulation (EC) No 6/2002, specifying the date of expiry of the period of deferment;

(n) a mention that a specimen was filed pursuant to Article 5;

(o) a mention that a description was filed pursuant to Article 1(2)(a).

3. In addition to the entries set out in paragraph 2 the Register shall contain the following entries, each accompanied by the date of recording such entry:

- (a) changes in the name, the address or the nationality of the holder or in the State in which he/she is domiciled or has his/her seat or establishment;
- (b) changes in the name or business address of the representative, other than a representative falling within the first subparagraph of Article 77(3) of Regulation (EC) No 6/2002;
- (c) when a new representative is appointed, the name and business address of that representative;
- (d) a mention that a multiple application or registration has been divided into separate applications or registrations pursuant to Article 37(4) of Regulation (EC) No 6/2002;
- (e) the notice of an amendment to the design pursuant to Article 25(6) of Regulation (EC) No 6/2002, including, if applicable, a reference to the disclaimer made or the court decision or the decision by the Office declaring the partial invalidity of the design right, as well as corrections of mistakes and errors pursuant to Article 20 of this Regulation;
- (f) a mention that entitlement proceedings have been instituted under Article 15(1) of Regulation (EC) No 6/2002 in respect of a registered Community design;
- (g) the final decision or other termination of proceedings pursuant to Article 15(4)(b) of Regulation (EC) No 6/2002 concerning entitlement proceedings;
- (h) a change of ownership pursuant to Article 15(4)(c) of Regulation (EC) No 6/2002;
- (i) transfers pursuant to Article 28 of Regulation (EC) No 6/2002;
- (j) the creation or transfer of a right *in rem* pursuant to Article 29 of Regulation (EC) No 6/2002 and the nature of the right *in rem*;
- (k) levy of execution pursuant to Article 30 of Regulation (EC) No 6/2002 and insolvency proceedings pursuant to Article 31 of that Regulation;
- (l) the grant or transfer of a licence pursuant to Article 16(2) or Article 32 of Regulation (EC) No 6/2002 and, where applicable, the type of licence pursuant to Article 25 of this Regulation;
- (m) renewal of the registration pursuant to Article 13 of Regulation (EC) No 6/2002 and the date from which it takes effect;
- (n) a record of the determination of the expiry of the registration;
- (o) a declaration of total or partial surrender by the holder pursuant to Article 51(1) and (3) of Regulation (EC) No 6/2002;
- (p) the date of submission of an application or of the filing of a counterclaim for a declaration of invalidity pursuant, respectively, to Article 52 or Article 86(2) of Regulation (EC) No 6/2002;
- (q) the date and content of the decision on the application or counterclaim for declaration of invalidity or any other termination of proceedings pursuant, respectively, to Article 53 or Article 86(4) of Regulation (EC) No 6/2002;
- (r) a mention pursuant to Article 50(4) of Regulation (EC) No 6/2002 that the registered Community design is deemed from the outset not to have had the effects specified in that Regulation;
- (s) the cancellation of the representative recorded pursuant to paragraph 2(e);
- (t) the modification or cancellation from the Register of the items referred to in points (j), (k) and (l).

4. The President of the Office may determine that items other than those referred to in paragraphs 2 and 3 shall be entered in the Register.

5. The holder shall be notified of any change in the Register.

6. Subject to Article 73, the Office shall provide certified or uncertified extracts from the Register on request, on payment of a fee.

CHAPTER XV

COMMUNITY DESIGNS BULLETIN AND DATA BASE

Article 70

Community Designs Bulletin

1. The Office shall determine the frequency of the publication of the *Community Designs Bulletin* and the manner in which such publication shall take place.

2. Without prejudice to the provisions of Article 50(2) of Regulation (EC) No 6/2002 and subject to Articles 14 and 16 of this Regulation relating to deferment of publication, the *Community Designs Bulletin* shall contain publications of registration and of entries made in the Register as well as other

particulars relating to registrations of designs whose publication is prescribed by Regulation (EC) No 6/2002 or by this Regulation.

