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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT

Sweden

The present document reproduces¹ the Design Protection Act 1953 (1970:485), as notified by Sweden under Article 63.2 of the Agreement (see document IP/N/1/SWE/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD

Suède

Le présent document contient le texte¹ de la Loi de 1953 sur la protection des dessins et modèles (1970:485), notifiée par la Suède au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/SWE/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

Suecia

En el presente documento se reproduce¹ la Ley de Protección de los Dibujos y Modelos de 1953 (1970:485), notificada por Suecia de conformidad con el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/SWE/1).

¹English only/anglais seulement/inglés solamente.

THE MINISTRY OF JUSTICE
Stockholm

DESIGN PROTECTION ACT

(Act No 1970:485 of June 29, 1970, as last amended by Act No 1994:235, of April 14, 1994).

General Provisions

Article 1. For the purposes of this Act a "design" is to be understood as the prototype for the shape of a product or for an ornament.

The person who has created a design, or his successor in title, may obtain, through registration, an exclusive right to exploit the design according to this Act (design right).

Article 2. A design may be registered only if it substantially differs from what has become known before the date of the filing of the application for registration.

As "known" shall be considered everything that has been made generally available, regardless of whether this has occurred through a reproduction, exhibition, putting on sale or in any other manner. Also a design which has not been made generally available shall be considered as known if the design appears in an application in this country for a patent or if an application for the registration of a trademark or a design, which is, or, according to what is prescribed in the relevant provisions, shall be considered to have been made before the date indicated in the first paragraph, and the design thereafter is made generally available in the course of the examination of the application.

Article 3. A design may be registered notwithstanding the fact that it has been made generally available

1. as a consequence of an obvious abuse in relation to the applicant or to a person from whom he derives his right,
2. through the fact that the applicant or a person from whom he derives his right has displayed the design at an official, or officially recognized, international exhibition.

Article 4. A design may not be registered

1. where the design or its use is contrary to morality or public order,
2. if in the design has been included, without authorization,

a) a State coat of arms, a State flag or another State emblem, a State control or guarantee warrant, another designation which alludes on the Swedish State and thereby gives the design an official character, a Swedish municipal coat of arms or such an international designation which is protected under the Act (1970:498) on the Protection of Coats of Arms and Certain Other Official Designations, or anything that may be easily confused with a coat of arms, a flag, an emblem or a designation as referred to above,

b) anything that may be perceived as the denomination of a foundation, a non-profit organization or a similar association or as another person's trade name or trade symbol protected in this country, or as another sign which has been established on the market for another person in this country in the course of business activities,

c) another person's portrait or anything that may be perceived as another person's family name, artistic name or similar name, unless the portrait or the name obviously relates to a person who is long deceased,

d) anything than may be perceived as another person's literary or artistic work protected in this country, where the title is distinctive, or anything that violates another person's copyright in such a work or in a photographic picture which is protected in this country,

e) anything that does not substantially differ from a design which is registered in this country for another person.

Article 5. The right in a design shall, with the limitations mentioned below, imply that no other person is, without the authorization of the holder of the right in the design (the design holder), allowed to exploit the design in the course of business activities through the manufacture, the import into Sweden, the offering for sale, selling, transfer or rental of a product the appearance of which does not substantially differ from the design or which incorporates something that does not substantially differ from the design.

The right in a design applies only to the goods for which the design has been registreed, or for similar goods.

The right in a design does not apply to the use of a goods which have been put on the market within the European Economic Area by the design holder or with his consent.

Article 6. A person who exploited the design in the course of business activities in this country when the application for the registration of the design was made may, notwithstanding the design right, continue the exploitation of the design while maintaining its essential features, if the exploitation did not amount to an obvious misuse in relation to the applicant or someone from whom he derives his right. Such a right of exploitation shall be accorded also to any person who has taken substantial steps for the exploitation of the design in the course of business activities in this country.

The right under the first paragraph may be transferred to another person only together with the business activity in which the right came into existence or where the exploitation was intended to take place.

Article 7. The Government may prescribe that spare parts or accessories to aircrafts may, notwithstanding the design right, be imported into the country for use in the repair of an aircraft domiciled in a foreign country which grants similar advantages in respect of a Swedish aircraft.

Article 8. The Government may prescribe that an application for the registration of a design, which has been earlier included in an application outside this country, shall, for the purposes of Articles 2 and 6, where the applicant so requests, be considered as having been made at the same time as the application outside this country.

The Application and its Examination

Article 9. The Patent and Registration Office is the Registration Authority.

Article 10. Any application for registration of a design shall be made in writing to the Registration Authority.

The application shall contain an indication of the goods for which the registration of the design is sought. The application shall indicate the creator of the design. Where registration is sought for a person other than the one who created the design, the applicant shall prove his right in that design.

To the application shall be attached a picture showing the design. Where the applicant, before the publication of the application, files also a model, that model shall be considered as showing the design. To the application shall furthermore be attached a declaration signed by the applicant himself, on his faith and honor, to the effect that the design, to the best knowledge of the applicant, has not before

the date of the filing of the application or the date when the application, under Article 8, shall be considered as having been made, been made known in such a way which under Articles 2 and 3 would prevent the registration.

The applicant shall pay the application fees and the additional fees prescribed in Article 48.

Article 11. An application may include several designs, where the goods for which registration of the designs is sought are interconnected as regards the manufacture and the exploitation. An application for such a joint registration may include no more than 20 designs and may not refer to ornaments.

Article 12. An applicant who is not domiciled in Sweden shall have a representative resident here who is empowered to represent him in all matters relating to the application.

Article 13. An application for the registration of a design shall not be considered as having been made until the applicant has presented a picture or a model showing the design.

The application may not be altered so as to refer to another design or another goods than contained in the original application.

