

Diplomatic Conference to Conclude and Adopt a Design Law Treaty (DLT)

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DRAFT OF THE REGULATIONS UNDER THE DESIGN LAW TREATY

submitted to Main Committee I and II by the Drafting Committee

REGULATIONS UNDER THE DESIGN LAW TREATY (DLT)

page

LIST OF RULES

Rule 1	Abbreviated Expressions	3
Rule 2	Details Concerning the Application	3
Rule 3	Details Concerning Representation of the Industrial Design	4
Rule 4	Details Concerning Representatives, Address for Service or Address for Correspondence	5
Rule 5	Details Concerning Filing Date	6
Rule 6	Details Concerning Publication	6
Rule 7	Details Concerning Communications	6
Rule 8	Identification of an Application Without its Application Number	8
Rule 9	Details Concerning Renewal	9
Rule 10	Details Concerning Relief in Respect of Time Limits	9
Rule 11	Details Concerning Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality Under Article 15	10
Rule 12	Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 16	10
Rule 13	Details Concerning the Requirements Concerning the Request for Recording of a License or a Security Interest or for Amendment or Cancellation of the Recording of a License or a Security Interest	11
Rule 14	Details Concerning the Request for Recording of a Change in Ownership	13
Rule 15	Details Concerning the Request for Recording of a Change in Name or Address	14
Rule 16	Details Concerning the Request for Correction of a Mistake	14
Rule 17	Model International Forms	15
Rule 18	Requirement of Unanimity Under Article 25(3)(a)	15

Rule 1 Abbreviated Expressions

(1) *[Abbreviated Expressions Defined in the Regulations]* For the purposes of these Regulations, unless expressly stated otherwise:

- (i) “Treaty” means the Design Law Treaty;
- (ii) “Article” refers to the specified Article of the Treaty;
- (iii) “Locarno Classification” means the classification established by the Locarno Agreement Establishing an International Classification for Industrial Designs, signed at Locarno on October 8, 1968, as revised and amended;
- (iv) “exclusive license” means a license which is only granted to one licensee and which excludes the holder from using the industrial design and from granting licenses to any other person;
- (v) “sole license” means a license which is only granted to one licensee and which excludes the holder from granting licenses to any other person but does not exclude the holder from using the industrial design;
- (vi) “non-exclusive license” means a license which does not exclude the holder from using the industrial design or from granting licenses to any other person.

(2) *[Abbreviated Expressions Defined in the Treaty]* The abbreviated expressions defined in Article 1 for the purposes of the Treaty shall have the same meaning for the purposes of these Regulations.

Rule 2 Details Concerning the Application

(1) *[Further Requirements Under Article 4]* In addition to the requirements provided for in Article 4, a Contracting Party may require that an application contain some, or all, of the following indications or elements:

- (i) an indication of the class of the Locarno Classification to which belongs the product which incorporates the industrial design, or in relation to which the industrial design is to be used;
- (ii) a claim;
- (iii) a statement of novelty;
- (iv) a description;
- (v) indications concerning the identity of the creator of the industrial design;
- (vi) a statement that the creator believes himself/ herself to be the creator of the industrial design;
- (vii) where the applicant is not the creator of the industrial design, a statement of assignment or, at the option of the applicant, other evidence of the transfer of the design to the applicant admitted by the Office;

(viii) where the applicant is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;

(ix) the name of a State of which the applicant is a national if he/she is the national of any State, the name of a State in which the applicant has his/her domicile, if any, and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(x) an indication of any prior application or registration, or other information, of which the applicant is aware, that could have an effect on the eligibility for registration of the industrial design;

(xi) where the applicant wishes to maintain the industrial design unpublished for a period of time, a request to that effect;

(xii) where the application includes more than one industrial design, an indication of the number of industrial designs included;

(xiii) an indication of the term of protection for which the application is filed;

(xiv) where a Contracting Party requires payment of a fee in respect of an application, evidence that the payment was made;

(xv) where applicable, an indication of partial design;

(xvi) where applicable, a request for earlier publication.