3. Where particulars whose publication is prescribed in Regulation (EC) No 6/2002 or in this Regulation are published in the *Community Designs Bulletin*, the date of issue shown on the Bulletin shall be taken as the date of publication of the particulars.

4. The information the publication of which is prescribed in Articles 14 and 16 shall, where appropriate, be published in all the official languages of the Community.

*Article 71***Database**

1. The Office shall maintain an electronic database with the particulars of applications for registration of Community designs and entries in the Register. The Office may, subject to the restrictions prescribed by Article 50(2) and (3) of Regula-

tion (EC) No 6/2002, make available the contents of that database for direct access or on CD-ROM or in any other machine-readable form.

2. The President of the Office shall determine the conditions of access to the database and the manner in which the contents of this database may be made available in machine-readable form, including the charges for those acts.

CHAPTER XVI

INSPECTION OF FILES AND KEEPING OF FILES*Article 72***Parts of the file excluded from inspection**

The parts of the file which shall be excluded from inspection pursuant to Article 74(4) of Regulation (EC) No 6/2002 shall be:

- (a) documents relating to exclusion or objection pursuant to Article 132 of Regulation (EC) No 40/94, the provisions of that Article being considered for this purpose as applying *mutatis mutandis* to registered Community designs and to applications for these;
- (b) draft decisions and opinions, and all other internal documents used for the preparation of decisions and opinions;
- (c) parts of the file which the party concerned showed a special interest in keeping confidential before the application for inspection of the files was made, unless inspection of such part of the file is justified by overriding legitimate interests of the party seeking inspection.

The request for inspection of the files shall not be deemed to have been made until the required fee has been paid.

The means of inspection shall be determined by the President of the Office.

2. Where inspection of the files relates to an application for a registered Community design or to a registered Community design which is subject to deferment of publication, which, being subject to such deferment, has been surrendered before or on the expiry of that period or which, pursuant to Article 50(4) of Regulation (EC) No 6/2002, is deemed from the outset not to have had the effects specified in that Regulation, the request shall contain an indication and evidence to the effect that:

- (a) the applicant for or holder of the Community design has consented to the inspection; or
- (b) the person requesting the inspection has established a legitimate interest in the inspection of the file, in particular where the applicant for or holder of the Community design has stated that after the design has been registered he/she will invoke the rights under it against the person requesting the inspection.

*Article 73***Inspection of the Register of Community Designs**

Where the registration is subject to a deferment of publication pursuant to Article 50(1) of Regulation (EC) No 6/2002:

- (a) access to the Register to persons other than the holder shall be limited to the name of the holder, the name of any representative, the date of filing and registration, the file number of the application and the mention that publication is deferred;
- (b) the certified or uncertified extracts from the Register shall contain only the name of the holder, the name of any representative, the date of filing and registration, the file number of the application and the mention that publication is deferred, except where the request has been made by the holder or his/her representative.

3. Inspection of the files shall take place on the premises of the Office.

4. On request, inspection of the files shall be effected by means of issuing copies of file documents. Such copies shall incur fees.

5. The Office shall issue on request certified or uncertified copies of the application for a registered Community design or of those file documents of which copies may be issued pursuant to paragraph 4 upon payment of a fee.

*Article 75***Communication of information contained in the files***Article 74***Procedures for the inspection of files**

1. Inspection of the files of registered Community designs shall either be of the original document, or of copies thereof, or of technical means of storage if the files are so stored.

Subject to the restrictions provided for in Article 74 of Regulation (EC) No 6/2002 and Articles 72 and 73 of this Regulation, the Office may, upon request, communicate information from any file of a Community design applied for or of a registered Community design, subject to payment of a fee.

However, the Office may require the applicant to inspect the file *in situ*, should it deem that to be appropriate in view of the quantity of information to be supplied.

Article 76

Keeping of files

1. The Office shall keep the files relating to Community design applications and to registered Community designs for at least five years from the end of the year in which:

- (a) the application is rejected or withdrawn;
- (b) the registration of the registered Community design expires definitively;

(c) the complete surrender of the registered Community design is registered pursuant to Article 51 of Regulation (EC) No 6/2002;

(d) the registered Community design is definitively removed from the Register;

(e) the registered Community design is deemed not to have had the effects specified in Regulation (EC) No 6/2002 pursuant to Article 50(4) thereof.

