

Council Regulation (EC) No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

COUNCIL REGULATION (EC) No 1891/2006

of 18 December 2006

amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs<sup>(1)</sup> created the Community design system whereby undertakings can by means of one procedural system obtain Community designs to which uniform protection is given and which produce their effects throughout the entire area of the Community.
- (2) Following preparations initiated and carried out by the World Intellectual Property Organisation (WIPO) with the participation of the Member States which are members of the Hague Union, the Member States which are not members of the Hague Union and the European Community, the Diplomatic Conference, convened for that purpose at Geneva, adopted the Geneva Act of the Hague Agreement concerning the international registration of industrial designs (hereinafter referred to as the 'Geneva Act') on 2 July 1999.
- (3) The Council, by Council Decision 954 approved the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs<sup>(2)</sup> and authorised the President of the Council to deposit the instrument of accession with the Director-General of WIPO as from the date on which the Council has adopted the measures which are necessary to give effect to the accession of the Community to the Geneva Act. This Regulation contains those measures.
- (4) The appropriate measures should be incorporated in Regulation (EC) No 6/2002 through the inclusion of a new title on 'International registration of designs'.

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- (5) The rules and procedures relating to international registrations designating the Community should, in principle, be the same as the rules and procedures which apply to Community designs applications. According to this principle, an international registration designating the Community should be subject to the examination as to the grounds for non-registrability before it takes the same effect as a registered Community design. Likewise, an international registration having the same effect as a registered Community design should be subject to the same rules on invalidation as a registered Community design.
- (6) Regulation (EC) No 6/2002 should therefore be amended accordingly.
- (7) The accession of the Community to the Geneva Act will create a new source of revenues for the Office for the Harmonisation in the Internal Market (Trade Marks and Designs). Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark<sup>(3)</sup> should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Article 134(3) of Regulation (EC) No 40/94 is replaced by the following:

3. Revenue shall comprise, without prejudice to other types of income, total fees payable under the fees regulations, total fees payable under the Madrid Protocol referred to in Article 140 of this Regulation for an international registration designating the European Communities and other payments made to Contracting Parties to the Madrid Protocol, total fees payable under the Geneva Act referred to in Article 106c of Regulation (EC) No 6/2002 for an international registration designating the European Community and other payments made to Contracting Parties to the Geneva Act, and, to the extent necessary, a subsidy entered against a specific heading of the general budget of the European Communities, Commission section..

*Article 2*

Regulation (EC) No 6/2002 is amended as follows:

1. Article 25(1)(d) is replaced by the following:
  - (d) if the Community design is in conflict with a prior design which has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the Community design, and which is protected from a date prior to the said date
    - (i) by a registered Community design or an application for such a design,  
or
    - (ii) by a registered design right of a Member State, or by an application for such a right,  
or
    - (iii) by a design right registered under the Geneva Act of the Hague Agreement concerning the international registration of industrial designs, adopted in Geneva on 2 July 1999, hereinafter referred

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to as “the Geneva Act”, which was approved by Council Decision 954/2006 and which has effect in the Community, or by an application for such a right;

2. The following title is inserted after title XI:

TITLE XIa:

## **INTERNATIONAL REGISTRATION OF DESIGNS**

Section 1

### **General provisions**

*Article 106a*

#### **Application of provisions**

- 1 Unless otherwise specified in this title, this Regulation and any Regulations implementing this Regulation adopted pursuant to Article 109 shall apply, mutatis mutandis, to registrations of industrial designs in the international register maintained by the International Bureau of the World Intellectual Property Organisation (hereinafter referred to as “international registration” and “the International Bureau”) designating the Community, under the Geneva Act.

- 2 Any recording of an international registration designating the Community in the International Register shall have the same effect as if it had been made in the register of Community designs of the Office, and any publication of an international registration designating the Community in the Bulletin of the International Bureau shall have the same effect as if it had been published in the Community Designs Bulletin.

Section 2

### **International registrations designating the community**

*Article 106b*

#### **Procedure for filing the international application**

International applications pursuant to Article 4(1) of the Geneva Act shall be filed directly at the International Bureau.

*Article 106c*

#### **Designation fees**

The prescribed designation fees referred to in Article 7(1) of the Geneva Act are replaced by an individual designation fee.

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#### *Article 106d*

### **Effects of international registration designating the European Community**

1 An international registration designating the Community shall, from the date of its registration referred to in Article 10(2) of the Geneva Act, have the same effect as an application for a registered Community design.

2 If no refusal has been notified or if any such refusal has been withdrawn, the international registration of a design designating the Community shall, from the date referred to in paragraph 1, have the same effect as the registration of a design as a registered Community design.

3 The Office shall provide information on international registrations referred to in paragraph 2, in accordance with the conditions laid down in the Implementing Regulation.

#### *Article 106e*

### **Refusal**

1 The Office shall communicate to the International Bureau a notification of refusal not later than six months from the date of publication of the international registration, if in carrying out an examination of an international registration, the Office notices that the design for which protection is sought does not correspond to the definition under Article 3(a), or is contrary to public policy or to accepted principles of morality.

The notification shall state the grounds on which the refusal is based.

2 The effects of an international registration in the Community shall not be refused before the holder has been allowed the opportunity of renouncing the international registration in respect of the Community or of submitting observations.

3 The conditions for the examination as to the grounds for refusal shall be laid down in the Implementing Regulation.

#### *Article 106f*

### **Invalidation of the effects of an international registration**

1 The effects of an international registration in the Community may be declared invalid partly or in whole in accordance with the procedure in Titles VI and VII or by a Community design court on the basis of a counterclaim in infringement proceedings.

2 Where the Office is aware of the invalidation, it shall notify it to the International Bureau..

#### *Article 3*

This Regulation shall enter into force on the date on which the Geneva Act enters into force with respect to the European Community.

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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, 18 December 2006.

*For the Council*

*The President*

J.-E. ENESTAM

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- (1) [OJ L 3, 5.1.2002, p. 1](#). Regulation as last amended by 2005 Act of Accession.
- (2) See page 18 of this Official Journal.
- (3) [OJ L 11, 14.1.1994, p. 1](#). Regulation as last amended by 2005 Act of Accession.

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**Changes and effects yet to be applied to :**

- Art. 1 abolition by [EUR 2009/207](#) Regulation