

## DEPARTMENT OF TRADE AND INDUSTRY

Government Notice R843 in Government Gazette 20256 of 2 July 1999

### DESIGNS ACT NO. 195 OF 1993

# Design Regulations, 1999

The Minister of Trade and Industry has, by virtue of the powers vested in him in terms of section 54 of the Designs Act, 1993 (Act no. 195 of 1993), made the following regulations and, with the concurrence of the Minister of State Expenditure, prescribed the matters in respect of which fees shall be payable and the tariff of such fees as set forth in Schedule 1 hereto.

#### Definitions

1. In these regulations any expression to which a meaning has been assigned in the Designs Act, 1993, shall, unless the context otherwise indicates, bear the meaning so assigned, and -

'office' means the designs office established under section 4 of the Act;

'specimen' means an article with a design applied to it; and

'the Act' means the Designs Act, 1993 (Act no. 195 of 1993).

#### Office hours

- 2.(1) The office shall be open to the public from Mondays to Fridays from 08:30 to 15:30, except on the following days:
  - (a) All days proclaimed public holidays in terms of any law; and
  - (b) days which may from time to time be notified by the registrar in the journal or by the displaying of a notice in a conspicuous place at the office.
- (2) Whenever the last day fixed by the Act or by these regulations for doing anything falls on a day when the office is not open to the public, it shall be lawful to do any such thing on the next day on which the office is open to the public.

#### Fees

- 3.(1) The fees to be paid in terms of the Act shall be the fees specified in Schedule 1 hereto, and shall be payable as follows:
  - (a) By affixing or applying revenue stamps to any relevant document, which stamps may be cancelled by a receiver of revenue or the registrar; or
  - (b) in such other manner as the registrar may direct.
- (2) For the purposes of this regulation, the word 'stamp' shall bear the meaning assigned to it by section 1 of the Stamp Duties Act, 1968 (Act no. 77 of 1968).

#### Forms

4. The forms referred to in these regulations are the forms contained in Schedule 2 hereto, and such forms shall be used substantially in the manner prescribed for those cases to which they are applicable, but they may be modified or amended with the approval of the registrar and to the extent necessary to meet the requirements of other cases.

#### Appointment of agent

- 5.(1) An application for registration and all other communications with the registrar, may be made by or through an agent duly authorised to the satisfaction of the registrar.

- (2) If a person (hereinafter referred to as 'the principal') appoints an agent, service upon such agent of any document relating to the design shall be deemed to be service upon the principal, and all communications to be directed to the principal in respect of the design may be addressed to such agent.
- (3) Any agent appointed to act on behalf of a principal shall file a power of attorney authorising such agent to act on behalf of the principal.
- (4) On termination of the authority of an agent referred to in subregulation (3), the principal concerned may act on his own behalf or may appoint any other agent to act for him.
- (5) Where the authority of an agent is terminated as envisaged in subregulation (4) the principal concerned shall, within one month of the date of such termination or such further period as the registrar may allow, furnish the registrar with a new address for service and request the registrar to change the previous address for service in terms of section 51 of the Act by lodging Form D4.
- (6) The registration of an assignment shall not revoke a power of attorney previously given, unless the assignee appoints another agent who files a power of attorney in terms of subregulation (3).
- (7) An agent who withdraws from proceedings under the Act may do so on notice to the registrar. Upon withdrawal of an agent the provisions of subregulation (4) shall apply.

#### **Address and address for service**

- 6.(1) On all documents lodged in terms of the Act and these regulations there shall, where required, be stated the address for service of the person by or on behalf of whom the document has been lodged.
  - (2) An address for service shall in all cases be in the Republic.
  - (3) Any change of address or address for service shall be made by lodging Form D4. If a person who changes his address or address for service is a party to any proceedings under the Act or these regulations, he shall give notice of such change of address or address for service to every other person who is a party to the proceedings.
  - (4) Where the address of an agent has been used as the address for service on any document and such address changes, the agent shall lodge a request to the registrar on Form D4 for the change of address to be published in the journal. Such publication shall be deemed to effect a change of the address on all such documents.
7. Where any person is required by the Act or by these regulations to furnish the registrar with an address or an address for service, the following provisions shall apply:
  - (a) The address given shall be an address to which mail is delivered, and if such an address is a street address it shall be as complete as possible in order to make it possible to locate the address.
  - (b) If the address given is not a street address, a street address shall also be provided which shall be as complete as possible in order to make it possible to locate the address.
  - (c) An address or an address for service may, in addition, include a facsimile transmission number.

