



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART III

DESIGN RIGHT

CHAPTER II

RIGHTS OF DESIGN RIGHT OWNER AND REMEDIES

Remedies for infringement

235 Exercise of concurrent rights

- (1) Where an action for infringement of design right brought by the design right owner or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the design right owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.
- (2) A design right owner or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.
- (3) The above provisions do not affect the granting of interlocutory relief on the application of the design right owner or an exclusive licensee.
- (4) Where an action for infringement of design right is brought which relates (wholly or partly) to an infringement in respect of which the design right owner and an exclusive licensee have concurrent rights of action—
 - (a) the court shall, in assessing damages, take into account—
 - (i) the terms of the licence, and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;

Status: This is the original version (as it was originally enacted).

- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
 - (c) the court shall if an account of profits is directed apportion the profits between them as the court considers just, subject to any agreement between them;
- and these provisions apply whether or not the design right owner and the exclusive licensee are both parties to the action.
- (5) The design right owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 230 (order for delivery up of infringing article, &c.); and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.