

Communication No 10/02 of the President of the Office of 28 June 2002

concerning professional representation in the framework of the Community Design Regulation

1. The Community Design Regulation (Council Regulation (EC) No 6/2002 of 12 December 2001, OJ EC No L 3 of 5.1.2002, p. 1) entered into force on 6 March 2002. The date from which applications for registered Community designs may be filed with the Office has not yet been determined. Also, the Implementing Regulation and the Fees Regulation have not yet been adopted.

2. As concerns professional representation, Article 78 (1) of the Community Design Regulation provides that the following persons may represent before the Office in proceedings concerning registered Community designs:

- legal practitioners subject to the further conditions specified in Article 78 (1) (a),
- professional representatives who are entered on the list of professional representatives maintained by the Office under Article 89 of the Community Trade Mark Regulation,
- persons who are entered on the special list of professional representatives in design matters referred to in Article 78 (4) of the Community Design Regulation.

3. It follows from these provisions that those professional representatives who are entered on the list of professional representatives maintained by the Office under Article 89 of the Community Trade Mark Regulation are entitled to represent in all proceedings before the Office, including, in the future, in proceedings relating to registered Community designs. On the other hand, the special list of professional representatives in design matters is exclusively reserved to those persons who do not fulfill the conditions for being entered on the list of professional representatives referred to in Article 89 of the Community Trade Mark Regulation. This may be the case where the relevant national law provides for different categories of professional representatives whose right to represent is limited to particular industrial property rights, or where a representative has habitually acted before a national office in design matters, but not in trade mark matters. The persons entered on the special list will only be entitled to represent third persons in proceedings before the Office concerning Community designs (Article 78 (2) of the Community Design Regulation).

4. The Office will refuse applications for entry on the special list of professional representatives in design matters referred to in Article 78 (4) of the Community Design Regulation

- where the representative is already on the list of professional representatives maintained by the Office under Article 89 of the Community Trade Mark Regulation, or
- where it is evident to the Office that he is entitled to be entered on that list. This will be the case if an individual or block certificate issued by the competent national office so certifies, or if the person relies on a professional qualification which qualifies as such for entry on the the list maintained by the Office under Article 89 of the Community Trade Mark Regulation (such as "patent attorney" in Germany and Austria or "agente de propiedad industrial" in Spain). Such persons may not apply for entry on the special list of professional representatives in design matters referred to in Article 78 (4) of the Community Design Regulation at all.

5. A person who has been entered on the special list of professional representatives in design matters referred to in Article 78 (4) of the Community Design Regulation will be deleted from that list, if he is subsequently entered on the list of professional representatives referred to in Article 89 of the Community

Trade Mark Regulation.

6. Legal practitioners will not be entered on the list of professional representatives maintained by the Office under Article 89 of the Community Trade Mark Regulation (cf. Communication No 1/95 of the President of the Office of 18 September 1995, OJ 1995, 18), nor will they be entered on the special list of professional representatives in design matters referred to in Article 78 (4) of the Community Design Regulation. The Office will refuse such applications.

7. Those professional representatives (other than legal practitioners) who do not qualify for entry on the the list of professional representatives maintained by the Office under Article 89 of the Community Trade Mark Regulation, but who wish to be entered on the special list referred to in Article 78 (4) of the Community Design Regulation, are requested to abstain from making their application at the present stage. Later this year, the Office will provide further information, in particular about the conditions and the procedure for obtaining the required certificate from the relevant national industrial property office.

Wubbo de Boer
President