#### **The register and indexes**

- 8.(1) On receipt of an application for a design registration, the registrar shall allocate to the application an official application number which shall include the symbol 'A' or 'F', as the case may be, as part thereof in terms of subregulation (7).
- (2) The registrar shall cause to be entered in the register the particulars called for in Form D2, which particulars shall include the official application number, the name, address and address for service of the applicant and the date of application, the part of the register in which the application is filed, the class in which the application is filed, the articles to which the design is to be applied, and particulars of a convention application (if any).

- (3) When the design is registered there shall be entered in the register the date of registration, the date of publication of the application in the journal, subsequent notifications of assignments, licences, hypothecs, amendments, and such other matters as may be determined by the registrar.
- (4) The registrar shall maintain a record containing a representation or representations or a specimen or specimens of the design which has been registered, in such form as the registrar may deem necessary.
- (5) The registrar shall maintain an alphabetical index of the names of all applicants for and all proprietors of design registrations on the register, and an alphabetical index of the names of all assignees of design applications and design registrations, and the registrar may also maintain an alphabetical index of the names of all registered licensees, all hypothec holders and all persons who caused an attachment to be entered.
- (6) The registrar shall maintain an index of all registered designs according to their classification, based on the publication particulars as published in the journal in accordance with regulation 31.
- (7) The registrar shall cause the entries in respect of registrations in Part A of the register and those in respect of registrations in Part F of the register to be clearly identified as such.

### **Classification**

- 9.(1) For the purposes of the registration of aesthetic and functional designs in accordance with the Act and these regulations, articles to which designs may be applied shall be classified in accordance with the classification in Schedule 3 hereto, and such classification shall determine the class or classes in which an application for the registration of a design to be applied to particular articles is to be filed.
  - (2) In the case of doubt as to the class or classes to which any particular article or description of articles belong and in which an application for the registration of a design to be applied to such article or articles is to be filed, the registrar shall determine such class or classes. A request for such determination as to class shall be lodged on Form D9.
  - (3) For the purposes of classifying articles in accordance with Schedule 3 hereto and of interpreting this Schedule, reference shall be had to the International Classification of Industrial Designs, originally adopted by the Locarno Union in 1971, as subsequently amended and put into force on 1 January 1989 including the explanatory notes and the lists of articles and goods contained therein.
  - (4) In the event of the International Classification of Industrial Designs being further amended at any future time, the registrar shall decide if such amendment is to be applicable for the purposes of subregulation (3) above, and shall in that case, to the extent that such amendment may necessitate an amendment of Schedule 3 hereto, so amend Schedule 3.

### **Documents**

- 10.(1) Subject to any directions that may be given by the registrar all documents, other than representations and priority documents, required by the Act or by these regulations to be filed with the registrar shall be in one of the official languages of the Republic.
  - (2) All such documents shall be so presented as to permit reproduction by photography or reprography of an unlimited number of copies. Only one side of a sheet shall be used, except where otherwise specified.
  - (3) Save as specifically provided otherwise, all documents shall be on A4 paper, which shall be strong, pliable and durable. Each sheet shall be used with its short sides at the top and bottom (except where inappropriate in the case of representations).
  - (4) Except for representations and priority documents lodged in terms of regulation 17(2), the minimum margins (which shall be kept completely blank) shall be as follows:

Top:	20 mm
Left side:	25 mm
Right side:	15 mm
Bottom:	10 mm

- (5) In all typed or printed documents the letters shall be of readily legible size. All documents except representations shall be in typescript or lithographed or printed in dark, durable colour.
- (6) In all documents units of measure shall be expressed in terms of the SI System. If a different system is used, units of measure shall be expressed also in terms of the SI System. In general, use shall be made of technical terms, signs and symbols generally accepted in the field in question, where such terms, signs or symbols are used.
- (7) All documents, including representations, shall be reasonably free from erasures and from alterations, overwritings and interlineations and shall in all cases be legible.

#### **Completion and signature of documents**

- 11.(1) If application for the registration of a design, or for the recording of an assignment or a licence or any other right in respect of a design registration is made by a firm or partnership, it shall not be necessary for the names of all the members or partners to be given on the relevant document.
- (2) A document lodged by a firm or partnership may be signed in the name of the firm or partnership and for and on behalf of the firm or partnership by any one or more of the members or partners thereof. A document lodged by a body corporate shall be signed by an authorised officer of such body corporate or by another authorised person.

