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THE DESIGNS ACT, 2000

ACT NO. 16 OF 2000

[25*th May*, 2000.]

An Act to consolidate and amend the law relating to protection of designs.

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(*1*) This Act may be called the Designs Act, 2000.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

(*b*) "Controller" means the Controller-General of Patents, Designs and Trade Marks referred to in section 3;

(*c*) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;

(*d*) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (*v*) of sub-section (*1*) of section 2 of the Trade and Merchandise Marks Act, 1958 (43 of 1958) or property mark as defined in section 479 of the Indian Penal Code (45 of 1860) or any artistic work as defined in clause (*c*) of section 2 of the Copyright Act, 1957 (14 of 1957).

(*e*) "High Court" shall have the same meaning as assigned to it in clause (*i*) of section 2 of the Patents Act, 1970 (39 of 1970);

(*f*) "legal representative" means a person who in law represents the estate of a deceased person;

(*g*) "original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application**;**

(*h*) "Patent Office" means the patent office referred to in section 74 of the Patents Act, 1970 (39 of 1970);

(*i*) "prescribed" means prescribed by rules made under this Act;

(*j*) "proprietor of a new or original design",—

(*i*) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed;

(*ii*) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

1. 11th May, 2001, *vide* notification No. S.O. 414(E), dated 11th May, 2001, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

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(*iii*) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

CHAPTER II

REGISTRATION OF DESIGNS

3. Controller and other officers.—(*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 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.

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.

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.

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.

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(*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 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.

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.

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 acknowledgement 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

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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.

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.

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 floppies and diskettes under sub-section (*1*), any reference in this Act to any entry in the register shall be construed as the reference to 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.

CHAPTER III

COPYRIGHT IN REGISTERED DESIGNS

11. Copyright on registration.—(*1*) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

(*2*) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copy-right for a second period of five years from the expiration of the original period of ten years.

12. Restoration of lapsed designs.—(*1*) Where a design has ceased to have effect by reason of failure to pay the fee for the extension of copyright under sub-section (*2*) of section 11, the proprietor of such design or his legal representative and where the design was held by two or more persons jointly, then, with the leave of the Controller one or more of them without joining the others, may, within one year from the date on which the design ceased to have effect, make an application for the restoration of the design in the prescribed manner on payment of such fee as may be prescribed.

(*2*) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.

13. Procedure for disposal of applications for restoration of lapsed designs.—(*1*) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is satisfied that the failure to pay the fee for extension of the period of copyright was unintentional and that there has been no undue delay in the making of the application, the Controller shall upon payment of any unpaid fee for extension of the period of copyright together with prescribed additional fee restore the registration of design.

(*2*) The Controller may, if he thinks fit as a condition of restoring the design, require that any entry shall be made in the register of any document or matter which under the provisions of this Act, has to be entered in the register but which has not been so entered.

14. Rights of proprietor of lapsed design which have been restored.—(*1*) Where the registration of a design is restored, the rights of the registered proprietor shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by

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contract or otherwise to avail themselves of, the benefit of applying the design between the date when the registration of the design ceased to have effect and the date of restoration of the registration of the design.

(*2*) No suit or other proceeding shall be commenced in respect of piracy of a registered design or infringement of the copyright in such design committed between the date on which the registration of the design ceased to have effect and the date of the restoration of the design.

15. Requirements before delivery on sales.—(*1*) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(*a*) (if exact representations or specimens were not finished on the application for registration) furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may, after giving notice thereof to the proprietor, erase his name from the register and thereupon the copyright in the design shall cease; and

(*b*) causes each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(*2*) Where a representation is made to the Central Government by or on behalf of any trade or industry that in the interest of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Central Government may, if it thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it thinks fit.

16. **Effect of disclosure on copyright.**—The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

17. Inspection of registered designs.—(*1*) During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner.

(*2*) Any person may, on an application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

18. Information as to existence of copyright.—On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.

19. **Cancellation of registration.**—(*1*) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:—

(*a*) that the design has been previously registered in India; or

(*b*) that it has been published in India or in any other country prior to the date of registration; or

(*c*) that the design is not a new or original design; or

(*d*) that the design is not registrable under this Act; or

(*e*) that it is not a design as defined under clause (*d*) of section 2.

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(*2*) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.

20. **Designs to bind Government**.—A registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970 (39 of 1970) shall apply to registered designs as they apply to patents.