2. The President of the Office shall determine the form in which the files shall be kept.

CHAPTER XVII

ADMINISTRATIVE COOPERATION

Article 77

Exchange of information and communications between the Office and the authorities of the Member States

1. The Office and the central industrial property offices of the Member States and the Benelux Design Office shall, upon request, communicate to each other relevant information about the filing of applications for registered Community designs, Benelux designs or national registered designs and about proceedings relating to such applications and the designs registered as a result thereof. Such communications shall not be subject to the restrictions provided for in Article 74 of Regulation (EC) No 6/2002.

2. Communications between the Office and the courts or authorities of the Member States which arise out of the application of Regulation (EC) No 6/2002 or this Regulation shall be effected directly between those authorities.

Such communication may also be effected through the central industrial property offices of the Member States or the Benelux Design Office.

3. Expenditure in respect of communications pursuant to paragraphs 1 and 2 shall be chargeable to the authority making the communications, which shall be exempt from fees.

Article 78

Inspection of files by or via courts or authorities of the Member States

1. Inspection of files relating to Community designs applied for or registered Community designs by courts or authorities of the Member States shall if so requested be of the original documents or of copies thereof. Article 74 shall not apply.

2. Courts or public prosecutors' offices of the Member States may, in the course of proceedings before them, open files or copies thereof transmitted by the Office to inspection by third parties. Such inspection shall be subject to Article 74 of Regulation (EC) No 6/2002.

3. The Office shall not charge any fee for inspections pursuant to paragraphs 1 and 2.

4. The Office shall, at the time of transmission of the files or copies thereof to the courts or public prosecutors' offices of the Member States, indicate the restrictions to which the inspection of files relating to Community designs applied for or registered Community designs is subject pursuant to Article 74 of Regulation (EC) No 6/2002 and Article 72 of this Regulation.

CHAPTER XVIII

COSTS

Article 79

Apportionment and fixing of costs

1. Apportionment of costs pursuant to Article 70(1) and (2) of Regulation (EC) No 6/2002 shall be dealt with in the decision on the application for a declaration of invalidity of a registered Community design, or in the decision on the appeal.

2. Apportionment of costs pursuant to Article 70(3) and (4) of Regulation (EC) No 6/2002 shall be dealt with in a decision on costs by the Invalidity Division or the Board of Appeal.

3. A bill of costs, with supporting evidence, shall be attached to the request for the fixing of costs provided for in the first sentence of Article 70(6) of Regulation (EC) No 6/2002.

The request shall be admissible only if the decision in respect of which the fixing of costs is required has become final. Costs may be fixed once their credibility is established.

4. The request provided for in the second sentence of Article 70(6) of Regulation (EC) No 6/2002 for a review of the decision of the registry on the fixing of costs, stating the reasons on which it is based, must be filed at the Office within one month of the date of notification of the awarding of costs.

It shall not be deemed to be filed until the fee for reviewing the amount of the costs has been paid.

5. The Invalidity Division or the Board of Appeal, as the case may be, shall take a decision on the request referred to in paragraph 4 without oral proceedings.

6. The fees to be borne by the losing party pursuant to Article 70(1) of Regulation (EC) No 6/2002 shall be limited to the fees incurred by the other party for the application for a declaration of invalidity and/or for the appeal.