## Application for registration

- 12.(1)** An application for the registration of a design shall be made on Form D1 and shall be accompanied by the following documents:
- (a) Form D1, in duplicate, one copy of which shall be returned to the applicant as proof of lodgement;
  - (b) Form D2 in duplicate;
  - (c) Form D3, which shall include a declaration by the applicant that he is the proprietor of the design, and a power of attorney in the case where an agent is appointed;
  - (d) a representation or representations, in the prescribed form;
  - (e) a definitive statement on Form D6, in duplicate, as prescribed; and
  - (f) publication particulars on Form D8, with an attached publication representation, all in duplicate, for purposes of publication.
- (2)** An application for registration of a design shall be signed by the applicant(s) or his (their) agent.
- (3)** Where the applicant has acquired the design and the right to apply from a predecessor in title as envisaged in section 1(1)(xix)(d) of the Act, the registrar may call for an assignment or other proof, to the satisfaction of the registrar, of the right of the applicant to apply.
- (4)** Having regard to the requirement of sections 14(1) and 16 of the Act that an application is to be filed in the prescribed manner, read with subregulation (1) and regulation 23, an application shall be accorded a lodging date by the registrar provided it is accompanied by -
- (a) the prescribed fee;
  - (b) Form D1 signed either by the applicant or his or her agent;
  - (c) Form D2 in duplicate;
  - (d) Form D6 containing the definitive statement;
  - (e) one copy of the representations, notwithstanding that they are not in the prescribed form; and
  - (f) information on the Form D1 whether the application is to be filed in Part A or Part F of the register.
- (5)** The provisions of paragraphs (d) and (e) of subregulation 4 shall be deemed to have been complied with, in the case of an application in terms of section 44 of the Act, by the inclusion in the Form D1 of the country, number and date of the application in a convention country, on the strength of which a priority right is claimed, and the articles to which the design is to be applied, if the Form D6 containing the definitive statement and the representations are lodged within 14 days of the date on which the application was lodged.
- (6)** The provisions of subregulation (4)(f) shall be deemed to be complied with if the information whether the application is to be filed in Part A or Part F of the register is supplied within 14 days of the date on which the application was lodged.
- 13.** An application shall state whether it is to be filed in Part A or Part F of the register, and the class in which the design is to be registered. Where it is desired to register the same design in both Part A and Part F of the register and/or in more than one class, a separate application shall be made in each case, and each such separate application shall be numbered separately and shall be treated as a separate and distinct application.
- 14.** An application shall state the article or articles to which the design is to be applied, and where the registrar so requires, the applicant shall state also for what purpose the article(s) to which the design is to be applied will be used.
- 15.(1)** An application shall contain, on Form D6, a definitive statement setting out the features of the design for which protection is claimed. The definitive statement shall be used to

interpret the scope of the protection afforded by the design registration. In the definitive statement reference may be made to reference symbols appearing in or on the representations.

- (2) In the case of an application for the registration of an aesthetic design and of a functional design which is not an integrated circuit topography, a mask work or a series of mask works, the definitive statement may be accompanied, on Form D6, by an explanatory statement relating to the design, which explanatory statement may refer to features of the article(s) to which the design is to be applied including the function and/or the method or principle of construction of the article(s).
  - (3) In the case of an application for the registration of a functional design for an integrated circuit topography, a mask work or a series of mask works, the definitive statement shall be accompanied, on Form D6, by an explanatory statement as envisaged in subregulation (2) above, which explanatory statement shall refer to the function and operation of the integrated circuit topography, mask work or series of mask works.
  - (4) The explanatory statement may be used to assist in interpreting the scope of the protection afforded by the design registration.
- 16.(1)** An application shall include publication particulars, on Form D8, which shall include a brief statement of the features of the design, to the satisfaction of the registrar, but which shall not be used to interpret the scope of the definitive statement. The brief statement of features shall be in narrative form and generally limited to a single paragraph of not more than 150 words. The statement shall refer to the article or articles to which the design is to be applied. The publication particulars shall be published in the journal.
- (2) Save as provided for in subregulation (3), the publication particulars shall be accompanied by a single representation of the design in a form suitable for publication in the journal. Features mentioned in the brief statement of features and illustrated and identified by reference symbols in the accompanying representation may be identified by the relevant reference symbols in the statement of features.
  - (3) In the case of an application for the registration of a design for an integrated circuit topography, a mask work or a series of mask works, the publication particulars need not be accompanied by a representation of the design for publication in the journal where the representations as lodged in terms of regulations 12 and 18, by reason of size or for other reasons, are not suitable to form the basis of a representation for publication in the journal.