(2) *[Requirements in Case of Divisional Applications]* A Contracting Party may require that, where an application is to be treated as a divisional application, the application contain the following:

(i) an indication to that effect;

(ii) the number and filing date of the initial application.

(3) *[Partial Design]* A Contracting Party shall, if the applicable law allows, permit the application to be directed to a design embodied in a part of an article or product.

Rule 3

Details Concerning Representation of the Industrial Design

(1) *[Form of Representation of the Industrial Design]* (a) The representation of the industrial design shall, at the option of the applicant, be in the form of:

(i) photographs;

(ii) graphic reproductions;

(iii) any other visual representation admitted by the Office;

(iv) a combination of any of the above, where permitted under the applicable law.

(b) The representation of the industrial design may, at the option of the applicant, be in color or in black and white.

(c) The industrial design shall be represented alone, to the exclusion of any other matter.

(2) *[Particulars Concerning Representation]* Notwithstanding paragraph (1)(c), the representation of the industrial design may include:

(i) matter that does not form part of the claimed design if it is shown by visual means such as dotted or broken lines and/or, if permitted under the applicable law, identified as such in the description;

(ii) shading, to show the contours or volume of a three-dimensional design.

(3) *[Views]* (a) The industrial design may, at the option of the applicant, be represented by one view that fully discloses the industrial design, or by several different views that fully disclose the industrial design.

(b) Notwithstanding subparagraph (a), additional, specific views may be required by the Office where such views are necessary to fully show the product or products that incorporate the industrial design or in relation to which the industrial design is to be used. However, additional views disclosing new matter affecting the industrial design, which are not derivable from the original view or views, do not have to be admitted.

(4) *[Number of Copies of Representation]* No more than one copy of any representation of the industrial design may be required where the application is filed electronically, and no more than three copies where the application is filed on paper.

Rule 4

Details Concerning Representatives, Address for Service or Address for Correspondence

(1) *[Appointment of Representative Under Article 5(4); Power of Attorney]* (a) Whenever a Contracting Party allows or requires an applicant, a holder or any other interested person to be represented by a representative before the Office, it may require that the representative be appointed in a separate communication (hereinafter referred to as “power of attorney”) indicating the name of the applicant, holder, or other interested person, as the case may be, as well as the name and address of the representative.

(b) The power of attorney may relate to one or more applications and/or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or registrations of that person.

(c) The power of attorney may limit the powers of the representative to certain acts. A Contracting Party may require that any power of attorney under which the representative has the right to withdraw an application or to surrender a registration contain an express indication to that effect.

(2) *[Time Limit Under Article 5(6)]* The time limit referred to in Article 5(6) shall be not less than one month from the date of the notification referred to in that Article where the address of the applicant, holder or other interested person is on the territory of the Contracting Party making the notification, and not less than two months from the date of the notification where such address is outside the territory of that Contracting Party.

(3) *[Evidence]* A Contracting Party may require that evidence be filed with the Office where the Office may reasonably doubt the veracity of any indication contained in any communication referred to in paragraph (1).

Rule 5
Details Concerning Filing Date

The time limit referred to in Article 6(4) shall be not less than one month from the date of the notification referred to in that Article.

Rule 6
Details Concerning Publication

The minimum period referred to in Article 10(1) shall be six months from the filing date.

Rule 7
Details Concerning Communications

(1) *[Details Concerning Article 12(3)]* (a) A Contracting Party may require that the address for correspondence referred to in Article 12(3)(i) and the address for service referred to in Article 12(3)(ii) be in a territory prescribed by that Contracting Party.

(b) A Contracting Party may require that the applicant, holder, or other interested person, include some, or all, of the following contact details in any communication:

- (i) a telephone number;
- (ii) a telefacsimile number;
- (iii) an email address.

(2) *[Indications Accompanying Signature of Communication on Paper]* A Contracting Party may require that the signature of the natural person who signs be accompanied by:

(i) an indication, in letters, of the family or principal name and the given or secondary name or names, of that person or, at the option of that person, of the name, or names, customarily used by the said person;

(ii) an indication of the capacity in which that person signed, where such capacity is not obvious from reading the communication.

