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COMMISSION REGULATION (EC) No .../..

of

amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

(Text with EEA relevance)

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 designs¹, and in particular Article 107 (3) thereof,

Whereas:

- (1) Following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs adopted on 2 July 1999 approved by Council Decision 2006/954/EC of 18 December 2006² and the amendments of Regulation (EC) No 6/2002 linked thereto, it is necessary to adopt certain technical implementing measures.
- (2) Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs³ should therefore be amended accordingly.
- (3) 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:

Article 1

Regulation (EC) No 2245/2002 is amended as follows:

- (1) The following Article 11a is inserted:

"Article 11a

Examination of grounds for refusal

¹ OJ L 3, 5.1.2002, p.1. Regulation as last amended by Regulation (EC) No 1891/2006 (OJ L 386, 29.12.2006, p. 14).

² OJ L 386, 29.12.2006, p. 28.

³ OJ L 341, 17.12.2002, p.28.

1. Where, pursuant to Article 106e(1) of Regulation (EC) No 6/2002, the Office finds, in the course of carrying out an examination of an international registration, that the design for which protection is sought does not correspond to the definition of design provided for in Article 3(a) of that Regulation or that the design is contrary to public policy or to accepted principles of morality, it shall send to the International Bureau of the World Intellectual Property Organisation (hereinafter “the International Bureau”) a notification of refusal not later than six months from the date of publication of the international registration, specifying the grounds for refusal pursuant to Article 12(2) of the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs adopted on 2 July 1999 (hereinafter ‘the Geneva Act’) approved by Council Decision 2006/954/EC⁴.
2. The Office shall specify a time limit within which the holder of the international registration has the possibility, pursuant to Article 106e(2) of Regulation (EC) No 6/2002, to renounce the international registration in respect of the Community, to limit the international registration to one or some of the industrial designs in respect of the Community or to submit observations.
3. Where the holder of the international registration is obliged to be represented in proceedings before the Office pursuant to Article 77(2) of Regulation (EC) No 6/2002, the notification shall contain a reference to the obligation of the holder to appoint a representative as referred to in Article 78(1) of that Regulation.

The time limit specified in paragraph 2 of this Article shall apply *mutatis mutandis*.

4. If the holder fails to appoint a representative within the specified time limit, the Office shall refuse the protection of the international registration.
5. Where the holder submits observations that would satisfy the Office within the specified time limit, the Office shall withdraw the refusal and notify the International Bureau in accordance with Article 12(4) of the Geneva act.

Where, pursuant to Article 12(2) of the Geneva act, the holder does not submit observations that would satisfy the Office within the specified time limit, the Office shall confirm the decision refusing protection for the international registration. That decision is subject to appeal in accordance with Title VII of Regulation (EC) No 6/2002.

6. Where the holder renounces the international registration or limits the international registration to one or some of the industrial designs in respect of the Community, he shall inform the International Bureau by way of recording procedure in accordance with Article 16(1)(iv) and (v) of the Geneva Act. The holder can inform the Office submitting a corresponding statement."

(2) Article 22 is replaced by the following:

⁴ OJ L 386, 29.12.2006, p.28.

"Article 22

Renewal of Community design registration

1. An application for renewal of registration shall contain:
 - (a) the name of the person requesting renewal;
 - (b) the registration number;
 - (c) 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) 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. If the payment referred to in paragraph 2 of this Article is made according to the provisions of Article 5(1) of the Regulation (EC) No 2246/2002, this shall be deemed to constitute a request for renewal provided that it contains all the indications required under points (a) and (b) of paragraph 1, of this Article and Article 6(1) of that Regulation.
4. 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.
5. 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 the holder accordingly.

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.

6. Where the determination made pursuant to paragraph 5 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.
7. Where the renewal fees provided for in paragraph 2 have been paid but the registration is not renewed, those fees shall be refunded.
8. A single application for renewal may be submitted for two or more designs, whether or not part of the same multiple registration, upon payment of the required fees for each of the designs, provided that the holders or the representatives are the same in each case."

(3) The following Article 22a is inserted:

"Article 22a

Renewals of international registration designating the Community

The international registration shall be renewed directly at the International Bureau in compliance with Article 17 of the Geneva Act."

(4) In Article 31, the following paragraph is added:

"6. Where the Office declares invalid the effects of an international registration in the territory of the Community; it shall notify its decision to the International Bureau upon becoming final."

(5) In Article 47,

the following paragraph is added:

"3. Communications between the Office and the International Bureau shall be in a mutually agreed manner and format, where possible by electronic means. Any reference to forms shall be construed as including forms available in electronic format."

(6) In Article 71,

the following paragraph is added:

"3. The Office shall provide information on international registrations of designs designating the Community in the form of an electronic link to the searchable database maintained by the International Bureau."

Article 2

This Regulation shall enter into force on the date on which the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs enters into force with respect to the European Community. The date of entry into force of this Regulation shall be published in the *Official Journal of the European Union*.

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

Done at Brussels,

For the Commission

Member of the Commission