

COMMUNITY DESIGN APPLICATIONS UNDER THE HAGUE AGREEMENT

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On 18 December 2006, the Council agreed on the deposit of the Instrument of Accession of the European Community to the Geneva Act of The Hague Agreement (“Geneva Act”)¹. The Instrument of Accession was submitted on 24 September 2007 to The World Intellectual Property Organization (WIPO) in Geneva. The basic regulation (CDR), the implementing regulation (CDIR) and the fee regulation (CDFR), governing the Community Designs, have been consolidated correspondingly.²

This shall allow obtaining a registered European Community Design (CD) by the filing of an International Design Application under The Hague Agreement. The system shall become operational on 1 January 2008.

1. Effects of International Registrations Designating the European Community

Pursuant to Article 106d CDR, an international registration designating the European 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, Art. 106 of CDR.

If no refusal has been notified or any such refusal has been withdrawn by the OHIM, the international registration of a design designating the Community shall, from the date of its registration referred to in Article 10 (2) of the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 the registration of a design as a registered Community Design.

The OHIM shall communicate a notification of refusal not later than six months from the date of the publication of the international registration. Novelty and individual character shall not be examined.

2. Entitlement to File an International Application

Only persons being a national of a state that is a contracting party or of a state member of an intergovernmental organization that is a contracting party, like the European Community, or that has a domicile, a habitual residence or a real

and effective industrial or commercial establishment in the territory of a contracting party, shall be entitled to file an international application (Article 3 Geneva Act). This is also to be observed in assignments to a new owner to whom the same rules of entitlement applies (Article 16 Geneva Act).

3. Parties to the Geneva Act

A list of the states being parties to the Geneva Act is enclosed with this information letter and can be found on the WIPO homepage.³ Although not all relevant industrial nations are a party to The Hague Agreement, if under the Geneva Act or an earlier version, The Hague system shall become an effective tool for obtaining protection for an industrial design in several states by filing a single application.

4. Filing and Costs

An international application designating the European Community shall be filed directly at the International Bureau of the World Intellectual Property Organization in Geneva (Article 106b CDR).

The prescribed designation fee of the Geneva Act is replaced by an individual designation fee (Article 106c CDR), for which a very moderate amount of € 62 has

been determined (see CDFR).

The designation of the European Community within the international application shall allow to reduce the filing costs as all member states of the European Community can be covered by the designation of the European Community, in addition to other states outside the European Community.

5. Renewals

An international registration designating the European Community shall be renewed directly at the WIPO in compliance with Art. 17 of the Geneva Act, Art. 22a CDIR.

The international registration designating the European Community can be extended to the maximum duration of 25 years for the CD.

6. Spare Parts

While Article 110 CDR still excludes protection as Community Designs for products which constitute a component part of a complex product for the purpose of the repair of that complex product so as to restore its original appearance, a protection for spare parts, e.g. car fenders, engine hoods or car bumpers, can be obtained under some national design laws, e.g. in Germany. The national design laws in the European Community have not been harmonized with respect to the spare part protection and some countries still allow said protection.

An international registration under The Hague Agreement can also be individually applied for many of the national states in the European Community mentioned in the attached list. If it is not certain whether a design might be legally considered as such a spare part or not, a Community Design and a national design application can be simultaneously applied for, in an international registration under The Hague Agreement. The national design and the Community Design can exist in parallel.

Attached: Status list of contracting states to the Hague Agreement, as retrieved from <http://www.wipo.int/treaties/en/documents/pdf/hague.pdf>

¹ <http://www.wipo.int/hague/en>

² <http://oami.europa.eu/en/design/reg.htm>

³ <http://www.wipo.int/treaties/en/documents/pdf/hague.pdf>

7. Hague Agreement Concerning the International Registration of Industrial Designs¹

Hague Agreement (1925), revised at London (1934) and at The Hague (1960)² (supplemented by the Additional Act of Monaco (1961)),³ the Complementary Act of Stockholm (1967) and the Protocol of Geneva (1975),⁴ and amended in 1979), and the Geneva Act (1999) (Hague Union)