(3) *[Date of Signing]* A Contracting Party may require that a signature be accompanied by an indication of the date on which the signing was effected. Where that indication is required, but is not supplied, the date of signing shall be deemed to be the date on which the communication bearing the signature was received by the Office or, if the Contracting Party so allows, a date earlier than the latter date.

(4) *[Signature of Communications on Paper]* Where a communication to the Office of a Contracting Party is on paper and a signature is required, that Contracting Party:

- (i) shall, subject to item (iii), accept a handwritten signature;
- (ii) may permit, instead of a handwritten signature, the use of other forms of signature, such as a printed or stamped signature, or the use of a seal or of a bar-coded label;

(iii) may, where the natural person who signs the communication is a national of the Contracting Party concerned and such person's address is in its territory, or where the legal entity on behalf of which the communication is signed is organized under its law and has either a domicile or a real and effective industrial or commercial establishment in its territory, require that a seal be used instead of a handwritten signature.

(5) *[Attestation, Notarization, Authentication, Legalization or Other Certification of a Signature of Communications on Paper]* A Contracting Party may require the attestation, notarization, authentication, legalization or other certification of any signature of a communication on paper, under Article 12(4)(b), if the communication concerns the withdrawal of an application or the surrender of a registration.

(6) *[Signature of Communications on Paper Filed by Electronic Means of Transmittal]* A Contracting Party that provides for communications on paper to be filed by electronic means of transmittal shall consider any such communication signed if a graphic or other representation of a signature accepted by that Contracting Party under paragraph (4) appears on the communication as received.

(7) *[Original of a Communication on Paper Filed by Electronic Means of Transmittal]* A Contracting Party that provides for communications on paper to be filed by electronic means of transmittal may require that the original of any such communication be filed with the Office:

(i) accompanied by a letter identifying that earlier transmission; and

(ii) within a time limit which shall be at least one month from the date on which the Office received the communication by electronic means of transmittal.

(8) *[Authentication of Communications in Electronic Form]* A Contracting Party that permits the filing of communications in electronic form may require that any such communication be authenticated through a system of electronic authentication, as prescribed by that Contracting Party.

(9) *[Date of Receipt]* A Contracting Party shall be free to determine the circumstances in which the receipt of a document or the payment of a fee shall be deemed to constitute receipt by or payment to the Office in cases in which the document was actually received by or payment was actually made to:

(i) a branch or sub-office of the Office;

(ii) a national Office on behalf of the Office of the Contracting Party, where the Contracting Party is an intergovernmental organization;

(iii) an official postal service;

(iv) a delivery service, or an agency, specified by the Contracting Party;

(v) an address other than the nominated address(es) of the Office.

(10) *[Electronic Filing]* Subject to paragraph (9), where a Contracting Party provides for the filing of a communication in electronic form or by electronic means of transmittal and the communication is so filed, the date on which the Office of that Contracting Party receives the communication in such form, or by such means, shall constitute the date of receipt of the communication.

(11) *[Indications Under Article 12(7)]* (a) A Contracting Party may require that any communication:

- (i) indicate the name and address of the applicant, holder or other interested person;
- (ii) indicate the number of the application or registration to which it relates;
- (iii) contain, where the applicant, holder or other interested person is registered with the Office, the number or other indication under which he/she is so registered;
- (iv) contain, where a Contracting Party requires payment of a fee in respect of a procedure before the Office, indications which are necessary for the Office of the Contracting Party to collect fees, including the amount of the fee and its method of payment.

(b) A Contracting Party may require that any communication by a representative for the purposes of a procedure before the Office contain:

- (i) the name and address of the representative;
- (ii) a reference to the power of attorney on the basis of which the representative acts;
- (iii) where the representative is registered with the Office, the number or other indication under which he/she is registered.