#### **Applications in terms of section 44 of the Act**

- 17.(1)** Where an application for registration of a design is made pursuant to an application in a convention country in terms of section 44 of the Act (hereinafter referred to as a 'convention application'), the Form D1 lodged in support of the convention application shall state the name of the convention country, the official date of the application in the convention country and the official filing number allocated to such application.
- (2) In addition to the documents required under regulation 12(1), the applicant in a convention application shall furnish the registrar with a certificate by the registering authority of the convention country verifying, to the satisfaction of the registrar, the application made in the convention country. If the certificate is in a language other than an official language of the Republic, it shall be accompanied by a translation into one of the official languages, which translation shall be verified to the satisfaction of the registrar.
  - (3) The certificate referred to in subregulation (2) shall be lodged within six months of the lodging of the convention application or within such further period as the registrar may on request allow.
  - (4) A convention application, if not made by the applicant in the convention country, shall contain also an assignment or other proof, to the satisfaction of the registrar, of the applicant's right to file the convention application.

- (5) If after an application for registration of a design has been lodged, the applicant desires to insert a claim to a priority right or to a further priority right by inserting on the Form D1 the appropriate information as provided for in subregulation (1), a request on Form D4 shall be lodged with payment of the prescribed fee within two months from the date on which the application for registration was lodged.
- (6) Where a certificate referred to in subregulation (2) has been lodged by an applicant in support of a convention application, and a certificate of the same application in a convention country is required to be lodged by the same applicant in support of another convention application, the registrar shall accept in lieu of such a certificate for the other convention application a request on Form D4 that the first-mentioned certificate lodged in support of the first-mentioned convention application is to be recognised also for the other convention application.

## **Representations**

18. There shall be furnished in connection with an application for the registration of a design to be applied to an article, four identical representations or sets of representations (when more than one figure is used), which may be in the form of drawings or photographs, or in the form of specimens or other records where the registrar so directs.
- 19.(1) Save as provided for in subregulations (5) and (6), each representation in the form of a drawing or a photograph of the design shall be executed upon or mounted on paper of A4 size. When more than one figure is shown, these shall as far as possible be on one and the same sheet, and the view of each shall be designated on the sheet (eg. front view, side view).
  - (2) The minimum margins for sheets containing drawings or photographs shall be the same as those set out in regulation 10(4), except that below the top margin there shall be a space clear of any drawing matter for the name of the applicant, the application number and the numbering of the sheets, and at the bottom righthand corner there shall be a space within the margin clear of any drawing matter for the signature of the applicant or his agent.
  - (3) Drawings shall be executed without colouring in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes to permit of satisfactory reproduction. All reference symbols appearing in or on the drawings shall be simple and clear.
  - (4) Where words, letters, or numerals are not part of the design or do not serve as reference symbols as envisaged in regulation 15, they shall be disclaimed or be removed from the representations.
  - (5) In the case of an application for the registration of a design for an integrated circuit topography, a mask work or a series of mask works, the representations may exceed A4 size, and shall be of such dimensions that the features of the integrated circuit topography, mask work or series of mask works are clearly visible to the naked eye.
  - (6) In the case of an application for the registration of a design for an integrated circuit topography, a mask work or a series of mask works, drawings not in A4 size shall be folded in A4 size.
- 20.(1) Where representations of the design in the form of drawings or photographs are furnished, they shall be signed by the applicant or his agent.
  - (2) Where representations in the form of drawings or photographs are supplied, the registrar shall be supplied also, if in any case he so requires, with a specimen or another recorded version of the design.
- 21.(1) Each representation of a design which consists of a repeating surface pattern shall show the complete pattern and a sufficient portion of the repeat in length and width to disclose adequately the design, and such representation shall be of a size not less than A5.

- (2) In a case where the repeating surface pattern is to be applied to a two-dimensional article, the representation may be in the form of a specimen.
- 22.(1) Where the name or representation of a living person appears in a design, the registrar shall, if he so requires, be furnished with a consent from such person before proceeding to register the design.
- (2) Where the name or representation of a deceased person appears in a design, the registrar shall, if he so requires, be furnished with a consent from the legal representative or next of kin of such person before proceeding with the registration of the design.

#### **Late lodging of documents**

23. A document which did not accompany an application in terms of regulation 12(1) or 17(2) shall be lodged on Form D5 within six months of the date on which the application was lodged.

#### **Requests and applications to the registrar**

24. Unless otherwise provided, any request or application to the registrar shall be made on Form D4, in duplicate, quoting the section of the Act or the regulation or both under which the request or application is made, and setting out the relief sought. The duplicate of the form shall be returned to the applicant or his agent to inform the applicant or his agent of the decision of the registrar.