Article 14. In the course of the examination of the application for registration of a design, the Registration Authority shall, to the extent prescribed by the Government, examine if the requirements for obtaining a registration of the design are fulfilled. If the applicant has not complied with the provisions governing the application or if the Authority otherwise considers that there is an obstacle for the approval of the application, the applicant shall be invited to submit, within a determined period of time, either a statement or a correction.

Where the applicant does not, within the prescribed period of time, submit a statement or take measures to remedy the deficiency indicated, the application shall be removed from the files. This possibility shall be indicated in the invitation.

An application which has been removed from the files may be reinstated where the applicant, within two months, submits a statement or takes measures to remedy the deficiency and within the same period of time pays the prescribed reinstatement fee. A reinstatement may be made only once.

Article 15. If there is an obstacle to the registration even after a statement has been submitted and if the applicant has been given an opportunity to file a statement concerning the obstacle, the application shall be rejected, unless there is a reason for issuing a new invitation to the applicant.

Article 16. If anyone claims, before the Registration Authority, that he has a better title to the design than the applicant and the matter is doubtful, the Authority may invite him to file an action in Court within a certain time, failing which his claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better title to the design is under consideration by a Court, the application for registration may be declared suspended pending a final decision in the case.

Article 17. If someone proves, before the Registration Authority, that he has a better title to the design than the applicant, the Authority shall transfer the application to him, if he so requests. The person to whom an application is transferred shall pay a new application fee.

If a transfer is requested, the application may not be altered, removed from the files, rejected or accepted until the claim has been finally considered.

Article 18. If the application documents are complete and there is no obstacle to effecting the registration, the Registration Authority shall publish a notice of the application in order to give the public an opportunity to file an opposition against the application. If a particular document in the case shall be kept secret according to what is prescribed in Article 19, the publication may, however, be deferred until the document shall be made publicly available.

Any opposition shall be filed in writing with the Registration Authority within two months from the publication.

Article 19. Where, in a case concerning the registration of a design, a particular document showing the design shall be kept secret according to what is specifically prescribed in this respect, the document may not, without the consent of the applicant, be made available until the period requested by him has expired or a period of six months have expired from the date of the filing of the application or, where priority under Article 8, first paragraph, has been claimed, from the date from which priority has been claimed. If the Registration Authority has decided to remove the application from the file, or to reject the application, before the period for secrecy has expired, the document may be made available only where the applicant requests the application to be reinstated or appeals against the decision.

Article 20. After the expiry of the period prescribed in Article 18, second paragraph, the examination of the application shall continue. As regards this examination, the provisions of Articles 14 to 17 apply.

The applicant shall be notified about any opposition filed. Where the opposition is not obviously groundless, the applicant shall be given an opportunity to make observations.

Article 21. A final decision by the Registration Authority in any matter concerning the application for registration of a design may be appealed by the applicant if the decision goes against him. A decision under which an application has been accepted in spite of an opposition filed according to what is prescribed in this respect, may be appealed by the person who has filed the opposition. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons for this exist.

A decision whereby a request for reinstatement as prescribed in Article 14, third paragraph, has been rejected or a request for a transfer as prescribed in Article 17 has been accepted, may be appealed by applicant. Any person who has filed a request for a transfer may appeal a decision under which the request has been rejected.

Article 22. A final decision by the Registration Authority under Article 21, may be appealed to the Court of Patent Appeals (Patentbesvärsrätten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed to the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards such appeals the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) on appeal against decisions by the Court of Administrative Appeals shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 23. Where an application for the registration of a design is accepted and the decision has taken legal force, the design shall be entered into the Design Register and a notice of the registration be published.

The Term of Validity of A Design Registration

Article 24. A registration of a design is valid for a term of five years from the date of the filing of the application for registration and may, upon application, be renewed for two further terms of five years. Each such further term runs from the expiry of the previous term.

Article 25. Applications for renewals of registrations shall be filed with the Registration Authority not earlier than one year, and not later than six months, after the expiry of the previous registration term. Within the same period, the renewal fees and the additional fees prescribed in Article 48 shall be paid, failing which the application shall be rejected.

A notice of the renewal of a registration shall be published.

On Assignments and Licenses, Etc.

Article 26. Where the owner of a design has granted someone else the right to exploit the design in the course of business activities (license), the licensee may transfer his right further only if there is an agreement to this effect.

Where the license forms part of a business activity, it may, however, be transferred together with the activity, unless there is an agreement to the contrary. In such a case the transferor remains liable for the fulfilment of the license agreement.

Article 27. Where a design right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the Design Register. Where it is shown that a license recorded in the register has expired, the entry shall be removed.

The provisions of the first paragraph apply correspondingly also in relation to a compulsory license and in relation to a right as prescribed in Article 32, second paragraph.

Where a joint registration has been effected, a transfer of a design right may be recorded only in relation to all the designs.

As the design holder shall, for the purpose of lawsuits or other legal cases relating to the design, be considered the person who has last been entered into the register in this capacity.

Article 28. Any person who, in this country, exploited, in the course of business activities, a design covered by an application for registration when a document showing the design was made publicly available, may, provided that the application results in a registration, be granted a compulsory license for the exploitation, provided that there are extraordinary reasons and he did not know about the application and could not reasonably have obtained such knowledge. A right to such a compulsory license may, subject to the same conditions, be granted also to any person who has taken significant measures in order to exploit the design in business activities in this country. A compulsory license may relate also the time before the design was registered.

Where a public interest of an extraordinary character calls for it, a person who wants to exploit, in the course of business activities, a design registered for another person, may be granted a compulsory license for such exploitation.

Article 29. Compulsory licenses may not be granted to persons other than those who could be presumed to be able to exploit the design in an acceptable manner and in conformity with the terms of the license.

A compulsory license does not prevent the design holder from exploiting the design himself or granting a license in this respect. A compulsory license may be transferred to another person only together with the business activity in which it is exploited or intended to be exploited.