CHAPTER IV

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

21. **Provisions as to exhibitions**.—The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provided that—

(*a*) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and

(*b*) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

CHAPTER V

LEGAL PROCEEDINGS

22. **Piracy of registered design.**—(*1*) During the existence of copyright in any design it shall not be lawful for any person—

(*a*) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the license or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or

(*b*) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or

(*c*) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(*2*) If any person acts in contravention of this section, he shall be liable for every contravention—

(*a*) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or

(*b*) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (*a*) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any court below the court of District Judge.

(*3*) In any suit or any other proceeding for relief under sub-section (*2*), ever ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.

(*4*) Notwithstanding anything contained in the second proviso to sub-section (*2*), where any ground or which the registration of a design may be cancelled under section 19 has been availed of as a ground of

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defence under sub-section (*3*) in any suit or other proceeding for relief under sub-section (*2*), the suit or such other proceedings shall be transferred by the Court, in which the suit or such other proceeding is pending, to the High Court for decision.

(*5*) When the court makes a decree in a suit under sub-section (*2*), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

23. Application of certain provisions of the Act as to patents to designs.—The provisions of the Patents Act, 1970 (39 of 1970) with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for reference to a patent, and of references to the proprietor of a design for references to patentee, and of references to the design for references to the invention.

CHAPTER VI

GENERAL

Fees

24. Fees.—(*1*) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees as may be prescribed.

(*2*) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to registers and other documents in the patent office

25. **Notice of trust not to be entered in registers**.—There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust expressed, implied or constructive.

26. **Inspection of and extracts from registers**.—Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee:

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer printout of the relevant entry in the register so maintained on computer.

27. **Privilege of reports of Controller**.—Reports of or to the Controller made under this Act other than the report referred to in section 45 shall not in any case be published or be open to public inspection.

28. **Prohibition and publication of specification, drawings, etc., where application abandoned, etc**.—Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

29. **Power of Controller to correct clerical errors**.—The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design, or in any other matter, which is entered upon the register of designs.

30. Entry of assignment and transmissions in registers.—(*1*) Where a person becomes entitled by assignments, transmission or other operation of law to the copyright in a registered design, he may make application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

(*2*) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a registered design, he may make an application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs, with particulars of the instrument, if any, creating such interest.

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(*3*) For the purposes of sub-section (*1*) or sub-section (*2*), an assignment of a design or of a share in a design, a mortgage, licence or the creation of any other interest in a design shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of an instrument embodying all the terms and conditions governing their rights and obligation and the application for registration of title under such instrument is filed in the prescribed manner with the Controller within six months from the execution of the instrument or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows:

Provided that the instrument shall, on entry of its particulars in the register under sub-section (*1*) or sub-section (*2*), have the effect from the date of its execution.

(*4*) The person registered as the proprietor of a design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the design and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the design may be enforced in like manner as in respect of any other movable property.

(*5*) Except in the case of an application made under section 31, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (*1*) and (*2*) shall not be admitted in evidence in any court in proof of the title to copyright in a design or to any interest therein, unless the court, for reasons to be recorded in writing, otherwise directs.

31. Rectification of register.—(*1*) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of designs of any entry, or by any entry made in such register without sufficient cause, or by any entry wrongly remaining on such register, or by an error or defect in any entry in such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly.

(2) The Controller may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of a register.

(*3*) An appeal shall lie to the High Court from any order of the Controller under this section and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.

(*4*) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner who shall upon the receipt of such notice rectify the register accordingly.

(*5*) Nothing in this section shall be deemed to empower the Controller to make any such order cancelling the registration of a design as is provided for in section 19.

CHAPTER VII

POWERS AND DUTIES OF CONTROLLER

32. Powers of Controller in proceedings under Act.—Subject to any rules made in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examining of witnesses and awarding costs and such award shall be executable in any court having jurisdiction as if it were a decree of that court.

33. Exercise of discretionary power by Controller.—Where any discretionary power is by or under this Act given to Controller, he shall not exercise that power adversely to the applicant for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

34. Power of Controller to take directions of the Central Government.—The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Central Government for directions in the matter.

35. Refusal to register a design in certain cases.—(*1*) The Controller may refuse to register a design of which the use would, in his opinion, be contrary to public order or morality.

(*2*) An appeal shall lie to the High Court from an order of the Controller under this section.

36. Appeals to the High Court.—(*1*) Where an appeal is declared by this Act to lie from the Controller to the High Court, the appeal shall be made within three months of the date of the order passed by the Controller.

(*2*) In calculating the said period of three months, the time (if any) occupied in granting a copy of the order appealed against shall be excluded.

(*3*) The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.

(*4*) The High Court my make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

CHAPTER VIII

EVIDENCE, ETC.