7. Costs essential to the proceedings and actually incurred by the successful party shall be borne by the losing party in accordance with Article 70(1) of Regulation (EC) No 6/2002 on the basis of the following maximum rates:

- (a) travel expenses of one party for the outward and return journey between the place of residence or the place of business and the place where oral proceedings are held or where evidence is taken, as follows:
 - (i) the cost of the first-class rail fare including usual transport supplements where the total distance by rail does not exceed 800 km;
 - (ii) the cost of the tourist-class air fare where the total distance by rail exceeds 800 km or the route includes a sea crossing;
- (b) subsistence expenses of one party equal to the daily subsistence allowance for officials in grades A 4 to A 8 as laid down in Article 13 of Annex VII to the Staff Regulations of officials of the European Communities;
- (c) travel expenses of representatives within the meaning of Article 78(1) of Regulation (EC) No 6/2002 and of witnesses and of experts, at the rates provided for in point (a);

- (d) subsistence expenses of representatives within the meaning of Article 78(1) of Regulation (EC) No 6/2002 and of witnesses and experts, at the rates referred to in point (b);
- (e) costs entailed in the taking of evidence in the form of examination of witnesses, opinions by experts or inspection, up to EUR 300 per proceedings;
- (f) costs of representation, within the meaning of Article 78(1) of Regulation (EC) No 6/2002:
 - (i) of the applicant in proceedings relating to invalidity of a registered Community design up to EUR 400;
 - (ii) of the holder in proceedings relating to invalidity of a registered Community design up to EUR 400;
 - (iii) of the appellant in appeal proceedings up to EUR 500;
 - (iv) of the defendant in appeal proceedings up to EUR 500;
- (g) where the successful party is represented by more than one representative within the meaning of Article 78(1) of the Regulation (EC) No 6/2002, the losing party shall bear the costs referred to in points (c), (d) and (f) for one such person only;
- (h) the losing party shall not be obliged to reimburse the successful party for any costs, expenses and fees other than those referred to in points (a) to (g).

Where the taking of evidence in any of the proceedings referred to in point (f) of the first subparagraph involves the examination of witnesses, opinions by experts or inspection, an additional amount shall be granted for representation costs of up to EUR 600 per proceedings.

CHAPTER XIX

LANGUAGES

Article 80

Applications and declarations

Without prejudice to Article 98(4) of Regulation (EC) No 6/2002:

- (a) any application or declaration relating to an application for a registered Community design may be filed in the language used for filing the application or in the second language indicated by the applicant in his/her application;
- (b) any application or declaration other than an application for declaration of invalidity pursuant to Article 52 of Regulation (EC) No 6/2002, or declaration of surrender pursuant to Article 51 of that Regulation relating to a registered Community design may be filed in one of the languages of the Office;
- (c) when any of the forms provided by the Office pursuant to Article 68 is used, such forms may be used in any of the official languages of the Community, provided that the form is completed in one of the languages of the Office, as far as textual elements are concerned.

Article 81

Written proceedings

1. Without prejudice to Article 98(3) and (5) of Regulation (EC) No 6/2002 and save as otherwise provided in this Regulation, in written proceedings before the Office a party may use any language of the Office.

If the language chosen is not the language of the proceedings, the party shall supply a translation into that language within one month of the date of the submission of the original document.

Where the applicant for a registered Community design is the sole party to proceedings before the Office and the language used for the filing of the application for the registered Community design is not one of the languages of the Office, the translation may also be filed in the second language indicated by the applicant in his/her application.

2. Save as otherwise provided in this Regulation, documents to be used in proceedings before the Office may be filed in any official language of the Community.

Where the language of such documents is not the language of the proceedings the Office may require that a translation be supplied, within a time limit specified by it, in that language or, at the choice of the party to the proceeding, in any language of the Office.

Article 82

Oral proceedings

1. Any party to oral proceedings before the Office may, in place of the language of proceedings, use one of the other official languages of the Community, on condition that he/she makes provision for interpretation into the language of proceedings.

Where the oral proceedings are held in a proceeding concerning the application for registration of a design the applicant may use either the language of the application or the second language indicated by him/her.

2. In oral proceedings concerning the application for registration of a design, the staff of the Office may use either the language of the application or the second language indicated by the applicant.

In all other oral proceedings, the staff of the Office may use, in place of the language of the proceedings, one of the other languages of the Office, on condition that the party or parties to the proceedings agree(s) to such use.

3. With regard to the taking of evidence, any party to be heard, witness or expert who is unable to express himself/herself adequately in the language of proceedings, may use any of the official languages of the Community.