#### **Procedure on receipt of application**

25. On receipt of an application for the registration of a design, the registrar shall furnish the applicant with an acknowledgement thereof, by returning to the applicant the copy of the Form D1 with the official application number and filing date entered thereon.
- 26.(1) An application for the registration of a design shall be examined by the registrar to ensure that the documents lodged are legible and capable of reproduction and comply with prescribed requirements as to form, and that the design is classified, and if in his opinion there is no objection to the registration of the design, and subject to subregulation (2), he shall register it.
- (2) If the applicant has lodged a request on Form D4 that examination of the design be delayed to a date not later than the date by which the application has to be finalised in terms of regulation 32, the registrar shall, if the requirements as set out in subregulation (1) have been complied with and in his opinion there is no objection to the registration of the design, register the design on the date to which registration has been delayed.
  - (3) Where the applicant has lodged a request for the registration of a design to be delayed as contemplated in subregulation (2), and the application is not in a form ready for registration by the date by which the application has to be finalised in terms of regulation 32, the application shall be dealt with in the manner as provided in regulation 32.
27. If after consideration of the application the registrar has any objections, a statement of those objections shall be sent to the applicant in writing and unless, within six months or such further period as the registrar may on request allow, the applicant rectifies any defect, or applies for a hearing, or makes written representations, he shall be deemed to have withdrawn his application. The decision of the registrar at such hearing or on such written representation shall be communicated, in writing, to the applicant.
28. If, in any hearing before the registrar, a party does not agree with a decision of the registrar, he may, should he consider it necessary for the purpose of appeal, within one month from the decision by the registrar, or such further period as the registrar may on

request allow, apply upon Form D17 requiring the registrar to state, in writing, the grounds for his decision and also the facts relied upon in arriving at such a decision.

29. Upon receipt of the Form D17 referred to in regulation 28 the registrar shall send to the applicant a statement, in writing, of the grounds for his decision, and the date on which such statement is sent shall be deemed to be the date of the registrar's decision for purposes of appeal, and an appeal may be lodged within three months from the date of such decision, or within such further period as the registrar may, on good cause shown, allow.

#### **Registration and notice of registration**

30. Upon registration of the application by the registrar in terms of regulation 26, the registrar shall give written notice of such registration to the applicant or his agent, which notice shall be accompanied by the duplicate copy of Form D8.

#### **Publication of registration**

- 31.(1) When notification of the registration of a design has been issued by the registrar to an applicant, the applicant shall advertise the notice of registration by publishing the publication particulars as contained in Form D8 in the journal within three months of the issuance of such notice of registration, or within such further time as the registrar may, on request on Form D4, allow.
- (2) Once publication as contemplated in subregulation (1) has taken place, the registrar shall issue a certificate of registration to the applicant.

#### **Non-finalisation**

- 32.(1) Where an application for the registration of a design has not been finalised by reason of default on the part of the applicant within 12 months from the date of lodging the application or within 6 months (or such further period as allowed by the registrar) from the date of a statement of objection as envisaged in regulation 27, whichever is the later, the registrar shall give notice to the applicant or his agent, in writing of such non-finalisation.
- (2) If after one month from the date on which such notice was sent, the application has not been finalised, the application shall be deemed to have been withdrawn, but the registrar may, on good cause shown, grant an extension of time for the finalisation of such application.

#### **Death of applicant or owner**

33. In the event of the death of any applicant in an application for the registration of a design, or of the registered proprietor of a design registration, the registrar may, on request being lodged on Form D4 and on being satisfied of the death of the applicant or proprietor and the title of the person claiming to be entitled to the design, enter in the register, in place of the name of such deceased applicant or owner, the name, address and description of the person who has become entitled to the design.

#### **Renewal**

- 34.(1) If-
- (a) in the case of a design registered under the repealed Act, it is desired at the expiration of the last year of a first or second period of five years for which the design registration endured in terms of section 14 of that Act; or
- (b) in the case of a design registered under the Act, it is desired at the expiration of the third year from the date referred to in section 22(1) of the Act; or

- (c) in either of the above cases, it is desired at the expiration of any succeeding year during the term of the design registration to keep the registration in force, the renewal fees set out in the appropriate item of Schedule 1 shall be paid by lodging Form D10, in duplicate, before the expiration of that year.
- (2) All or any of the renewal fees may be paid in advance.
  - (3) An application for extension of time for payment of any renewal fee shall be made on Form D10.
  - (4) On receipt of Form D10, and provided the terms of this regulation are complied with, the registrar shall make an entry in the register to signify that the renewal has been effected, and shall furnish the applicant with a confirmation that the renewal has been effected by returning to the applicant the copy of the Form D10 after the official stamp of the registrar has been applied thereto.

