

## SCHEDULE

### USE OF COMMUNITY DESIGNS FOR SERVICES OF THE CROWN

#### Reference of disputes relating to Crown use

5.—(1) A dispute as to any matter which falls to be determined by the court in default of agreement under—

- (a) paragraph 2 (settlement of terms for Crown use),
- (b) paragraph 3 (rights of third parties in case of Crown use), or
- (c) paragraph 4 (Crown use: compensation for loss of profit),

may be referred to the court by any party to the dispute.

(2) In determining a dispute between a government department and any person as to the terms for Crown use of a Community design the court shall have regard to—

- (a) any sums which that person or a person from whom he derives title has received or is entitled to receive, directly or indirectly, from any government department in respect of the Community design; and
- (b) whether that person or a person from whom he derives title has in the court's opinion without reasonable cause failed to comply with a request of the department for the use of the Community design on reasonable terms.

(3) One of two or more joint holders of the Community design may, without the concurrence of the others, refer a dispute to the court under this paragraph, but shall not do so unless the others are made parties; and none of those others is liable for any costs unless he takes part in the proceedings.

(4) Where the consent of an exclusive licensee is required by paragraph 3(3)(a)(i) to the settlement by agreement of the terms for Crown use of a Community design, a determination by the court of the amount of any payment to be made for such use is of no effect unless the licensee has been notified of the reference and given an opportunity to be heard.

(5) On the reference of a dispute as to the amount recoverable as mentioned in paragraph 3(3)(a)(ii) (right of exclusive licensee to recover part of amount payable to holder of Community design) the court shall determine what is just having regard to any expenditure incurred by the licensee—

- (a) in developing the design, or
- (b) in making payments to the holder of the Community design in consideration of the licence (other than royalties or other payments determined by reference to the use of the design).

(6) In this Schedule “the court” means—

- (a) in England and Wales, the High Court or any patents county court having jurisdiction by virtue of an order under section 287 of the Copyright, Designs and Patents Act 1988<sup>(1)</sup>,
- (b) in Scotland, the Court of Session, and
- (c) in Northern Ireland, the High Court.

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(1) 1988 c. 48.