

Designs Act, 2000

Chapter 2 - Registration of Designs

(1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) shall be the Controller of Designs for the purposes of this Act.

(2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers and with such designations as it thinks fit.

(3) Subject to the provisions of this Act, the officers appointed under sub-section (2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time, by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

Section 4 - Prohibition of registration of certain designs

A design which-

- (a) is not new or original; or
 - (b) has been disclosed to the public anywhere in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
 - (c) is not significantly distinguishable from known designs or combination of known designs; or
 - (d) comprises or contains scandalous or obscene matter, shall not be registered.
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Section 5 - Application for registration of designs

(1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act:

Provided that the Controller shall before such registration refer the application for examination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference.

(2) Every application under sub-section (1) shall be in the prescribed form and shall be filed in the patent office in the prescribed manner and shall be accompanied by the prescribed fee.

(3) A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.

(4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the High Court.

(5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

(6) A design when registered shall be registered as of the date of the application for registration.

Section 6 - Registration to be in respect of particular article

(1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.

(2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.

(3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof be invalidated-

(a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

(b) on the ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article in respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

(4) Where any person makes an application for the registration of a design in respect of any article and either-

(a) that design has been previously registered by another person in respect of some other article; or

(b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof,

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application, the applicant had been the registered proprietor of that design.

Section 7 - Publication of particulars of registered designs

The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection.

Section 8 - Power of Controller to make orders regarding substitution of application, etc.

(1) If the Controller is satisfied on a claim made in the prescribed manner at any time before a design has been registered that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for registration of the design or by operation of law, the claimant would, if the design were then registered, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the design or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly, as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for registration of a design except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of a design unless-

(a) the design is identified therein by reference to the number of the application for the registration; or

(b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the design in respect of which that application is made; or

(c) the rights of the claimant in respect of the design have been finally established by the decision of a court; or

(d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for registration of a design dies at any time before the design has been registered, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for registration of a design whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the

parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

Section 9 - Certificate of registration

- (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.
 - (2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.
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Section 10 - Register of designs

- (1) There shall be kept at the patent office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed and such register may be maintained wholly or partly on computer floppies or diskettes, subject to such safeguards as may be prescribed.
 - (2) Where the register is maintained wholly or partly on computer under floppies or diskettes sub-section (1), any reference in this Act to any entry in the register shall be construed as the reference to the entry so maintained on computer floppies or diskettes.
 - (3) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.
 - (4) The register of designs shall be prima facie evidence of any matter by this Act directed or authorized to be entered therein.
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