37. Evidence before the Controller.—Subject to any rules made under section 44, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit in the absence of directions by the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence *viva voce* in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.

38. Certificate of Controller to be evidence.—A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

39. Evidence of documents in patent office.—Printed or written copies or extracts, purporting to be certified by Controller and sealed with the seal of the patent office, of documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in India, and in all proceedings, without further proof or production of the originals:

Provided that a court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

40. Applications and notices by post.—Any application, notice or other document authorized or required to be left, made or given at the patent office or to the Controller, or to any other person under this Act, may be sent by post.

41. Declaration by infant, lunatic, etc.—(*1*) If any person , is by reason of infancy , lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or , if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(*2*) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

42. Avoidance of certain restrictive conditions.—(*1*) It shall not be lawful to insert—

(*i*) in any contract for or in relation to the sale or lease of an article in respect of which a design is registered; or

(*ii*) in a licence to manufacture or use an article in respect of which a design is registered; or

(*iii*) in a licence to package the article in respect of which a design is registered,

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condition the effect of which may be—

(*a*) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the article in respect of which a design is registered; or

(*b*) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article in respect of which a design is registered which is not supplied by the vendor, lessor or licensor or his nominee,

and any such condition shall be void.

(*2*) A condition of the nature referred to in clause (*a*) or clause (*b*) of sub-section (*1*) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the article in respect of which a design is registered.

(*3*) In proceeding against any person for any act in contravention of section 22, it shall be a defence to prove that at the time of such contravention there was in force a contract relating to the registered design and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

(*4*) Nothing in this section shall—

(*a*) affect a condition in a contract by which a person is prohibited from selling goods other than those of particular person;

(*b*) validate a contract which, but for this section, would be invalid;

(*c*) affect a condition in a contract for the lease of, or licence to use, an article in respect of which a design is registered, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article, in respect of which a design is registered, as may be required or to put or keep it in repair.

(*5*) The provision of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement.

CHAPTER IX

AGENCY

43. Agency.—(*1*) All applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent whose name and address had been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970 (39 of 1970).

(*2*) The Controller may, if he sees fit, require—

(*a*) any such agent to be resident in India;

(*b*) any person not residing in India to employ an agent residing in India;

(*c*) the personal signature or presence of any applicant or other person.

CHAPTER X

POWERS, ETC., OF CENTRAL GOVERNMENT

44. Reciprocal arrangement with the United Kingdom and other convention countries or group of countries of inter-governmental organisations.—(*1*) Any person who has applied for protection for any design in the United Kingdom or any of other convention countries or group of countries or countries which are members of inter-governmental organisations, or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the

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application in the United Kingdom or any of such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be:

Provided that—

(*a*) the application is made within six months from the application for protection in the United Kingdom or any such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be; and

(*b*) nothing in this section shall entitle the proprietor of the design to recover damages for piracy of design happening prior to the actual date on which the design is registered in India.

(*2*) The registration of a design shall not be invalidated by reason only of the exhibition or use of or the publication of a description or representation of the design in India during the period specified in this section as that within which the application may be made.

(*3*) The application for registration of a design under this section has been made in the same manner as an ordinary application under this Act.

(*4*) Where it is made to appear to the Central Government that the legislature of the United Kingdom or any such other convention country or a country which is member of any group of countries or inter-governmental organisation as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in the United Kingdom or that other convention country or such country which is member of any group of countries or inter-governmental organisation, as the case may be.

Explanation 1.—For the purposes of this section, the expression "convention countries", "group of countries" or "inter-governmental organisation" means, respectively, such countries, group of countries or inter-governmental organisation to which the Paris Convention for Protection of Industrial Property, 1883 as revised at Stockholm in 1967 and as amended in 1979 or the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisation applies.

Explanation 2.—Where more than one application for protection referred to in sub-section (*1*) has been made for similar protections in the United Kingdom or one or more convention countries, group of countries or countries which are members of inter-governmental organisations, the period of six months referred to in clause (*a*) of that sub-section shall be reckoned from the date of which the earlier or the earliest application, as the case may be, of such applications has been made.

45. Report of the Controller to be placed before Parliament.—The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

46. Protection of security of India.—Notwithstanding anything contained in this Act, the Controller shall—

(*a*) not disclose any information relating to the registration of a design or any application relating to the registration of a design under this Act, which he considers prejudicial to the interest of the security of India; and

(*b*) take any action regarding the cancellation of registration of such designs registered under this Act which the Central Government may, by notification in the Official Gazette, specify in the interest of the security of India.