### **Restoration**

- 35.(1)** An application under section 23 of the Act for the restoration of a design registration which has lapsed through non-payment of renewal fees shall be made on Form D18 and shall be accompanied by an affidavit setting out the circumstances under which the design registration lapsed and the grounds on which restoration is requested.
- (2) If the registrar is satisfied that a prima facie case has been made out, he shall advertise the application once in the journal.
  - (3) At any time within two months of the date of the advertisement of the application any person (hereinafter referred to as 'the objector') may oppose the restoration of the design registration, in accordance with the procedure set out in regulation 36.
  - (4) If no opposition is entered, or if the registrar at the conclusion of the hearing is satisfied that restoration is appropriate, he shall issue an order that the registration be restored, and the registrar shall, subject to compliance with section 23(5) of the Act, cause an entry to be made in the register to that effect.

### **Procedure on opposition**

- 36.(1)** (a) An opposition by any person (hereinafter referred to as 'the opponent') in any matter in which opposition is allowed under the Act shall be brought by way of notice of opposition on Form D11 or in a form as nearly as possible in accordance with Form D11, and shall be supported by an affidavit as to the facts upon which the opponent relies for relief.
- (b) A copy of such notice, and all annexures to it, shall be served upon every interested party.
- (c) In such notice the opponent shall appoint an address for service in terms of regulations 6 and 7 at which he shall accept notice and service of all documents in the proceedings, and shall set forth a day, being not less than one month after service of the notice on an interested party, on or before which such interested party shall be required to notify the opponent and the registrar, in writing, whether he intends to contest such opposition. The notice shall further state that if no such notification by an interested party is given, the matter shall be set down for hearing on a stated date, being not less than ten days after expiry of the one-month period referred to above.
- (d) If an interested party does not, on or before the day mentioned for that purpose in the notice, notify the opponent and the registrar of his intention to contest the opposition, the opponent may set the matter on the roll for hearing by giving the registrar notice of set down before noon on the court day but one preceding the day upon which the matter is to be heard.
- (e) Any interested party intending to contest the granting of an order sought (hereinafter referred to as 'the respondent') shall -

- (i) within the time stated in the said notice, notify the opponent and the registrar in writing that he intends to contest the opposition;
  - (ii) appoint an address for service in terms of regulations 6 and 7 at which he shall accept notice and service of all documents;
  - (iii) within two months of notifying the opponent of his intention to contest the opposition, deliver his answering affidavit and supporting documents, if any; and
  - (iv) if he intends to raise any question of law only, deliver notice of his intention to do so, within the time stated in subparagraph (iii), setting forth such question.
- (f) Within one month of the service upon him of the answering affidavit and documents referred to in paragraph (e)(iii), the opponent may deliver a replying affidavit. The registrar may in his discretion permit the filing of further affidavits.
- (g) Where no answering affidavit or notice in terms of paragraph (e)(iv) is delivered within the period referred to in paragraph (e)(iii), the opponent may within ten court days of the expiry of the said period apply to the registrar to allocate a date for the hearing of the matter.
- (h) Where an answering affidavit is delivered, the opponent may apply for such allocation within ten court days of the delivery of his replying affidavit or, if no replying affidavit is delivered, within ten court days of the expiry of the period referred to in paragraph (f).
- (i) Where a notice in terms of paragraph (e)(iv) is delivered, the opponent may apply for the allocation of a date for the hearing within ten court days after delivery of such notice.
- (j) If the opponent fails to apply to the registrar to allocate a date within the appropriate period, the respondent may do so immediately upon the expiry of such period. Notice of set down in writing of the date allocated by the registrar shall be given forthwith by the opponent or respondent, as the case may be, to the opposite party.
- (k) Where an opposition cannot properly be decided on affidavit, the registrar may refer the matter to the Supreme Court or make such order as to him seems meet with a view to ensuring a just and expeditious decision.
- (l) In the case of an application to strike out, which shall be brought by way of notice, the registrar may order to be struck out from any affidavit any matter which is scandalous, vexatious or irrelevant, with an appropriate order as to costs, including costs as between attorney and client. The registrar shall not grant an order unless he is satisfied that the applicant will be prejudiced in his case should it not be granted.
- (2)** (a) Notwithstanding the foregoing, an interlocutory or other application incidental to pending proceedings or a pending application, including an application for an extension of time and condonation, may be brought on notice supported by such affidavits as the case may require and may be set down at a time assigned by the registrar.
- (b) If the applicant in such an application wishes to rely on particular facts not apparent from the official record, an affidavit must be filed at the office at least ten court days before the hearing. In the event that the applicant does not file an affidavit, it shall be presumed that he intends to rely on those facts which are properly before the registrar. At any time within the period allowed for the filing of such an affidavit by the applicant, he may give written notification to the other party and to the registrar that he intends to rely on the facts which are properly before the registrar.
- (c) After the applicant has filed his affidavit, the other party may file an answering affidavit at least seven court days before the hearing. In the event that the applicant does not file an affidavit in support of his application, the other party