Rule 8 **Identification of an Application Without its Application Number**

(1) *[Manner of Identification]* Where it is required that an application be identified by its application number, but such a number has not yet been issued or is not known to the applicant or its representative, the application shall be considered identified if the following is supplied:

- (i) the provisional application number, if any, given by the Office; or
- (ii) a copy of the application; or
- (iii) a representation of the industrial design, accompanied by an indication of the date on which, to the best knowledge of the applicant or the representative, the application was received by the Office, along with any identification number given to the application by the applicant or the representative.

(2) *[Prohibition of Other Requirements]* No Contracting Party may demand that requirements other than those referred to in paragraph (1) be complied with in order for an application to be identified where its application number has not yet been issued or is not known to the applicant or its representative.

Rule 9 Details Concerning Renewal

For the purposes of Article 13(2), the period during which any request for renewal may be presented, and any renewal fee may be paid, shall commence at least six months before the date on which the renewal is due and shall end, at the earliest, six months after that date. If the request for renewal is presented, or the fee is paid, after the date on which the renewal is due, the acceptance of the request for renewal and the payment of the fee may be subject to the payment of a surcharge.

Rule 10 Details Concerning Relief in Respect of Time Limits

(1) *[Requirements Under Article 14(1)]* (a) A Contracting Party may require that a request referred to in Article 14(1):

- (i) be signed by the applicant or holder;
- (ii) contain an indication to the effect that an extension of a time limit is requested, and an identification of the time limit in question.

(b) Where a request for an extension of a time limit is filed after the expiration of the time limit, the Contracting Party may require that all of the requirements for the action in respect of which the time limit applied, be complied with at the same time as the request is filed.

(2) *[Period and Time Limit Under Article 14(1)]* (a) The period of extension of a time limit referred to in Article 14(1) shall be not less than one month from the date of the expiration of the un-extended time limit.

(b) The time limit referred to in Article 14(1)(ii) shall expire not earlier than two months from the date of the expiration of the un-extended time limit.

(3) *[Requirements Under Article 14(2)(i)]* A Contracting Party may require that a request referred to in Article 14(2)(i):

- (i) be signed by the applicant or holder;
- (ii) contain an indication to the effect that relief in respect of non-compliance with a time limit is requested, and an identification of the time limit in question.

(4) *[Time Limit for Filing a Request Under Article 14(2)(ii)]* The time limit referred to in Article 14(2)(ii) shall expire not earlier than two months after a notification by the Office that the applicant or holder did not comply with the time limit fixed by the Office.

(5) *[Exceptions Under Article 14(3)]* No Contracting Party shall be required under Article 14(1) or (2) to grant:

- (i) a second, or any subsequent, relief in respect of a time limit for which relief has already been granted under Article 14(1) or (2);
- (ii) relief for filing a request for a relief measure under Article 14(1) or (2) or a request for reinstatement under Article 15(1);
- (iii) relief in respect of a time limit for the payment of a renewal fee;

- (iv) relief in respect of a time limit for an action before a board of appeal, or other review body, constituted in the framework of the Office;
- (v) relief in respect of a time limit for an action in *inter partes* proceedings;
- (vi) relief in respect of a time limit referred to in Article 16(1) or (2).

Rule 11

Details Concerning Reinstatement of Rights After a Finding by the Office of Due Care or Unintentionality Under Article 15

- (1) *[Requirements Under Article 15(1)(i)]* A Contracting Party may require that a request referred to in Article 15(1)(i) be signed by the applicant or holder.
- (2) *[Time Limit Under Article 15(1)(ii)]* The time limit for making a request, and for complying with the requirements, under Article 15(1)(ii), shall be the earlier to expire of the following:
- (i) not less than two months from the date of the removal of the cause of failure to comply with the time limit for the action in question;
 - (ii) not less than 12 months from the date of expiration of the time limit for the action in question, or, where a request relates to non-payment of a renewal fee, not less than 12 months from the date of expiration of the period of grace provided under Article 5*bis* of the Paris Convention.
- (3) *[Exceptions Under Article 15(2)]* The exceptions referred to in Article 15(2) are failure to comply with a time limit:
- (i) for making a request for relief under Article 14(1) or (2) or a request for reinstatement under Article 15(1);
 - (ii) for an action before a board of appeal, or other review body, constituted in the framework of the Office;
 - (iii) for an action in *inter partes* proceedings;
 - (iv) for filing a declaration which, under the law of the Contracting Party, may establish a new filing date for a pending application;
 - (v) referred to in Article 16(1) or (2).

