

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs

TITLE VIII

PROCEDURE BEFORE THE OFFICE

Section 1

General provisions

Article 62

Statement of reasons on which decisions are based

Decisions of the Office shall state the reasons on which they are based. They shall be based only on reasons or evidence on which the parties concerned have had an opportunity to present their comments.

Article 63

Examination of the facts by the Office of its own motion

1 In proceedings before it the Office shall examine the facts of its own motion. However, in proceedings relating to a declaration of invalidity, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.

2 The Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 64

Oral proceedings

1 If the Office considers that oral proceedings would be expedient, they shall be held either at the instance of the Office or at the request of any party to the proceedings.

2 Oral proceedings, including delivery of the decision, shall be public, unless the department before which the proceedings are taking place decides otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 65

Taking of evidence

1 In any proceedings before the Office the means of giving or obtaining evidence shall include the following:

- a hearing the parties;

Status: Point in time view as at 31/01/2020.

Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 6/2002, Section 1. (See end of Document for details)

- b requests for information;
- c the production of documents and items of evidence;
- d hearing witnesses;
- e opinions by experts;
- f statements in writing, sworn or affirmed or having a similar effect under the law of the State in which the statement is drawn up.

2 The relevant department of the Office may commission one of its members to examine the evidence adduced.

3 If the Office considers it necessary for a party, witness or expert to give evidence orally, it shall issue a summons to the person concerned to appear before it.

4 The parties shall be informed of the hearing of a witness or expert before the Office. They shall have the right to be present and to put questions to the witness or expert.

Article 66

Notification

The Office shall, as a matter of course, notify those concerned of decisions and summonses and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Regulation or of the implementing regulation, or of which notification has been ordered by the President of the Office.

Article 67

Restitutio in integrum

1 The applicant for or holder of a registered Community design or any other party to proceedings before the Office who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Regulation, of causing the loss of any rights or means of redress.

2 The application must be filed in writing within two months of the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-submission of the request for renewal of registration or of non-payment of a renewal fee, the further period of six months provided for in the second sentence of Article 13(3) shall be deducted from the period of one year.

3 The application must state the grounds on which it is based and must set out the facts on which it relies. It shall not be deemed to be filed until the fee for the re-establishment of rights has been paid.

4 The department competent to decide on the omitted act shall decide upon the application.

5 The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 and Article 41(1).

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6 Where the applicant for or holder of a registered Community design has his rights re-established, he may not invoke his rights vis-à-vis a third party who, in good faith, in the course of the period between the loss of rights in the application for or registration of the registered Community design and publication of the mention of re-establishment of those rights, has put on the market products in which a design included within the scope of protection of the registered Community design is incorporated or to which it is applied.

7 A third party who may avail himself of the provisions of paragraph 6 may bring third party proceedings against the decision re-establishing the rights of the applicant for or holder of the registered Community design within a period of two months as from the date of publication of the mention of re-establishment of those rights.

8 Nothing in this Article shall limit the right of a Member State to grant *restitutio in integrum* in respect of time limits provided for in this Regulation and to be complied with vis-à-vis the authorities of such State.

Article 68

Reference to general principles

In the absence of procedural provisions in this Regulation, the implementing regulation, the fees regulation or the rules of procedure of the Boards of Appeal, the Office shall take into account the principles of procedural law generally recognised in the Member States.

Article 69

Termination of financial obligations

1 Rights of the Office to the payment of fees shall be barred four years from the end of the calendar year in which the fee fell due.

2 Rights against the Office for the refunding of fees or sums of money paid in excess of a fee shall be barred after four years from the end of the calendar year in which the right arose.

3 The periods laid down in paragraphs 1 and 2 shall be interrupted, in the case covered by paragraph 1, by a request for payment of the fee and, in the case covered by paragraph 2, by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless in the meantime judicial proceedings to enforce the right have begun. In this case the period shall end at the earliest one year after the judgment has acquired the authority of a final decision.

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There are currently no known outstanding effects for the Council Regulation (EC) No 6/2002, Section 1.