Status on November 23, 2007

State/IGO	Date on which State/IGO became party to the Agreement	Date on which State became party to the London Act	Date on which State became party to the Hague Act ²	Date on which State became party to the Complementary Act of Stockholm	Date on which State/IGO became party to the Geneva Act
Albania	March 19, 2007	–	March 19, 2007	March 19, 2007	May 19, 2007
Armenia	July 13, 2007	–	–	–	July 13, 2007
Belgium ^{5,6}	April 1, 1979	–	August 1, 1984	May 28, 1979	–
Belize	July 12, 2003	–	July 12, 2003	July 12, 2003	–
Benin	November 2, 1986	November 2, 1986	November 2, 1986	January 2, 1987	–
Botswana	December 5, 2006	–	–	–	December 5, 2006
Bulgaria	December 11, 1996	–	December 11, 1996	December 11, 1996	–
Côte d'Ivoire	May 30, 1993	May 30, 1993	May 30, 1993	May 30, 1993	–
Croatia	February 12, 2004	–	February 12, 2004	February 12, 2004	April 12, 2004
Democratic People's Republic of Korea	May 27, 1992	–	May 27, 1992	May 27, 1992	–
Egypt	July 1, 1952	July 1, 1952	–	–	August 27, 2004
Estonia	December 23, 2003	–	–	–	December 23, 2003
European Community	January 1, 2008	–	–	–	January 1, 2008
France ⁷	October 20, 1930	June 25, 1939	August 1, 1984	September 27, 1975	March 18, 2007
Gabon	August 18, 2003	–	August 18, 2003	August 18, 2003	–
Georgia	August 1, 2003	–	August 1, 2003	August 1, 2003	December 23, 2003
Germany	June 1, 1928	June 13, 1939	August 1, 1984	September 27, 1975	–
Greece	April 18, 1997	–	April 18, 1997	April 18, 1997	–
Hungary ⁸	April 7, 1984	–	August 1, 1984	April 7, 1984	May 1, 2004
Iceland	December 23, 2003	–	–	–	December 23, 2003
Indonesia	December 24, 1950	December 24, 1950	–	–	–
Italy	June 13, 1987	–	June 13, 1987	August 13, 1987	–
Kyrgyzstan	March 17, 2003	–	March 17, 2003	March 17, 2003	December 23, 2003
Latvia	July 26, 2005	–	–	–	July 26, 2005
Liechtenstein	July 14, 1933	January 28, 1951	August 1, 1984	September 27, 1975	December 23, 2003
Luxembourg ⁶	April 1, 1979	–	August 1, 1984	May 28, 1979	–
Mali	September 7, 2006	–	September 7, 2006	September 7, 2006	–
Moldova	March 14, 1994	–	March 14, 1994	March 14, 1994	December 23, 2003
Monaco	April 29, 1956	April 29, 1956	August 1, 1984	September 27, 1975	–
Mongolia	April 12, 1997	–	April 12, 1997	April 12, 1997	January 19, 2008
Montenegro	June 3, 2006	–	June 3, 2006	June 3, 2006	–
Morocco	October 20, 1930	January 21, 1941	October 13, 1999	October 13, 1999	–
Namibia	June 30, 2004	–	–	–	June 30, 2004
Netherlands ^{5,6}	April 1, 1979	–	August 1, 1984 ⁹	May 28, 1979 ⁹	–
Niger	September 20, 2004	–	September 20, 2004	September 20, 2004	–
Romania	July 18, 1992	–	July 18, 1992	July 18, 1992	December 23, 2003
Senegal	June 30, 1984	June 30, 1984	August 1, 1984	June 30, 1984	–
Serbia ¹⁰	December 30, 1993	–	December 30, 1993	December 30, 1993	–
Singapore	April 17, 2005	–	–	–	April 17, 2005
Slovenia	January 13, 1995	–	January 13, 1995	January 13, 1995	December 23, 2003
Spain	June 1, 1928	March 2, 1956	–	–	December 23, 2003
Suriname	November 25, 1975	November 25, 1975	August 1, 1984	February 23, 1977	–
Switzerland	June 1, 1928	November 24, 1939	August 1, 1984	September 27, 1975	December 23, 2003
The former Yugoslav Republic of Macedonia	March 18, 1997	–	March 18, 1997	March 18, 1997	March 22, 2006
Tunisia	October 20, 1930	October 4, 1942	–	–	–
Turkey	January 1, 2005	–	–	–	January 1, 2005
Ukraine	August 28, 2002	–	August 28, 2002	August 28, 2002	December 23, 2003
(Total: 47)	(47)	(14)	(34)	(34)	(25)

7. Hague Agreement Concerning the International Registration of Industrial Designs¹

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(continued)

¹ The Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs was adopted on July 2, 1999. The Geneva Act entered into force on December 23, 2003.

² The Protocol to the Hague Act (1960) is not yet in force. It has been ratified by or acceded to by the following States: Belgium, France, Germany, Italy, Liechtenstein, Monaco, Morocco, Netherlands, Switzerland.

³ The Additional Act of Monaco (1961) is in force in respect of the following States as from the dates indicated: France (December 1, 1962), Germany (December 1, 1962), Liechtenstein (July 9, 1966), Monaco (September 14, 1963), Netherlands (as far as the Netherlands Antilles is concerned) (September 14, 1963), Spain (August 31, 1969), Suriname (November 25, 1975) and Switzerland (December 21, 1962). See also footnote 5.

⁴ The Protocol of Geneva (1975), in accordance with Article 11(2)(a) thereof, ceased to have effect as of August 1, 1984; however, as provided by Article 11(2)(b), States bound by the Protocol (Belgium (as from April 1, 1979), France (as from February 18, 1980), Germany (as from December 26, 1981), Hungary (as from April 7, 1984), Liechtenstein (as from April 1, 1979), Luxembourg (as from April 1, 1979), Monaco (as from March 5, 1981), Netherlands (as from April 1, 1979), Senegal (as from June 30, 1984), Suriname (as from April 1, 1979) and Switzerland (as from April 1, 1979)) are not relieved of their obligations thereunder in respect of industrial designs whose date of international deposit is prior to August 1, 1984.

⁵ Belgium had withdrawn from the Hague Union with effect from January 1, 1975. The Netherlands had denounced, in respect of the Kingdom in Europe and with effect from January 1, 1975, the Hague Agreement (1925) and the subsequent Acts to which the Netherlands had adhered, specifying that the said Agreement and Acts – London Act (1934) and Additional Act of Monaco (1961) – would remain in force in respect of the Netherlands Antilles and Suriname. As a result of their ratification of the Protocol of Geneva (1975) and its entry into force on April 1, 1979, Belgium and the Netherlands became, again, as from that date, members of the Hague Union.

⁶ The territories in Europe of Belgium, Luxembourg and the Netherlands are, for the application of the Hague Agreement, to be deemed a single country.

⁷ Including all Overseas Departments and Territories.

⁸ With the declaration that Hungary does not consider itself bound by the Protocol annexed to the Hague Act (1960). The London Act ceased to be effective in respect of Hungary as of February 1, 2005.

⁹ Ratification for the Kingdom in Europe.

¹⁰ Serbia is the continuing State from Serbia and Montenegro as from June 3, 2006.