Rule 12

Details Concerning Correction or Addition of Priority Claim and Restoration of Priority Right Under Article 16

- (1) *[Requirements Under Article 16(1)(i)]* A Contracting Party may require that a request referred to in Article 16(1)(i) be signed by the applicant.
- (2) *[Time Limit Under Article 16(1)(ii)]* The time limit referred to in Article 16(1)(ii) shall not be less than six months from the priority date or, where the correction or addition would cause a change in the priority date, six months from the priority date as so changed, whichever six-month period expires first. Notwithstanding the foregoing, such request may be submitted until the expiration of two months from the filing date.

(3) *[Exception]* No Contracting Party shall be obliged to provide for the correction or addition of a priority claim under Article 16(1), where the request referred to in Article 16(1)(i) is received after the substantive examination of the application has been completed.

(4) *[Time Limits Under Article 16(2)]* The time limits referred to in Article 16(2), introductory part, and Article 16(2)(ii) shall expire not less than one month from the date on which the priority period expired.

(5) *[Requirements Under Article 16(2)(i)]* A Contracting Party may require that a request referred to in Article 16(2)(i):

- (i) be signed by the applicant; and
- (ii) be accompanied, where the application did not claim the priority of the earlier application, by the priority claim.

Rule 13

Details Concerning the Requirements Concerning the Request for Recording of a License or a Security Interest or for Amendment or Cancellation of the Recording of a License or a Security Interest

(1) *[Content of Request]* (a) A Contracting Party may require that the request for the recording of a license under Article 17(1) or (6) contain some, or all, of the following indications or elements:

- (i) the name and address of the holder;
- (ii) where the holder has a representative, the name and address of that representative;
- (iii) where the holder has an address for service or an address for correspondence, such address;
- (iv) the name and address of the licensee;
- (v) where the licensee has a representative, the name and address of that representative;
- (vi) where the licensee has an address for service or an address for correspondence, such address;
- (vii) where the licensee is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;
- (viii) the name of a State of which the licensee is a national, if he/she is the national of any State, the name of a State in which the licensee has his/her domicile, if any, and the name of a State in which the licensee has a real and effective industrial or commercial establishment, if any;
- (ix) the registration number of the industrial design which is the subject of the license;
- (x) where the license is not granted in respect of all the industrial designs contained in a registration, the industrial design number(s) for which the license is granted;

(xi) whether the license is an exclusive license, a non-exclusive license or a sole license;

(xii) where applicable, that the license concerns only a part of the territory covered by the registration, together with an explicit indication of that part of the territory;

(xiii) the duration of the license.

(b) A Contracting Party may require that the request for amendment or cancellation of the recording of a license under Article 18(1) contain some or all of the following indications or elements:

(i) the indications specified in items (i) to (ix) of subparagraph (a);

(ii) the nature and scope of the amendment to be recorded or an indication that cancellation is to be recorded.

(2) *[Supporting Documents for Recording of a License]* (a) Where the license is a freely concluded agreement, a Contracting Party may require that the request for the recording of a license be accompanied, at the option of the requesting party, by one of the following:

(i) a copy of the agreement, which copy may be required to be certified, at the option of the requesting party, by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being in conformity with the original agreement;

(ii) an extract of the agreement consisting of those portions of that agreement which indicate the parties, as well as the rights licensed and their extent, which extract may be required to be certified, at the option of the requesting party, by a notary public or any other competent authority or, where permitted under the applicable law, by a representative having the right to practice before the Office, as being a true extract of the agreement.

(b) A Contracting Party may require that any co-holder who is not a party to the license agreement give its express consent to the license in a document signed by such co-holder.