Article 30. A compulsory license may be granted by a Court which also decides the extent to which a design may be exploited and decides about the remuneration and other conditions for the license. The Court may terminate the license or decide on new conditions for it where substantially altered circumstances call for it.

On the Termination of A Registration

Article 31. If a design has been registered contrary to the provisions of Articles 1 to 4 and the ground for refusing the registration still exists, the Court shall, upon the filing of an action in this respect, invalidate the registration. A registration may, however, not be invalidated on the ground that the person who has obtained the registration is entitled only to a part of the design right.

An action based on the fact that a registration has been effected for a person other than the one who is entitled to it under Article 1 may be filed only by the person who claims to be the holder of the right in the design. The action shall be brought within one year from the date on which the plaintiff became aware of the registration and of the other circumstances on which the action is based. If the design holder was in good faith when the design was registered or when the right in the design was transferred to him, the action may not be brought later than three years from the registration.

In other cases an action may be brought by anyone who suffers an injury from the registration. An action based on the provisions of Article 4, 1) or 2.a) may be brought also by a Public Authority as decided by the Government.

Article 32. If a design has been registered for a person other than the one entitled to it under Article 1, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him. Any action in this respect shall be brought within the period prescribed in Article 31, second paragraph.

If a person from which a registration has thus been transferred, has commenced, in good faith, the exploitation of the design in the course of business activities in this country, or has taken significant measures in this respect, he may, against the payment of an equitable remuneration and on other conditions considered reasonable continue the exploitation or commence the intended exploitation, while maintaining its essential features. The same right shall, under the same conditions, be granted to a licensee recorded in the register.

A right as provided for in the second paragraph may be transferred to another person only in connection with the business activity in which it is exploited or the exploitation was intended to take place.

Article 33. If the design holder renounces, in writing to the Registration Authority, his right in the design, the Authority shall remove the design from the register.

If the right in a design is sequestered for debt, seized or kept for securing the payment of a debt or if there is a dispute concerning the transfer or a registration, the design may not, upon request by the owner of the design, be removed from the register as long as the sequestering, seizure or the keeping for the payment of a debt is still valid or the dispute has not been finally decided.

On the Obligation to Furnish Information

Article 34. A person who has applied for the registration of a design and who invokes the application against another person before a document showing the design has been made publicly available, is obliged to give his consent to the making available of the document to the other person.

A person who directly in relation to another person, in an advertisement or through the publication of a notice on a goods or its packaging or in any other manner, states that the registration of a design has been applied for, or effected, without, however, at the same time informing about the number of the application or the registration, is obliged to furnish, upon request and without delay, information in this respect. If it is not explicitly claimed that a registration has been applied for, or effected, but what has occurred gives the impression that this is the case, information shall, upon request and without delay, be furnished concerning whether a registration has been applied for or effected.

On Sanctions and Damages, Etc.

Article 35. Where a person commits an infringement of a design right (design infringement) and the infringement is committed wilfully or with gross negligence, he shall be punished by fines or imprisonment for not more than two years. A person who has violated a prohibition under the penalty of a fine under Article 35 a. may not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph as well as the preparation of such acts shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for a violation as mentioned in the first and second paragraphs only if there is a complaint from the injured party and such an action is called for in the public interest.

Article 35 a. At the request of the design holder or of a person who, on the basis of a license, has the right to exploit a design, the Court may issue an injunction prohibiting, under penalty of a fine, a person who commits an act constituting a design infringement to continue that act.

If the plaintiff shows a probable case that an act constituting an infringement takes place and it can reasonably be assumed that the defendant, through the continuation of the act, diminishes the value of the exclusive right in the design, the Court may issue an injunction for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for injury.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the Court for the injury which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition under the second paragraph shall continue to apply.

The provisions on appeal against decisions prescribed in Chapter 15 of the Code on Judicial Procedure shall apply as regards appeals against decisions under the second and third paragraphs and as regards proceedings in higher Courts.

A request for the imposition of a fine may be made by the person who has requested the injunction. In connection with such an imposition, a request may be made for a new injunction to be issued under penalty of a fine.

As regards the contents of wireless broadcasts and broadcasts by wire, the provisions of the Radio Act (1966:755) shall apply.

Article 36. Anyone who wilfully or with negligence commits a design infringement shall pay an equitable compensation for the exploitation of the design and compensation for the further injury caused by the infringement. In the determination of the amount of the compensation also the interest of the owner of the design that a design infringement not be committed and to other circumstances of other than purely economic importance shall be taken into account.

Anyone who without intention or negligence commits a design infringement shall pay a compensation for the exploitation of the design, if and to the extent that this is considered reasonable.

The right to compensation for a design infringement is lost where the action is not brought within five years from the date of the injury.

Article 37. At the request of a person who has suffered injury from a design infringement, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement, decide that the goods manufactured in, or imported into, Sweden in violation of another person's design right, or an object the use of which would constitute a design infringement, shall be altered in a specified manner or be taken into custody for the remainder of the term of protection, or be destroyed or, as regards goods which have been manufactured without authorization in, or imported into, Sweden, be surrendered, against compensation, to the injured party. This does not apply in relation to a person who has in good faith acquired the property or a specific right in it and who has not himself committed a design infringement.

Property as referred to in the first paragraph may be seized, where it can reasonably be assumed that a violation under Article 35 has been committed. As regards such seizure, the provisions on seizure in criminal cases in general shall apply.

Notwithstanding the provisions of the first paragraph the Court may, where there are extraordinary reasons, decide, upon request, that the owner of a property referred to in the first paragraph may have the right to use the property for the remainder of the term of protection, or part of that term, against an equitable compensation and subject to other reasonable conditions.

The provisions of the first to third paragraphs apply also in relation to acts of attempts or of planning referred to in Article 35, second paragraph.

