

Commission Regulation (EC) No 2245/2002 of 21 October 2002  
implementing Council Regulation (EC) No 6/2002 on Community designs

CHAPTER V

**SURRENDER AND INVALIDITY**

*Article 27*

**Surrender**

1 A declaration of surrender pursuant to Article 51 of Regulation (EC) No 6/2002 shall contain:

- a the registration number of the registered Community design;
- b the name and address of the holder in accordance with Article 1(1)(b);
- c where a representative has been appointed, the name and business address of the representative in accordance with Article 1(1)(e);
- d where surrender is declared only for some of the designs contained in a multiple registration, an indication of the designs for which the surrender is declared or the designs which are to remain registered;
- e where, pursuant to Article 51(3) of Regulation (EC) No 6/2002, the registered Community design is partially surrendered, a representation of the amended design in accordance with Article 4 of this Regulation.

2 Where a right of a third party relating to the registered Community design is entered in the Register, it shall be sufficient proof of his/her agreement to the surrender that a declaration of consent to the surrender is signed by the holder of that right or his/her representative.

Where a licence has been registered, surrender of the design shall be registered three months after the date on which the holder satisfies the Office that he/she has informed the licensee of his/her intention to surrender it. If the holder proves to the Office before the expiry of that period that the licensee has given his/her consent, the surrender shall be registered forthwith.

3 Where a claim relating to the entitlement to a registered Community design has been brought before a court pursuant to Article 15 of Regulation (EC) No 6/2002, a declaration of consent to the surrender, signed by the claimant or his/her representative, shall be sufficient proof of his/her agreement to the surrender.

4 If the requirements governing surrender are not fulfilled, the Office shall communicate the deficiencies to the declarant. If the deficiencies are not remedied within the time limit specified by the Office, the Office shall reject the entry of the surrender in the Register.

*Article 28*

**Application for a declaration of invalidity**

1 An application to the Office for a declaration of invalidity pursuant to Article 52 of Regulation (EC) No 6/2002 shall contain:

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- a as concerns the registered Community design for which the declaration of invalidity is sought:
  - (i) its registration number;
  - (ii) the name and address of its holder;
- b as regards the grounds on which the application is based:
  - (i) a statement of the grounds on which the application for a declaration of invalidity is based;
  - (ii) additionally, in the case of an application pursuant to Article 25(1)(d) of Regulation (EC) No 6/2002, the representation and particulars identifying the prior design on which the application for a declaration of invalidity is based and showing that the applicant is entitled to invoke the earlier design as a ground for invalidity pursuant to Article 25(3) of that Regulation;
  - (iii) additionally, in the case of an application pursuant to Article 25(1)(e) or (f) of Regulation (EC) No 6/2002, the representation and particulars identifying the distinctive sign or the work protected by copyright on which the application for a declaration of invalidity is based and particulars showing that the applicant is the holder of the earlier right pursuant to Article 25(3) of that Regulation;
  - (iv) additionally, in the case of an application pursuant to Article 25(1)(g) of the Regulation (EC) No 6/2002, the representation and particulars of the relevant item as referred to in that Article and particulars showing that the application is filed by the person or entity concerned by the improper use pursuant to Article 25(4) of that Regulation;
  - (v) where the ground for invalidity is that the registered Community design does not fulfil the requirements set out in Article 5 or 6 of Regulation (EC) No 6/2002, the indication and the reproduction of the prior designs that could form an obstacle to the novelty or individual character of the registered Community design, as well as documents proving the existence of those earlier designs;
  - (vi) an indication of the facts, evidence and arguments submitted in support of those grounds;
- c as concerns the applicant:
  - (i) his/her name and address in accordance with Article 1(1)(b);
  - (ii) if the applicant has appointed a representative, the name and the business address of the representative, in accordance with Article 1(1)(e);
  - (iii) additionally, in the case of an application pursuant to Article 25(1)(c) of Regulation (EC) No 6/2002, particulars showing that the application is made by a person or by persons duly entitled pursuant to Article 25(2) of that Regulation.

2 The application shall be subject to the fee referred to in Article 52(2) of Regulation (EC) No 6/2002.

3 The Office shall inform the holder that an application for declaration of invalidity has been filed.

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## Article 29

### Languages used in invalidity proceedings

1 The application for a declaration of invalidity shall be filed in the language of proceedings pursuant to Article 98(4) of Regulation (EC) No 6/2002.

2 Where the language of proceedings is not the language used for filing the application and the holder has filed his/her observations in the language of filing, the Office shall arrange to have those observations translated into the language of proceedings.

