

Provided that anything in an industrial design which serves solely to obtain a technical result shall not be protected under this Part.

Definition of novelty.

31. (1) For the purpose of this Part a new industrial design means an industrial design which had not been made available to the public anywhere in the world and at any time whatsoever through description, use or in any other manner before the date of an application for registration of such industrial design or before the priority date validly claimed in respect thereof.

(2) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it had been a display at an official or officially recognized, international exhibition.

(3) An industrial design shall not be considered a new industrial design solely by reason of the fact that it differs from an earlier industrial design in minor respects or that it concerns a type of product different from a product embodying an earlier industrial design.

CHAPTER IV

RIGHT TO PROTECTION OF INDUSTRIAL DESIGN

Ownership and right to protection of industrial design.

32. (1) The right to obtain protection of an industrial design belongs to its owner.

(2) Subject to provisions of section 34, the owner of an industrial design or his successor in title is its creator .

(3) Where two or more persons have jointly created an industrial design, the right to obtain protection shall belong to them jointly :

Provided that a person who has merely assisted in the creation of an industrial design but has made no contribution of a creative nature shall not be deemed to be the creator or a co-creator of such industrial design.

(4) Subject to the provisions of sections 33 and 34 the person who makes the first application for the registration of an industrial design or the person who first validly claims the earliest priority for his application shall be deemed to be the creator of such industrial design.

33. (1) Where the essential elements of an industrial design, are the subject of an application for registration or have been derived from an industrial design, for which the right to protection belongs to another person, such other person may apply in writing to the Director-General to assign the said application or registration to him.

Industrial design.

(2) The application for assignment shall be forwarded with the prescribed fee and evidence to substantiate the claim of the applicant. Where the registration has already been effected, the application under subsection (1) shall be made within one year from the date of the publication of the registration under section 44.

(3) The Director-General shall forthwith send a copy of such application for assignment to the applicant for registration or the registered owner of the industrial design, who shall within a period of three months from the date of such notice forward to the Director-General a counter statement in the prescribed manner together with the prescribed fee and evidence to substantiate his claim.

(4) If the applicant or the registered owner forwards a counter statement as referred to in subsection (3), the Director-General shall after hearing the parties, if he considers it necessary decide as expeditiously as possible whether the application or registration should be assigned and, where applicable whether the register should be rectified. If the applicant or the registered owner fails to forward a counter statement as provided for in subsection (3) within the period of three months, the Director-General shall allow the application referred to in subsection (1).

(5) Where, after an application for the registration of an industrial design has been filed, the person to whom the right to protection belongs gives his consent to the filling of the said application, such consent shall, for all purposes, be deemed to have been effective from the date of filling of such application.

Industrial design created by the employee to accrue to employer.

34. (1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the ownership of an industrial design created in the performance of such contract or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be :

Provided that where the industrial design acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the creator shall be entitled to equitable remuneration which may be fixed by the Court on an application made by the creator to Court in the absence of an agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any creative activity creates, in the field of activities of his employer, an industrial design using data or means placed at his disposal by his employer, the ownership of such industrial design shall be deemed to accrue to the employer in the absence of any provision to the contrary in the contract of employment :

Provided that the employee shall be entitled to equitable remuneration, which in the absence of agreement between the parties, may be fixed by the Court on an application made by the employee, taking into account his emoluments, the economic value of the industrial design and any benefit derived from it by the employer.

(3) The rights conferred on the creator of an industrial design by subsections (1) and (2) shall not be restricted by contract.

35. (1) The creator of an industrial design shall be named as such in the registration, unless by a declaration in writing signed by him or any person authorized by him in writing in that behalf and submitted to the Director-General indicates his willingness to forgo his name being used in such registration.

Naming of creator of an industrial design.

(2) The provisions of subsection (1) not be altered, varied or modified by the terms of any contract.

CHAPTER V

REQUIREMENTS OF APPLICATION AND PROCEDURE FOR REGISTRATION OF AN INDUSTRIAL DESIGN

36. (1) An application for registration of an industrial design shall be made to the Director-General in the prescribed form and shall be accompanied by the prescribed fee and shall contain—

Requirements of application.

- (a) a request for registration of the industrial design ;
- (b) the name, address and description of the applicant and, if he is a resident outside Sri Lanka, a postal address for service in Sri Lanka ;
- (c) a specimen of the article embodying the industrial design or copies of a photographic or graphic representation of the industrial design, in colour where it is in colour, or drawings and tracings of the design ;
- (d) an indication of the kind of products for which the industrial design is to be used and, where the regulations make provision for classification, an indication of the class or classes in which such products are included ;
- (e) a declaration by the applicant that the industrial design is new to the best of his knowledge.