Article 38. Where anyone exploits, in the course of business activities, a design covered by an application for registration after the making publicly available a document showing the design, the provisions on design infringement shall apply accordingly to the extent that the application results in a registration. A criminal penalty may, however, not be adjudicated and a compensation for injury on the basis of an exploitation which has taken place before a notice of the registration was published according to Article 18, may be decided only according to the provisions in Article 36, second paragraph.

The provision of Article 36, third paragraph, does not apply where the action for compensation is brought no later than one year from the registration of the design.

Article 39. Where the registration of a design has been invalidated through a judgement having legal force, no criminal penalty, compensation or security measure as provided for in Articles 35 to 38 may be adjudicated.

Where an action is brought for a design infringement and the person against whom the action is brought claims that the registration be invalidated, the Court shall, upon his request, order the proceedings to be suspended until the question of the invalidation of the registration has been finally decided. Where the action in this respect has not been brought, the Court shall, in connection with the order for suspension, prescribe a certain time for him within which such an action shall be brought.

Article 40. A fine shall be imposed on any person who wilfully or with negligence which is not insignificant

1. does not meet his obligations under Article 34,
2. in cases prescribed in that Article provides information which is incorrect, where a penal sanction is not provided for in the Criminal Code.

Anyone who wilfully or with negligence does not meet his obligation or commits an act as referred to in the first paragraph, shall pay a compensation for any injury caused. The compensation may be adjusted in case the negligence is insignificant.

A public criminal action for a violation as referred to in the first paragraphs may be brought only if there is a complaint from the injured party and such an action, for specific reasons, is called for in the public interest.

Provisions on Proceedings

Article 41. A design holder or a person who has, on the basis of a license, the right to exploit the design, may bring an action to resolve the question on whether or not he enjoys, on the basis of the registration, protection in relation to another person, where an uncertainty exists in this respect and the uncertainty causes injury to the plaintiff.

Under the same conditions, a person who is engaged in, or intends to engage in, a business activity may bring an action against the design holder to resolve the question whether an obstacle against the activity would exist on the basis of a certain design registration.

The provisions of Article 39, second paragraph, apply accordingly where it is claimed, in a case referred to in the first paragraph, that the design registration be invalidated.

Article 42. Anyone who wishes to bring an action concerning the invalidation of a design registration, concerning the transfer of a registration or concerning the granting of a compulsory license shall notify this fact to the Registration Authority and inform every person who, according to the Design Register, holds a license for the exploitation of that design. A licensee who wishes to bring an action for design infringement or for the resolution of a question referred to in Article 41, first paragraph, shall inform the design holder about this fact.

The obligation to furnish information referred to in the first paragraph shall be considered to have been met when a notice has been sent in registered, pre-paid mail to the address recorded in the Design Register.

Where it is not shown, at the time when the action is brought, that a notification or a notice has been furnished under the provisions in the first paragraph, the plaintiff shall be given sufficient time for this purpose. If he fails in this respect, his action shall not be taken up for consideration.

Article 43. Where there is not, under the Code of Judicial Procedure, a Court competent to consider an action concerning a better title to a design, concerning the invalidation of a design registration, concerning the transfer of such a registration, concerning the granting of a compulsory license or of a right referred to in Article 32, second paragraph, concerning remuneration according to Article 40, second paragraph, or concerning the resolution of a question referred to in Article 41, the action shall be brought at the District Court in Stockholm.

Article 44. Copies of judgements or final decisions in cases referred to in Articles 16, 30 to 32, 35 to 38 and 41 shall be transmitted to the Registration Authority.

Special Provisions

Article 45. A design holder who does not have his domicile in Sweden shall have an representative resident here who is empowered to receive notice of writs, summons and other documents relating to court cases and other matters concerning the design right, with the exception, however, as regards writs in criminal cases and as regards invitations for a party to appear personally in the Court. The representative shall be notified to the Design Register and recorded there.

Where a design holder has not notified a representative according to the first paragraph, a summon may instead be served through the transmission of the document in a pre-paid letter to the address recorded in the Design Register. Where a complete address is not recorded in the Register, the summon may, instead, be effected through the making available of the document at the Registration Authority and through the entry of a notice about this fact and about the essential contents of the document in a publication as decided by the Government. A summon shall be considered as effected when the actions now mentioned have been carried out.

Article 46. The Government may, on condition of reciprocity, prescribe that the provisions of Article 12 or Article 45 shall not apply in relation to such an applicant or a design holder who is domiciled in a certain foreign State or who has a representative domiciled there who has been notified to the Registration Authority and who is empowered as prescribed in those Articles.

Article 47. Decisions by the Registration Authority other than those referred to in Article 21 may be appealed through the lodging of an appeal to the Court of Patent Appeals (Patentbesvärsrätten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals (Patentbesvärsrätten) may be appealed to the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards such appeals the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) on appeal against decisions by the Court of Administrative Appeals. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 48. In matters concerning the registration of a design and concerning the renewal of a registration of a design the applicant shall pay an application fee or a renewal fee and, where applicable, the following additional fees, namely a class fee for each class of goods in addition to the first one, a joint registration fee for each design in addition the first one, a storage fee for the storage of a model and a publication fee for the publication of a notice about a picture in addition to the first one. A renewal fee which is paid after the expiry of a current registration period shall be paid with an increased amount.

Article 49. The Government determines the fees under this Act.

Further provisions on the application of this Act are issued by the Government or, as decided by the Government, by the Registration Authority.

This Act enters into force on July 1, 1970.

THE MINISTRY OF JUSTICE
Stockholm

DESIGN PROTECTION ACT

(Act No 1970:485 of June 29, 1970, as last amended by Act No 1994:235, of April 14, 1994).

General Provisions

Article 1. For the purposes of this Act a "design" is to be understood as the prototype for the shape of a product or for an ornament.

The person who has created a design, or his successor in title, may obtain, through registration, an exclusive right to exploit the design according to this Act (design right).

Article 2. A design may be registered only if it substantially differs from what has become known before the date of the filing of the application for registration.