Explanation.—For the purposes of this section, the expression "security of India" means any action necessary for the security of India which relates to the application of any design registered under this Act to any article used for war or applied directly or indirectly for the purposes of military establishment or for the purposes of war or other emergency in international relations.

47. Power of Central Government to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generally of the forgoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the form of application for registration of design, the manner of filing it at the patent office and the fee which shall accompany it, under sub-section (*2*) of section 5;

(*b*) the time within which the registration is to be effected under sub-section (*5*) of section 5;

(*c*) the classification of articles for registration under sub-section (*1*) of section 6;

(*d*) the particulars of design to be published and the manner of their publication under section 7;

(*e*) the manner of making claim under sub-section (*1*) of section 8;

(*f*) the manner of making applications to the Controller under sub-section (*5*) of section 8;

(*g*) the additional matters required to be entered in the register of designs and the safeguards to be made in maintaining such register in computer floppies or diskettes under sub-section (*1*) of section 10;

(*h*) the manner of making application and fee to be paid for extension of the period of copyright under and the fee payable thereto, sub-section (*2*) of section 11;

(*i*) the manner of making application for restoration of design and the fee to be paid with it under sub-section (*1*) of section 12;

(*j*) the manner of verification of statement contained in an application under sub-section (*2*) of section 12;

(*k*) the additional fee to be paid for restoration of the registration of design under sub-section (*1*) of section 13;

(*l*) the provisions subject to which the right of the registered proprietor shall be under sub-section (*1*) of section 14;

(*m*) the number of exact representation or specimen of the design to be furnished to the Controller under clause (*a*) of sub-section (*1*) of section 15;

(*n*) the mark, words or figures with which the article is to be marked denoting that the design is registered under clause (*b*) of sub-section (*1*) of section 15;

(*o*) the rules to dispense with or modify as regards any class or description of articles any of the requirements of section 15 as to marking under sub-section (*2*) of that section;

(*p*) the fee to be paid for and the manner of inspection under sub-section (*1*) of section 17;

(*q*) the fee to be paid to obtain a certified copy of any design under sub-section (*2*) of section 17;

(*r*) the fee on payment of which the Controller shall inform under section 18;

(*s*) the form for giving notice to the controller under clause (*a*) of the proviso to section 21;

(*t*) the fee to be paid in respect of the registration of designs and application therefor, and in respect of other matters relating to designs under sub-section (*1*) of section 24;

(*u*) the fee to be paid for giving certified copy of any entry in the register under section 26;

(*v*) the fee to be accompanied with the request in writing for correcting any clerical error under section 29;

(*w*) the form in which an application for registration as proprietor shall be made and the manner in which the Controller shall cause an entry to be made in the register of the assignment, transmission or other instruments effecting the title under sub-section (*1*) of section 30;

(*x*) the form in which an application for title shall be made and the manner in which the Controller shall cause notice of the interest to be entered in the register of designs with particulars of the instrument, if any, creating such interest under sub-section (*2*) of section 30;

(*y*) the manner of filing an application for registration and for making application for extension of time as referred to in sub-section (*3*) of section 30;

(*z*) the manner of making application to the Controller for rectification of register under sub-section (*1*) of section 31;

(*za*) the manner in which the notice of rectification shall be served on the Controller under sub-section (*4*) of section 31;

(*zb*) the rules regulating the proceedings before the Controller under section 32;

(*zc*) the time which shall be granted to the applicants for being heard by the Controller under section 33;

(*zd*) the fee to be accompanied with an appeal under sub-section (*1*) of section 36;

(*ze*) any other matter which is required to be, or may be, prescribed.

(*3*) The power to make rules under this section shall be subject to the conditions of the rules being made after previous publication.

(*4*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Act.

CHAPTER XI

REPEAL AND SAVING

48. Repeal and savings.—(*1*) The Designs Act, 1911 (2 of 1911) is hereby repealed.

(*2*) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, determination, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Designs Act, 1911 (2 of 1911), shall, in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(*3*) The provisions of this Act shall apply to all applications for registration of designs pending at the commencement of this Act and to any proceedings consequent thereon and to any registration granted in pursuance thereof.

(*4*) Notwithstanding anything contained in this Act, any proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act has not been passed.

(*5*) Notwithstanding anything contained in sub-section (*2*), the date of expiration of the copyright in the design registered before the commencement of this Act shall, subject to the provisions of this Act, be the date immediately after the period of five years for which it was registered or the date immediately after the period of five years for which the extension of the period of copyright for a second period from the expiration of the original period has been made.

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