

**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.

(2) The application for registration may be accompanied by a declaration signed by the creator of the industrial design, giving his name and address and requesting the same to be indicated in the registration.

(3) Where the applicant is not the creator of the industrial design the application shall be accompanied by a statement justifying the applicant's right to obtain registration.

(4) The Director-General shall in every case where the applicant is not the creator of the Industrial design, shall serve the creator with a copy of the statement referred to in subsection (3). The creator of the industrial design shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.

(5) Where the application is filed through an agent, it shall be accompanied by power of attorney granted to such agent by the applicant.

Right of priority.

**37.** The applicant for registration of an industrial design who desires to availhim self of the priority of an earlier application filed in a convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the Appropriate Authority of the country where such earlier application was filed.

Application fee.

**38.** An application for registration of an industrial design shall not be entertained unless the prescribed fee has been paid to the Director-General.

Examination of application.

**39.** (1) The Director-General shall examine whether the applicant has complied with the provisions of sections 36, section 37 (where applicable) and section 38.

(2) Where the applicant fails to comply with the provision of sections 36 and 37 the Director-General shall refuse registration of the industrial design :

Provided that the Director-General shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the applicant fails to comply with the provisions of section 37 the Director-General shall not, in connection with the registration of the industrial design, make any reference to the priority claimed

(4) Where the applicant complies with the provisions of section 37 the Director-General shall, in connection with the registration of the industrial design, record the priority claimed.

(5) Where the Director-General refuses to register an industrial design he shall, state the grounds for such refusal and inform the applicant, on payment of a prescribed fee of the grounds for his decision.

**40.** (1) Where the applicant complies with the provisions of sections 36 and 38 the Director-General shall examine the industrial design in relation to the provisions of section 29.

Registration.

(2) Where the industrial design is not registrable under section 29 the Director-General shall notify the applicant accordingly, stating the grounds for refusal of registration.

(3) Where the Director-General refuses the application of a person for registration of an industrial design, the applicant may within a period of one month from the date of such notification in terms of section (2), make his submissions in writing on the matter of such refusal to the Director-General.

(4) On receipt of any such submission as required by subsection (3) the Director-General may grant such applicant a hearing and inform him of the date and time of such hearing. The Director-General may after such hearing register or refuse to register such industrial design.

(5) (a) Notwithstanding the provisions of subsections (1) (2), (3) and (4) where the Director-General finds that the essential elements of an industrial design is derived from an industrial design already registered in respect of which an application for registration is made, he shall notify the applicant accordingly and request him, with a copy to the registered owner of the cited industrial design, to show that the industrial design is not so derived.

(b) The applicant may, within a period of three months from the date of such notice, tender his written submissions to the Director-General with the prescribed fee. The registered owner of the cited industrial design may also tender his observations in writing within the same period of time.

(c) On receipt of such written submissions and observations, if any, the Director-General shall after hearing the parties if he considers it necessary forthwith determine whether such industrial design should be registered or not.

(d) Where the applicant fails to tender his written submissions as required by paragraph (b) of subsection (5) the Director-General shall refuse the application for the registration of the industrial design for reasons to be stated and he shall in writing, if the applicant so requests, inform the applicant in writing of the grounds for his decision on payment by the applicant of the prescribed fee.

(6) Where the Director-General is of the opinion that the industrial design is registrable he may request the applicant to pay within a period of one month the prescribed fee for publication of the application.

(7) Where the fee for publication of the application is not paid within the prescribed period registration of the industrial design shall be refused.

(8) (a) If the fee for publication is paid within the prescribed period the Director-General shall proceed to publish the application setting out the date of application, number of the application, the name and address of the applicant and if the applicant is resident outside Sri Lanka, a postal address for service in Sri Lanka, the priority claimed, a description of the industrial design and the kind and class of the industrial design.

(b) Notwithstanding the provisions of subsections (6), (7) and paragraph (a) of subsection (8), the Director-General may in his discretion by a written notice, require the applicant to publish the application in accordance with the provisions of paragraph (a) of subsection (8) and in the form as indicated by the Director-General. Where the applicant fails or neglects to publish the application as required by the Director-General within a period of two months from the said notice of the Director-General, the application may be refused.

(9) Where any person considers that the industrial design is not registrable on one or more grounds referred to in section 29 he may within a period of two months from the date of publication give to the Director-General in a prescribed form and together with the prescribed fee, notice of opposition to such registration stating his grounds of opposition accompanied by evidence to substantiate such grounds.

(10) Where notice of opposition has not been received by the Director-General within the period specified in subsection (9) the Director-General shall register the industrial design.

(11) Where, within the period specified in subsection (9) notice of opposition in the prescribed form is received by the Director-General, together with the prescribed fee, he shall serve a copy of such grounds of opposition on the applicant and shall request him to present his observations on those grounds in writing accompanied by evidence to support his application within a period of one month.

(12) On receipt of the observations of the applicant the Director-General shall after hearing the parties, where taking all the circumstances into consideration he considers such hearing necessary, decide, as expeditiously as possible, whether or not the industrial design may be registered. If he decides that the industrial design is registrable he shall accordingly register such industrial design—

- (a) where no appeal is preferred against his decision, upon the expiry of the period within which an appeal may be preferred against his decision ;
- (b) where an appeal is preferred against his decision, upon the dismissal of such appeal, as the case may be.

(13) The Director-General may allow a reasonable extension of the prescribed period within which any act has to be done or any fee has to be paid under this section.

Issue of certificate of registration.

**41.** Upon the registration of an industrial design, the Director-General shall issue to the registered owner thereof a Certificate of Registration and shall, at the request of the registered owner, send such certificate to him by registered post to his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, to his last recorded postal address.

Register of Industrial Designs.

**42.** (1) The Director-General shall keep and maintain a register called the “Register of Industrial Designs” wherein shall be recorded, in the order of their registration, all registered industrial designs and such other particulars relating to the industrial designs as are authorised or directed by this Part to be so recorded or may from time to time be prescribed

(2) The registration of an industrial design shall include a representation of the industrial design and shall specify its number, the name and address of the registered owner and, if the registered owner is resident outside Sri Lanka, a postal address for service in Sri Lanka ; the date of application and

registration ; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed ; the kinds and classes of products referred to in paragraph (d) subsection (1) of section 36 and the name and address of the creator of the industrial design, if he has requested his name to be indicated as such in the registration.

**43.** Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Examination of register and certified copies.

**44.** The Director-General shall cause to be published in the Gazette, in the prescribed form, all registered industrial designs in the order of their registration, including in respect of each industrial design so published reference to such particulars as may be prescribed.

Publication of registered industrial designs.

## CHAPTE R VI

### DURATION OF REGISTRATION OF AN INDUSTRIAL DESIGN

**45.** Subject to, and without prejudice to the other provisions of this Part, registration of an industrial design shall expire on the completion of five years from the date of receipt of the application for registration.

Duration of registration.

**46.** (1) Registration of an industrial design may be renewed for two consecutive periods of five years each, on an application made in that behalf and on payment of the prescribed fee.

Renewal.

(2) The renewal fee shall be paid within the six months preceding the date of expiration of the period of registration :

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(3) The Director-General shall record in the register and cause to be published in the Gazette in the prescribed form a list of all renewals of registration of industrial designs.