may file an affidavit at least seven court days before the hearing, setting out such facts as he may consider relevant.

- (d) At least four court days before the hearing, the applicant may file an affidavit replying to any facts set out in the answering affidavit.
  - (e) A copy of any affidavit filed with the registrar in accordance with the foregoing shall be delivered to the other party to the proceedings at its appointed address for service.
  - (f) A notice of setdown shall be served upon every party to whom such notice is to be given at least ten court days prior to the hearing.
  - (g) Failure to comply with these provisions shall result in the matter being struck off the roll, and an appropriate award of costs shall be made by the registrar.
- (3) (a) In any opposed proceedings before the registrar in terms of this regulation which result in a hearing before the registrar, both parties to the matter shall file heads of argument at the office of the registrar not later than two court days before the date which has been set down for the hearing.
- (b) Such heads of argument shall consist of a concise and succinct statement of the main points (without elaboration) intended to be argued. A list of authorities relied upon in support of each point shall also be supplied.

### **Title to and interest in design applications and registrations**

- 37.(1) An application for the recording of an assignment shall be made in duplicate on Form D7, accompanied by proof of title of such assignment.
- (2) Any such application shall be made within six months of the event entitling the applicant to request a recording: Provided that the registrar may extend this time limit if so requested on Form D4, and on payment of the appropriate fee prescribed in Schedule 1.
- 38.(1) A warrant or writ of execution or an attachment order in respect of a design application or registration shall be served on the applicant or the registered proprietor, as the case may be, and a copy of such writ or order, together with proof of service, shall be lodged with the registrar on Form D7 for recording in the register.
- (2) An entry of any attachment may be removed from the register on request being made to the registrar on Form D4.
- 39.(1) An application for the recording of a licence against a design application or registration shall be made on Form D7 within six months of the event entitling the recording of such licence: Provided that the registrar may extend this time limit on application on Form D4 and on payment of the appropriate fee prescribed in Schedule 1.
- (2) The recording of a licence may be cancelled on request being made to the registrar on Form D4 accompanied by proof, to the satisfaction of the registrar, that the licence has been cancelled or otherwise terminated.
- 40.(1) The hypothecation of a design application or registration shall be recorded in the register on application on Form D7 accompanied by the deed of hypothecation.
- (2) The application for recording shall be served also on the applicant or the registered proprietor, as the case may be, and on any other person recorded in the register as having an interest in the design application or registration, and proof of service shall be furnished to the satisfaction of the registrar.
- (3) The recording of the hypothecation may be removed from the register on application to the registrar on Form D4, accompanied by such proof of the termination of the hypothecation as the registrar may require.