As "known" shall be considered everything that has been made generally available, regardless of whether this has occurred through a reproduction, exhibition, putting on sale or in any other manner. Also a design which has not been made generally available shall be considered as known if the design appears in an application in this country for a patent or if an application for the registration of a trademark or a design, which is, or, according to what is prescribed in the relevant provisions, shall be considered to have been made before the date indicated in the first paragraph, and the design thereafter is made generally available in the course of the examination of the application.

Article 3. A design may be registered notwithstanding the fact that it has been made generally available

1. as a consequence of an obvious abuse in relation to the applicant or to a person from whom he derives his right,
2. through the fact that the applicant or a person from whom he derives his right has displayed the design at an official, or officially recognized, international exhibition.

Article 4. A design may not be registered

1. where the design or its use is contrary to morality or public order,
2. if in the design has been included, without authorization,

a) a State coat of arms, a State flag or another State emblem, a State control or guarantee warrant, another designation which alludes on the Swedish State and thereby gives the design an official character, a Swedish municipal coat of arms or such an international designation which is protected under the Act (1970:498) on the Protection of Coats of Arms and Certain Other Official Designations, or anything that may be easily confused with a coat of arms, a flag, an emblem or a designation as referred to above,

b) anything that may be perceived as the denomination of a foundation, a non-profit organization or a similar association or as another person's trade name or trade symbol protected in this country, or as another sign which has been established on the market for another person in this country in the course of business activities,

c) another person's portrait or anything that may be perceived as another person's family name, artistic name or similar name, unless the portrait or the name obviously relates to a person who is long deceased,

d) anything than may be perceived as another person's literary or artistic work protected in this country, where the title is distinctive, or anything that violates another person's copyright in such a work or in a photographic picture which is protected in this country,

e) anything that does not substantially differ from a design which is registered in this country for another person.

Article 5. The right in a design shall, with the limitations mentioned below, imply that no other person is, without the authorization of the holder of the right in the design (the design holder), allowed to exploit the design in the course of business activities through the manufacture, the import into Sweden, the offering for sale, selling, transfer or rental of a product the appearance of which does not substantially differ from the design or which incorporates something that does not substantially differ from the design.

The right in a design applies only to the goods for which the design has been registreed, or for similar goods.

The right in a design does not apply to the use of a goods which have been put on the market within the European Economic Area by the design holder or with his consent.

Article 6. A person who exploited the design in the course of business activities in this country when the application for the registration of the design was made may, notwithstanding the design right, continue the exploitation of the design while maintaining its essential features, if the exploitation did not amount to an obvious misuse in relation to the applicant or someone from whom he derives his right. Such a right of exploitation shall be accorded also to any person who has taken substantial steps for the exploitation of the design in the course of business activities in this country.

The right under the first paragraph may be transferred to another person only together with the business activity in which the right came into existence or where the exploitation was intended to take place.

Article 7. The Government may prescribe that spare parts or accessories to aircrafts may, notwithstanding the design right, be imported into the country for use in the repair of an aircraft domiciled in a foreign country which grants similar advantages in respect of a Swedish aircraft.

Article 8. The Government may prescribe that an application for the registration of a design, which has been earlier included in an application outside this country, shall, for the purposes of Articles 2 and 6, where the applicant so requests, be considered as having been made at the same time as the application outside this country.

The Application and its Examination

Article 9. The Patent and Registration Office is the Registration Authority.

Article 10. Any application for registration of a design shall be made in writing to the Registration Authority.

The application shall contain an indication of the goods for which the registration of the design is sought. The application shall indicate the creator of the design. Where registration is sought for a person other than the one who created the design, the applicant shall prove his right in that design.

To the application shall be attached a picture showing the design. Where the applicant, before the publication of the application, files also a model, that model shall be considered as showing the design. To the application shall furthermore be attached a declaration signed by the applicant himself, on his faith and honor, to the effect that the design, to the best knowledge of the applicant, has not before

the date of the filing of the application or the date when the application, under Article 8, shall be considered as having been made, been made known in such a way which under Articles 2 and 3 would prevent the registration.

The applicant shall pay the application fees and the additional fees prescribed in Article 48.

Article 11. An application may include several designs, where the goods for which registration of the designs is sought are interconnected as regards the manufacture and the exploitation. An application for such a joint registration may include no more than 20 designs and may not refer to ornaments.

Article 12. An applicant who is not domiciled in Sweden shall have a representative resident here who is empowered to represent him in all matters relating to the application.

Article 13. An application for the registration of a design shall not be considered as having been made until the applicant has presented a picture or a model showing the design.

The application may not be altered so as to refer to another design or another goods than contained in the original application.

Article 14. In the course of the examination of the application for registration of a design, the Registration Authority shall, to the extent prescribed by the Government, examine if the requirements for obtaining a registration of the design are fulfilled. If the applicant has not complied with the provisions governing the application or if the Authority otherwise considers that there is an obstacle for the approval of the application, the applicant shall be invited to submit, within a determined period of time, either a statement or a correction.

Where the applicant does not, within the prescribed period of time, submit a statement or take measures to remedy the deficiency indicated, the application shall be removed from the files. This possibility shall be indicated in the invitation.

An application which has been removed from the files may be reinstated where the applicant, within two months, submits a statement or takes measures to remedy the deficiency and within the same period of time pays the prescribed reinstatement fee. A reinstatement may be made only once.

Article 15. If there is an obstacle to the registration even after a statement has been submitted and if the applicant has been given an opportunity to file a statement concerning the obstacle, the application shall be rejected, unless there is a reason for issuing a new invitation to the applicant.

Article 16. If anyone claims, before the Registration Authority, that he has a better title to the design than the applicant and the matter is doubtful, the Authority may invite him to file an action in Court within a certain time, failing which his claim may be disregarded in the course of the continued examination of the application.