Where the taking of evidence is decided upon following a request by a party to the proceedings, parties to be heard, witnesses or experts who express themselves in languages other than the language of proceedings may be heard only if the party who made the request makes provision for interpretation into that language.

In proceedings concerning the application for registration of a design, in place of the language of the application, the second language indicated by the applicant may be used.

In any proceedings with only one party, the Office may at the request of the party concerned permit derogation from the provisions in this paragraph.

4. If the parties and the Office so agree, any official language of the Community may be used in oral proceedings.

5. The Office shall, if necessary, make provision at its own expense for interpretation into the language of proceedings, or, where appropriate, into its other languages, unless this interpretation is the responsibility of one of the parties to the proceedings.

6. Statements by staff of the Office, by parties to the proceedings and by witnesses and experts, made in one of the languages of the Office during oral proceedings shall be entered in the minutes in the language employed. Statements made in any other language shall be entered in the language of proceedings.

Corrections to the application for or the registration of a Community design shall be entered in the minutes in the language of proceedings.

Article 83

Certification of translations

1. When a translation of any document is to be filed, the Office may require the filing, within a time limit to be specified by it, of a certificate that the translation corresponds to the original text.

Where the certificate relates to the translation of a previous application pursuant to Article 42 of Regulation (EC) No 6/2002, such time limit shall not be less than three months after the date of filing of the application.

Where the certificate is not filed within that time limit, the document shall be deemed not to have been received.

2. The President of the Office may determine the manner in which translations are certified.

Article 84

Legal authenticity of translations

In the absence of evidence to the contrary, the Office may assume that a translation corresponds to the relevant original text.

CHAPTER XX

RECIPROCITY, TRANSITION PERIOD AND ENTRY INTO FORCE

Article 85

Publication of reciprocity

1. If necessary, the President of the Office shall request the Commission to enquire whether a State which is not party to the Paris Convention for the Protection of Industrial Property or to the Agreement establishing the World Trade Organisation grants reciprocal treatment within the meaning of Article 41(5) Regulation (EC) No 6/2002.

2. If the Commission determines that reciprocal treatment in accordance with paragraph 1 is granted, it shall publish a communication to that effect in the *Official Journal of the European Communities*.

3. Article 41(5) of Regulation (EC) No 6/2002 shall apply from the date of publication in the *Official Journal of the European Communities* of the communication referred to in paragraph 2, unless the communication states an earlier date from which it is applicable.

Article 41(5) of Regulation (EC) No 6/2002 shall cease to be applicable from the date of publication in the *Official Journal of the European Communities* of a communication of the Commission stating that reciprocal treatment is no longer granted, unless the communication states an earlier date from which it is applicable.

4. Communications referred to in paragraphs 2 and 3 shall also be published in the *Official Journal of the Office*.

*Article 86***Transition period**

1. Any application for registration of a Community design filed no more than three months before the date fixed pursuant to Article 111(2) of Regulation (EC) No 6/2002 shall be marked by the Office with the filing date determined pursuant to that provision and with the actual date of receipt of the application.

2. With regard to the application, the priority period of six months provided for in Articles 41 and 44 of Regulation (EC) No 6/2002 shall be calculated from the date fixed pursuant to Article 111(2) of that Regulation.

3. The Office may issue a receipt to the applicant prior to the date fixed pursuant to Article 111(2) of Regulation (EC) No 6/2002.

4. The Office may examine the applications prior to the date fixed pursuant to Article 111(2) of Regulation (EC) No 6/2002 and communicate with the applicant with a view to remedying any deficiencies prior to that date.

Any decisions with regard to such applications may be taken only after that date.

5. Where the date of receipt of an application for the registration of a Community design by the Office, by the central industrial property office of a Member State or by the Benelux Design Office is before the commencement of the three-month period specified in Article 111(3) of Regulation (EC) No 6/2002 the application shall be deemed not to have been filed.

The applicant shall be informed accordingly and the application shall be sent back to him/her.

*Article 87***Entry into force**

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

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

Done at Brussels, 21 October 2002.

For the Commission
Frederik BOLKESTEIN
Member of the Commission