### **Alteration, correction and rectification, and amendment**

- 41.(1) An applicant for or a registered proprietor of a design registration who changes his address or changes his name may apply to the registrar on Form D4 for the change to be recorded, and the registrar shall alter the register accordingly.
- (2) An applicant for or a registered proprietor of a design registration who changes his address for service shall apply to the registrar on form D4 in terms of regulation 5(5) for the change to be recorded, and the registrar shall change the register accordingly.
- (3) An application for the correction of any clerical error or error in translation or other amendment in terms of section 26 of the Act shall be made on Form D12 and shall be accompanied by a copy/copies of the relevant document(s) showing the desired correction, and a clean copy/copies of the document(s) in corrected or amended form.
- (4) An application to amend a design application or a design registration in terms of section 27 of the Act shall be made on Form D12 and shall be accompanied by a copy/copies of the relevant document(s) showing the desired amendment, and a clean copy/copies of the document(s) in amended form.
- (5) If, in the case of an application on Form D12, the registrar is satisfied that a correction or amendment in terms of section 26 of the Act is required to be published in terms of section 26(4), or an amendment in terms of section 27 is in compliance with the Act, he shall direct the applicant for or the registered proprietor of the design registration to advertise the correction or the amendment, as the case may be, once in the journal.
- (6) In the case where the design application to be corrected or amended is not yet open for public inspection, the particulars to be published shall be those set out in Part I of Form D12. An application for correction or amendment so published may not be inspected and may not be opposed.
- (7) In the case where the design registration to be corrected or amended is open for public inspection, the particulars to be published shall be those set out in Parts I and II of Form D12. An application for correction or amendment so published may be inspected and may be opposed within two months of the date of such publication, in accordance with regulation 36.
- (8) In the case of a correction or amendment as envisaged in subregulation (6), the registrar shall cause an entry to be made in the register to the effect that the correction or amendment is allowed.
- (9) If in the case of a correction or amendment as envisaged in subregulation (7) no opposition is entered, or if the registrar at the conclusion of the hearing determines that the correction or amendment ought to be allowed, the registrar shall cause an entry to be made in the register to that effect.
- (10) A request for the rectification of the register in terms of section 28 of the Act shall be made on Form D4.

#### **Voluntary surrender**

- 42.(1) A notice by a registered proprietor of a design registration in terms of section 34 of the Act for the surrender of the design shall be lodged on Form D13.
- (2) On receipt of a notification to surrender a design, an interested party may lodge an objection to the surrender, in accordance with regulation 36.
- (3) If no opposition is entered, or if the registrar at the conclusion of the hearing concludes that the design ought to be surrendered, the registrar shall cause an entry to be made in the register to that effect.
- (4) A request by an applicant to withdraw an application for the registration of a design shall be made on Form D4.

#### **Application for revocation**

- 43.(1) An application for revocation in terms of section 31 of the Act shall be brought by way of notice of revocation on Form D14 or in a form as nearly as possible in accordance with

Form D14, and shall set out the ground or grounds on which the revocation is based, and shall be supported by an affidavit as to the facts upon which the applicant relies for relief.

- (2) The notice, and all annexures to it, shall be duly lodged at the court, and a copy of such notice, and all annexures to it, shall be lodged with the registrar and shall be served on the registered proprietor and on any other person recorded in the register as having an interest in the design registration.
44. The provisions of regulation 36 shall, *mutatis mutandis*, apply to an application for revocation in terms of section 31 of the Act and regulation 43, and the application shall be proceeded with in a manner as nearly as possible in accordance with the procedure provided for in regulation 36.

### **Application for compulsory licence**

45. An application for a compulsory licence under section 21 of the Act shall be brought by way of notice of motion and shall be served on the registered proprietor and on any other person recorded in the register as having an interest in the design registration.

### **Discretionary power**

- 46.(1) Before any discretionary power given to the registrar by the Act or these regulations is exercised to the detriment of any person, the registrar shall give the person who will be affected by the exercise of such power an opportunity to be heard.
- (2) Any application for a hearing shall be made within one month from the date on which the registrar gives such person the opportunity to be heard.
- (3) Upon receiving such application, the registrar shall give the applicant one month's notice of the time when the applicant or his agent may be heard.
- (4) Within 14 days from the date on which such notice would normally be delivered by post, the person applying shall notify the registrar whether or not he intends to be heard in regard to the matter.
- (5) The decision of the registrar in the exercise of any such discretionary power shall be conveyed, in writing, to the person affected.

### **Extension of time**

47. Whenever any period is specified within which any act is to be performed the registrar may, save where expressly provided otherwise, extend such period either before or after its expiry.

### **Certificates**

48. Where a certificate is required for any purpose in terms of section 40 of the Act, in regard to any entry, matter, or thing which the registrar is authorised by the Act or these regulations to make or do, or where a copy or certificate is required in terms of section 9, the registrar shall, on lodgement of Form D15, furnish such a certificate or copy.

### **Inspection**

49. An inspection in terms of section 8 of the Act shall be permitted by the registrar on lodgement of Form D16.

### **Repeal of Regulations**

50. The following Government Notices are hereby repealed:

Government Notice No. R.361 dated 29 December 1967  
Government Notice No. R.2120 dated 29 December 1967  
Government Notice No. R.587 dated 28 April 1995  
Government Notice No. R.53 dated 19 January 1996  
Government Notice No. R.312 dated 28 February 1997  
Government Notice No. R.313 dated 28 February 1997.

## **Commencement**

- 51.** These regulations shall be called the Designs Regulations, 1999, and shall come into operation on the date of publication hereof.