Where a dispute concerning a better title to the design is under consideration by a Court, the application for registration may be declared suspended pending a final decision in the case.

Article 17. If someone proves, before the Registration Authority, that he has a better title to the design than the applicant, the Authority shall transfer the application to him, if he so requests. The person to whom an application is transferred shall pay a new application fee.

If a transfer is requested, the application may not be altered, removed from the files, rejected or accepted until the claim has been finally considered.

Article 18. If the application documents are complete and there is no obstacle to effecting the registration, the Registration Authority shall publish a notice of the application in order to give the public an opportunity to file an opposition against the application. If a particular document in the case shall be kept secret according to what is prescribed in Article 19, the publication may, however, be deferred until the document shall be made publicly available.

Any opposition shall be filed in writing with the Registration Authority within two months from the publication.

Article 19. Where, in a case concerning the registration of a design, a particular document showing the design shall be kept secret according to what is specifically prescribed in this respect, the document may not, without the consent of the applicant, be made available until the period requested by him has expired or a period of six months have expired from the date of the filing of the application or, where priority under Article 8, first paragraph, has been claimed, from the date from which priority has been claimed. If the Registration Authority has decided to remove the application from the file, or to reject the application, before the period for secrecy has expired, the document may be made available only where the applicant requests the application to be reinstated or appeals against the decision.

Article 20. After the expiry of the period prescribed in Article 18, second paragraph, the examination of the application shall continue. As regards this examination, the provisions of Articles 14 to 17 apply.

The applicant shall be notified about any opposition filed. Where the opposition is not obviously groundless, the applicant shall be given an opportunity to make observations.

Article 21. A final decision by the Registration Authority in any matter concerning the application for registration of a design may be appealed by the applicant if the decision goes against him. A decision under which an application has been accepted in spite of an opposition filed according to what is prescribed in this respect, may be appealed by the person who has filed the opposition. Even if the opponent withdraws his appeal, the case may still be brought to a decision where special reasons for this exist.

A decision whereby a request for reinstatement as prescribed in Article 14, third paragraph, has been rejected or a request for a transfer as prescribed in Article 17 has been accepted, may be appealed by applicant. Any person who has filed a request for a transfer may appeal a decision under which the request has been rejected.

Article 22. A final decision by the Registration Authority under Article 21, may be appealed to the Court of Patent Appeals (Patentbesvärsrätten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals may be appealed to the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards such appeals the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) on appeal against decisions by the Court of Administrative Appeals shall apply. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 23. Where an application for the registration of a design is accepted and the decision has taken legal force, the design shall be entered into the Design Register and a notice of the registration be published.

The Term of Validity of A Design Registration

Article 24. A registration of a design is valid for a term of five years from the date of the filing of the application for registration and may, upon application, be renewed for two further terms of five years. Each such further term runs from the expiry of the previous term.

Article 25. Applications for renewals of registrations shall be filed with the Registration Authority not earlier than one year, and not later than six months, after the expiry of the previous registration term. Within the same period, the renewal fees and the additional fees prescribed in Article 48 shall be paid, failing which the application shall be rejected.

A notice of the renewal of a registration shall be published.

On Assignments and Licenses, Etc.

Article 26. Where the owner of a design has granted someone else the right to exploit the design in the course of business activities (license), the licensee may transfer his right further only if there is an agreement to this effect.

Where the license forms part of a business activity, it may, however, be transferred together with the activity, unless there is an agreement to the contrary. In such a case the transferor remains liable for the fulfilment of the license agreement.

Article 27. Where a design right has been transferred to another person, or a license has been granted or transferred, an entry of this fact shall, upon request and against the payment of the prescribed fee, be made in the Design Register. Where it is shown that a license recorded in the register has expired, the entry shall be removed.

The provisions of the first paragraph apply correspondingly also in relation to a compulsory license and in relation to a right as prescribed in Article 32, second paragraph.

Where a joint registration has been effected, a transfer of a design right may be recorded only in relation to all the designs.

As the design holder shall, for the purpose of lawsuits or other legal cases relating to the design, be considered the person who has last been entered into the register in this capacity.

Article 28. Any person who, in this country, exploited, in the course of business activities, a design covered by an application for registration when a document showing the design was made publicly available, may, provided that the application results in a registration, be granted a compulsory license for the exploitation, provided that there are extraordinary reasons and he did not know about the application and could not reasonably have obtained such knowledge. A right to such a compulsory license may, subject to the same conditions, be granted also to any person who has taken significant measures in order to exploit the design in business activities in this country. A compulsory license may relate also the time before the design was registered.

Where a public interest of an extraordinary character calls for it, a person who wants to exploit, in the course of business activities, a design registered for another person, may be granted a compulsory license for such exploitation.

Article 29. Compulsory licenses may not be granted to persons other than those who could be presumed to be able to exploit the design in an acceptable manner and in conformity with the terms of the license.

A compulsory license does not prevent the design holder from exploiting the design himself or granting a license in this respect. A compulsory license may be transferred to another person only together with the business activity in which it is exploited or intended to be exploited.

Article 30. A compulsory license may be granted by a Court which also decides the extent to which a design may be exploited and decides about the remuneration and other conditions for the license. The Court may terminate the license or decide on new conditions for it where substantially altered circumstances call for it.

On the Termination of A Registration

Article 31. If a design has been registered contrary to the provisions of Articles 1 to 4 and the ground for refusing the registration still exists, the Court shall, upon the filing of an action in this respect, invalidate the registration. A registration may, however, not be invalidated on the ground that the person who has obtained the registration is entitled only to a part of the design right.

An action based on the fact that a registration has been effected for a person other than the one who is entitled to it under Article 1 may be filed only by the person who claims to be the holder of the right in the design. The action shall be brought within one year from the date on which the plaintiff became aware of the registration and of the other circumstances on which the action is based. If the design holder was in good faith when the design was registered or when the right in the design was transferred to him, the action may not be brought later than three years from the registration.