(c) Where the license is not a freely concluded agreement, for example, it results from operation of law or a court decision, a Contracting Party may require that the request be accompanied by a copy of a document evidencing the license. A Contracting Party may also require that the copy be certified as being in conformity with the original document, at the option of the requesting party, by the authority which issued the document or by a notary public or any other competent public authority or, where permitted under the applicable law, by a representative having the right to practice before the Office.

(3) *[Supporting Documents for Amendment of Recording of a License]* (a) A Contracting Party may require that the request for amendment of the recording of a license be accompanied, at the option of the requesting party, by one of the following:

(i) documents substantiating the requested amendment of the recording of the license; or

(ii) an uncertified statement of amendment of license, signed by both the holder and the licensee.

(b) A Contracting Party may require that any co-holder who is not a party to the license contract give express consent to the amendment of the license in a document signed by such co-holder.

(4) *[Supporting Documents for Cancellation of Recording of a License]* A Contracting Party may require that the request for cancellation of the recording of a license be accompanied, at the option of the requesting party, by one of the following:

- (i) documents substantiating the requested cancellation of the recording of the license; or
- (ii) an uncertified statement of cancellation of license, signed by both the holder and the licensee.

(5) *[Security Interests]* Paragraphs (1) to (4) shall apply, *mutatis mutandis*, to requests for the recording, amendment of the recording and cancellation of the recording, of a security interest.

Rule 14

Details Concerning the Request for Recording of a Change in Ownership

(1) *[Content of Request]* A Contracting Party may require that the request for the recording of a change in ownership under Article 21 contain some, or all, of the following indications:

- (i) an indication to the effect that a recording of a change in ownership is requested;
- (ii) the number of the registration concerned by the change;
- (iii) the name and address of the holder;
- (iv) the name and address of the new owner;
- (v) the date of the change in ownership;
- (vi) where the new owner is a legal entity, the legal nature of that legal entity and the State, and, where applicable, the territorial unit within that State, under the law of which the said legal entity has been organized;
- (vii) the name of a State of which the new owner is a national if he/she is the national of any State, the name of a State in which the new owner has his/her domicile, if any, and the name of a State in which the new owner has a real and effective industrial or commercial establishment, if any;
- (viii) where the holder has a representative, the name and address of that representative;
- (ix) where the new owner has a representative, the name and address of that representative;
- (x) where the new owner is required to have an address for service or an address for correspondence, such address;
- (xi) the basis for the change requested.

(2) *[Requirements Concerning Supporting Documents for Recording of a Change in Ownership Resulting From a Contract]* A Contracting Party may require that the request for the recording of a change in ownership resulting from a contract be accompanied, at the option of the requesting party, by one of the following:

- (i) a copy of the contract, which may be required to be certified by a notary public or any other competent public authority, as being in conformity with the original contract;
- (ii) an extract of the contract showing the change in ownership, which may be required to be certified by a notary public or any other competent public authority, as being a true extract of the contract;
- (iii) an uncertified certificate of transfer signed by both the holder and the new owner;
- (iv) an uncertified transfer document signed by both the holder and the new owner.

Rule 15

Details Concerning the Request for Recording of a Change in Name or Address

A Contracting Party may require that the request for the recording of a change in name and/or address under Article 22 contain some, or all, of the following indications:

- (i) the name and address of the holder;
- (ii) where the holder has a representative, the name and address of that representative;
- (iii) where the holder has an address for service, such address.

Rule 16

Details Concerning the Request for Correction of a Mistake

A Contracting Party may require that the request for correction of a mistake under Article 23 contain some, or all, of the following indications:

- (i) an indication to the effect that a correction of mistake is requested;
- (ii) the number of the application or registration concerned;
- (iii) the mistake to be corrected;
- (iv) the correction to be made;
- (v) the name and address of the requesting party.

Rule 17
Model International Forms

The International Bureau shall publish the Model International Forms established by the Assembly under Article 26(2)(ii).

Rule 18
Requirement of Unanimity Under Article 25(3)(a)

Amendment of the following Rules shall require unanimity:

- (i) Rule 2(viii) and (ix);
- (ii) Rule 6;
- (iii) Rule 12(3);
- (iv) the present Rule.

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