3 Three years after the date fixed in accordance with Article 111(2) of Regulation (EC) No 6/2002, the Commission will submit to the Committee mentioned in Article 109 of Regulation (EC) No 6/2002 a report on the application of paragraph 2 of this Article and, if appropriate, proposals for fixing a limit for the expenses borne by the Office in this respect as provided for in the fourth subparagraph of Article 98(4) of Regulation (EC) No 6/2002.

4 The Commission may decide to submit the report and possible proposals referred to in paragraph 3 at an earlier date, and the Committee shall discuss them as a matter of priority if the facilities in paragraph 2 lead to disproportionate expenditure.

5 Where the evidence in support of the application is not filed in the language of the invalidity proceedings, the applicant shall file a translation of that evidence into that language within two months of the filing of such evidence.

6 Where the applicant for a declaration of invalidity or the holder informs the Office, within two months of receipt by the holder of the communication referred to in Article 31(1) of this Regulation, that they have agreed on a different language of proceedings pursuant to Article 98(5) of Regulation (EC) No 6/2002, the applicant shall, where the application was not filed in that language, file a translation of the application in that language within one month of the said date.

## Article 30

### Rejection of the application for declaration of invalidity as inadmissible

1 If the Office finds that the application for declaration of invalidity does not comply with Article 52 of Regulation (EC) No 6/2002, Article 28(1) of this Regulation or any other provision of Regulation (EC) No 6/2002 or this Regulation, it shall inform the applicant accordingly and shall call upon him/her to remedy the deficiencies within such time limit as it may specify.

If the deficiencies are not remedied within the specified time limit, the Office shall reject the application as inadmissible.

2 Where the Office finds that the required fees have not been paid, it shall inform the applicant accordingly and shall inform him/her that the application will be deemed not to have been filed if the required fees are not paid within a specified time limit.

If the required fees are paid after the expiry of the time limit specified, they shall be refunded to the applicant.

3 Any decision to reject an application for a declaration of invalidity pursuant to paragraph 1 shall be communicated to the applicant.

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Where, pursuant to paragraph 2, an application is deemed not to have been filed, the applicant shall be informed accordingly.

### Article 31

#### Examination of the application for a declaration of invalidity

1 If the Office does not reject the application for declaration of invalidity in accordance with Article 30, it shall communicate such application to the holder and shall request him/her to file his/her observations within such time limits as it may specify.

2 If the holder files no observations, the Office may base its decision concerning invalidity on the evidence before it.

3 Any observations filed by the holder shall be communicated to the applicant, who may be called upon by the Office to reply within specified time limits.

4 All communications pursuant to Article 53(2) of Regulation (EC) No 6/2002 and all observations filed in that respect shall be sent to the parties concerned.

5 The Office may call upon the parties to make a friendly settlement.

[<sup>F16</sup> 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.]

#### Textual Amendments

- F1** Inserted by [Commission Regulation \(EC\) No 876/2007 of 24 July 2007 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 \(Text with EEA relevance\)](#).

### Article 32

#### Multiple applications for a declaration of invalidity

1 Where a number of applications for a declaration of invalidity have been filed relating to the same registered Community design, the Office may deal with them in one set of proceedings.

The Office may subsequently decide no longer to deal with them in that way.

2 If a preliminary examination of one or more applications reveals that the registered Community design may be invalid, the Office may suspend the other invalidity proceedings.

The Office shall inform the remaining applicants of any relevant decisions taken during such proceedings as are continued.

3 Once a decision declaring the invalidity of the design has become final, the applications in respect of which the proceedings have been suspended in accordance with paragraph 2 shall be deemed to have been disposed of and the applicants concerned shall be informed accordingly. Such disposition shall be considered to constitute a case which has not proceeded to judgment for the purposes of Article 70(4) of Regulation (EC) No 6/2002.

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4 The Office shall refund 50 % of the invalidity fee referred to in Article 52(2) of Regulation (EC) No 6/2002 paid by each applicant whose application is deemed to have been disposed of in accordance with paragraphs 1, 2 and 3 of this Article.

### *Article 33*

#### **Participation of an alleged infringer**

Where, pursuant to Article 54 of Regulation (EC) No 6/2002, an alleged infringer seeks to join the proceedings, he/she shall be subject to the relevant provisions of Articles 28, 29 and 30 of this Regulation, and shall in particular file a reasoned statement and pay the fee referred to in Article 52(2) of Regulation (EC) No 6/2002.

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

- Regulation revoked by [2023 c. 28 Sch. 1 Pt. 2](#)