In other cases an action may be brought by anyone who suffers an injury from the registration. An action based on the provisions of Article 4, 1) or 2.a) may be brought also by a Public Authority as decided by the Government.

Article 32. If a design has been registered for a person other than the one entitled to it under Article 1, the Court shall, following an action in this respect by the person entitled to it, transfer the registration to him. Any action in this respect shall be brought within the period prescribed in Article 31, second paragraph.

If a person from which a registration has thus been transferred, has commenced, in good faith, the exploitation of the design in the course of business activities in this country, or has taken significant measures in this respect, he may, against the payment of an equitable remuneration and on other conditions considered reasonable continue the exploitation or commence the intended exploitation, while maintaining its essential features. The same right shall, under the same conditions, be granted to a licensee recorded in the register.

A right as provided for in the second paragraph may be transferred to another person only in connection with the business activity in which it is exploited or the exploitation was intended to take place.

Article 33. If the design holder renounces, in writing to the Registration Authority, his right in the design, the Authority shall remove the design from the register.

If the right in a design is sequestered for debt, seized or kept for securing the payment of a debt or if there is a dispute concerning the transfer or a registration, the design may not, upon request by the owner of the design, be removed from the register as long as the sequestering, seizure or the keeping for the payment of a debt is still valid or the dispute has not been finally decided.

On the Obligation to Furnish Information

Article 34. A person who has applied for the registration of a design and who invokes the application against another person before a document showing the design has been made publicly available, is obliged to give his consent to the making available of the document to the other person.

A person who directly in relation to another person, in an advertisement or through the publication of a notice on a goods or its packaging or in any other manner, states that the registration of a design has been applied for, or effected, without, however, at the same time informing about the number of the application or the registration, is obliged to furnish, upon request and without delay, information in this respect. If it is not explicitly claimed that a registration has been applied for, or effected, but what has occurred gives the impression that this is the case, information shall, upon request and without delay, be furnished concerning whether a registration has been applied for or effected.

On Sanctions and Damages, Etc.

Article 35. Where a person commits an infringement of a design right (design infringement) and the infringement is committed wilfully or with gross negligence, he shall be punished by fines or imprisonment for not more than two years. A person who has violated a prohibition under the penalty of a fine under Article 35 a. may not be adjudicated to criminal liability for the infringement covered by the prohibition.

Attempts to commit an infringement under the first paragraph as well as the preparation of such acts shall be punishable according to the provisions of Chapter 23 of the Criminal Code.

A public prosecutor is entitled to bring an action for a violation as mentioned in the first and second paragraphs only if there is a complaint from the injured party and such an action is called for in the public interest.

Article 35 a. At the request of the design holder or of a person who, on the basis of a license, has the right to exploit a design, the Court may issue an injunction prohibiting, under penalty of a fine, a person who commits an act constituting a design infringement to continue that act.

If the plaintiff shows a probable case that an act constituting an infringement takes place and it can reasonably be assumed that the defendant, through the continuation of the act, diminishes the value of the exclusive right in the design, the Court may issue an injunction for the time until the case has been finally adjudicated or otherwise is decided. No injunction may be issued before the defendant has been given an opportunity to respond, unless a delay would entail a risk for injury.

An injunction as mentioned in the second paragraph may be issued only if the plaintiff deposits a security with the Court for the injury which may be caused to the defendant. If the plaintiff is not capable of depositing such a security, the Court may liberate him from making a deposit. As regards the type of security, the provisions of Chapter 2, Article 25, of the Enforcement Code shall apply. The security shall be examined by the Court unless the defendant has accepted it.

When the case is adjudicated, the Court shall decide whether a prohibition under the second paragraph shall continue to apply.

The provisions on appeal against decisions prescribed in Chapter 15 of the Code on Judicial Procedure shall apply as regards appeals against decisions under the second and third paragraphs and as regards proceedings in higher Courts.

A request for the imposition of a fine may be made by the person who has requested the injunction. In connection with such an imposition, a request may be made for a new injunction to be issued under penalty of a fine.

As regards the contents of wireless broadcasts and broadcasts by wire, the provisions of the Radio Act (1966:755) shall apply.

Article 36. Anyone who wilfully or with negligence commits a design infringement shall pay an equitable compensation for the exploitation of the design and compensation for the further injury caused by the infringement. In the determination of the amount of the compensation also the interest of the owner of the design that a design infringement not be committed and to other circumstances of other than purely economic importance shall be taken into account.

Anyone who without intention or negligence commits a design infringement shall pay a compensation for the exploitation of the design, if and to the extent that this is considered reasonable.

The right to compensation for a design infringement is lost where the action is not brought within five years from the date of the injury.

Article 37. At the request of a person who has suffered injury from a design infringement, the Court may, to the extent considered reasonable in order to prevent the continuation of the infringement, decide that the goods manufactured in, or imported into, Sweden in violation of another person's design right, or an object the use of which would constitute a design infringement, shall be altered in a specified manner or be taken into custody for the remainder of the term of protection, or be destroyed or, as regards goods which have been manufactured without authorization in, or imported into, Sweden, be surrendered, against compensation, to the injured party. This does not apply in relation to a person who has in good faith acquired the property or a specific right in it and who has not himself committed a design infringement.

Property as referred to in the first paragraph may be seized, where it can reasonably be assumed that a violation under Article 35 has been committed. As regards such seizure, the provisions on seizure in criminal cases in general shall apply.

Notwithstanding the provisions of the first paragraph the Court may, where there are extraordinary reasons, decide, upon request, that the owner of a property referred to in the first paragraph may have the right to use the property for the remainder of the term of protection, or part of that term, against an equitable compensation and subject to other reasonable conditions.

The provisions of the first to third paragraphs apply also in relation to acts of attempts or of planning referred to in Article 35, second paragraph.

Article 38. Where anyone exploits, in the course of business activities, a design covered by an application for registration after the making publicly available a document showing the design, the provisions on design infringement shall apply accordingly to the extent that the application results in a registration. A criminal penalty may, however, not be adjudicated and a compensation for injury on the basis of an exploitation which has taken place before a notice of the registration was published according to Article 18, may be decided only according to the provisions in Article 36, second paragraph.

The provision of Article 36, third paragraph, does not apply where the action for compensation is brought no later than one year from the registration of the design.

Article 39. Where the registration of a design has been invalidated through a judgement having legal force, no criminal penalty, compensation or security measure as provided for in Articles 35 to 38 may be adjudicated.

Where an action is brought for a design infringement and the person against whom the action is brought claims that the registration be invalidated, the Court shall, upon his request, order the proceedings to be suspended until the question of the invalidation of the registration has been finally decided. Where the action in this respect has not been brought, the Court shall, in connection with the order for suspension, prescribe a certain time for him within which such an action shall be brought.

Article 40. A fine shall be imposed on any person who wilfully or with negligence which is not insignificant

1. does not meet his obligations under Article 34,
2. in cases prescribed in that Article provides information which is incorrect, where a penal sanction is not provided for in the Criminal Code.

Anyone who wilfully or with negligence does not meet his obligation or commits an act as referred to in the first paragraph, shall pay a compensation for any injury caused. The compensation may be adjusted in case the negligence is insignificant.

A public criminal action for a violation as referred to in the first paragraphs may be brought only if there is a complaint from the injured party and such an action, for specific reasons, is called for in the public interest.

Provisions on Proceedings

Article 41. A design holder or a person who has, on the basis of a license, the right to exploit the design, may bring an action to resolve the question on whether or not he enjoys, on the basis of the registration, protection in relation to another person, where an uncertainty exists in this respect and the uncertainty causes injury to the plaintiff.

Under the same conditions, a person who is engaged in, or intends to engage in, a business activity may bring an action against the design holder to resolve the question whether an obstacle against the activity would exist on the basis of a certain design registration.

The provisions of Article 39, second paragraph, apply accordingly where it is claimed, in a case referred to in the first paragraph, that the design registration be invalidated.

Article 42. Anyone who wishes to bring an action concerning the invalidation of a design registration, concerning the transfer of a registration or concerning the granting of a compulsory license shall notify this fact to the Registration Authority and inform every person who, according to the Design Register, holds a license for the exploitation of that design. A licensee who wishes to bring an action for design infringement or for the resolution of a question referred to in Article 41, first paragraph, shall inform the design holder about this fact.

The obligation to furnish information referred to in the first paragraph shall be considered to have been met when a notice has been sent in registered, pre-paid mail to the address recorded in the Design Register.

Where it is not shown, at the time when the action is brought, that a notification or a notice has been furnished under the provisions in the first paragraph, the plaintiff shall be given sufficient time for this purpose. If he fails in this respect, his action shall not be taken up for consideration.

Article 43. Where there is not, under the Code of Judicial Procedure, a Court competent to consider an action concerning a better title to a design, concerning the invalidation of a design registration, concerning the transfer of such a registration, concerning the granting of a compulsory license or of a right referred to in Article 32, second paragraph, concerning remuneration according to Article 40, second paragraph, or concerning the resolution of a question referred to in Article 41, the action shall be brought at the District Court in Stockholm.

Article 44. Copies of judgements or final decisions in cases referred to in Articles 16, 30 to 32, 35 to 38 and 41 shall be transmitted to the Registration Authority.

Special Provisions

Article 45. A design holder who does not have his domicile in Sweden shall have an representative resident here who is empowered to receive notice of writs, summons and other documents relating to court cases and other matters concerning the design right, with the exception, however, as regards writs in criminal cases and as regards invitations for a party to appear personally in the Court. The representative shall be notified to the Design Register and recorded there.

Where a design holder has not notified a representative according to the first paragraph, a summon may instead be served through the transmission of the document in a pre-paid letter to the address recorded in the Design Register. Where a complete address is not recorded in the Register, the summon may, instead, be effected through the making available of the document at the Registration Authority and through the entry of a notice about this fact and about the essential contents of the document in a publication as decided by the Government. A summon shall be considered as effected when the actions now mentioned have been carried out.

Article 46. The Government may, on condition of reciprocity, prescribe that the provisions of Article 12 or Article 45 shall not apply in relation to such an applicant or a design holder who is domiciled in a certain foreign State or who has a representative domiciled there who has been notified to the Registration Authority and who is empowered as prescribed in those Articles.

Article 47. Decisions by the Registration Authority other than those referred to in Article 21 may be appealed through the lodging of an appeal to the Court of Patent Appeals (Patentbesvärsrätten) within two months from the date of the decision.

A final decision by the Court of Patent Appeals (Patentbesvärsrätten) may be appealed to the Supreme Administrative Court (Regeringsrätten) within two months from the date of the decision. As regards such appeals the provisions of Articles 35 to 37 of the Act on Administrative Proceedings (Act 1971:291) on appeal against decisions by the Court of Administrative Appeals. The decision of the Court of Patent Appeals shall contain an indication of the fact that a special permission has to be obtained in order for the case to be brought to the Supreme Administrative Court and of the grounds on which such permission may be granted.

Article 48. In matters concerning the registration of a design and concerning the renewal of a registration of a design the applicant shall pay an application fee or a renewal fee and, where applicable, the following additional fees, namely a class fee for each class of goods in addition to the first one, a joint registration fee for each design in addition the first one, a storage fee for the storage of a model and a publication fee for the publication of a notice about a picture in addition to the first one. A renewal fee which is paid after the expiry of a current registration period shall be paid with an increased amount.

Article 49. The Government determines the fees under this Act.

Further provisions on the application of this Act are issued by the Government or, as decided by the Government, by the Registration Authority.

This Act enters into force on July 1, 1970.