

Contributing firm
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Legal framework

In Sweden, exclusive rights to designs can be established by filing an application for:

- a Swedish national design registration;
- a registered Community design; or
- an international application to register a design through the Hague System, designating the European Community.

Protection for unregistered designs is available through the unregistered Community design system (discussed below).

The Design Act (1970:485) and the EU Community Designs Regulation (6/2002) apply to design rights in Sweden. The Design Regulation (1970:486) sets out the application procedure.

The Design Act was amended in 2002 to reflect changes at EU level to harmonise IP laws within the European Union. As a result, Swedish design law is in large part consistent with the rules that apply in other EU member states.

Cases handed down by the EU courts and legal literature regarding the EU design system are, in many cases, also relevant for the interpretation of the Design Act. Notably, the act includes a right to register designs for spare parts, which is not possible under the EU system (discussed below).

Both the national and registered Community design systems follow the deposit system model, whereby rights are established through the filing and registration of an image or model of the design.

Unregistered designs

Protection for unregistered designs is available in Sweden through the unregistered Community design system. Rights to an unregistered Community design are established simply by making the design public within the European Union (eg, at a fashion show or trade fair). The resulting design rights can be enforced only against identical copies and elapse after three years.

Unregistered designs may also be protected under the Copyright Act (1960:729). Swedish copyright law grants exclusive rights to the creator of an artistic work from the moment

of its creation, provided that the work is original. There is no registration procedure. The threshold for originality is low, especially for applied arts.

Registered designs

The designer, or anyone to whom he or she has assigned his or her creation, may apply for a national Swedish design registration. Only physical persons can qualify as designers. Companies that wish to apply for design registrations must supplement their applications with assignment deeds signed by the actual designers.

Exclusive rights to a design are secured by registration. A 'design' is defined as the appearance of a product or its parts. The appearance follows from the details of the product itself or the details of its ornaments, such as lines, contours, colours, shapes, surface structures or materials. The design element must be visible during normal use. However, the design of spare parts is also registrable.

A design registration cannot include state emblems, official or international designations or designs that are contrary to public order or morality. Purely technical aspects of a design will be disregarded.

The design must be new and possess individual character. A design is not considered new if it has already been made public (eg, during a registration procedure or through display or use in a professional context without an explicit or implied non-disclosure agreement). The novelty requirement is global.

The design will still be considered new if priority is claimed and the design was not made public before the priority date. A 12-month grace period applies in the event that the design was made public by the designer or with his or her permission, or as result of abuse in relation to the designer. A third limitation of the novelty requirement concerns the relevant trade groups; if the design could not reasonably have been known by the relevant trade groups within the European Economic Area, it will be considered new even if it is already known for purposes unrelated to the business of that trade group. In this way, designs can be reinvented for new uses.

The individual character requirement is met if the design presents an overall impression that

is different from all previously known designs, taking into consideration the inventive freedom of the designer in the specific design field.

Local agents, which assist with applications, charge varying fees, depending on the nature and extent of the advice given before filing. The official fees payable to the Swedish Patent and Registration Office (PRV) for a design application are available at www.prv.se. Examples of such fees include:

- a Skr1,900 application fee for the first five-year period;
- a Skr2,500 renewal fee for each additional five-year period;
- a Skr500 class fee for each extra class beyond the first; and
- a Skr1,400 multiple registration fee for each design beyond the first.

By registering a design, the applicant (or future assignee) is granted the exclusive right to use the design (eg, to manufacture, sell, import or hire products displaying the design). Use of an identical design or a design that creates an overall impression that is insufficiently different from the registered design will be considered as infringement.

A design registration is valid for a maximum of 25 years. It runs for one or more five-year periods from the date of filing of the application. The registration can be renewed at the earliest one year before and at the latest (on payment of an additional fee) six months after the expiry of each five-year period. Alternatively, it is possible to specify in the application the number of periods for which the design should remain valid and pay the full fee for those periods simultaneously. The registration period for the design of spare parts is a maximum of 15 years.

Procedures

An application for a Swedish national design can be filed with the PRV by post, fax or in person. The PRV does not check whether the design is new and has individual character. Applicants are advised to perform a search before filing in order to verify that the design meets these requirements. By doing so, the applicant will avoid wasting money on an application that may easily be revoked after an opposition or invalidation procedure at a later stage.

The application must include the following:

- details about the applicant(s);
- evidence of the assignment from designer to applicant (if applicable);
- indication of the product and class(es) for the design;
- information about multiple designs (if applicable). Multiple designs may be included in the same application if they are all in the same class or if they are ornaments to the main design object;
- confirmation of whether the application is to be filed in colour or black and white;
- images of the design. There is no specific requirement on the number of images, but the entirety of the product must be clearly visible. The images can be supplied by email in jpg format and preferably 300 dpi resolution. Dotted lines may be used to show parts of the product for which design protection is not sought;
- an attached model of the design (optional);
- priority information (if applicable);
- a request for secrecy (if applicable). Secrecy for up to six months from the date of filing will be granted on request;
- an original power of attorney (if the application is filed by an agent);
- payment of the applicable fee(s); and
- the applicant's signature.

If the design passes official examination, possibly after amendments following communications with the PRV, the PRV will publish the design as registered. The public may file oppositions against the registration within two months of the date of publication. Oppositions are handled by the PRV.

Decisions of the PRV can be appealed to the Court of Patent Appeals within two months of being issued. Decisions of the Court of Patent Appeals can be appealed to the Supreme Administrative Court; however, the chances of being granted leave to appeal are slim.

A design registration can still be removed from the register after the opposition timeframe has lapsed, as a result of a cancellation action before the common courts.

Enforcement

Unauthorised use of registered and unregistered designs in Sweden can be

addressed through infringement proceedings before the common courts. Criminal proceedings are available in acute cases, but these provisions of the Design Act are seldom used.

In many instances, infringement will cease after receipt of a warning letter, which details the rights of the rights holder or licensee of the design.

The Stockholm District Court is the first-instance court for cases regarding a registered Community design. For other design cases, the common forum rules of the Procedural Law apply. In the event that these rules are not applicable (eg, if the infringer is domiciled outside Sweden), the Stockholm District Court is the competent court. The Stockholm District Court has a department that specialises in IP cases and therefore has special competence in this area.

A court order ordering the alleged infringer or a third party to provide information that can be used as evidence of the infringement or for incurred damages may be granted before the infringement action is filed with the court.

The courts may also grant an order for seizure of documents or product examples, or copies of such articles, in order to provide the plaintiff with access to evidence for its case.

It is common in Sweden to request preliminary injunctions as part of an infringement action. Such a request cannot be filed independently of a full court action. A bank guarantee or similar must be filed before the interim request can be granted, sometimes amounting to significant sums. The guarantee will be used to compensate the alleged infringer in the event that the interim injunction is granted without proper cause. Nevertheless, interim injunction requests are common. Apart from possibly putting an end to the infringement (at least temporarily), an interim injunction often serves as a means to secure a speedy settlement between the parties, irrespective of the outcome. As an interim injunction is granted only in the event that the court finds it likely that the plaintiff will ultimately succeed, the parties often see the court's decision as an indication of their chances in the proceedings. As a result, the majority of infringement cases do not remain in the courts long enough for a final court

decision, and case law in this area is thus sparse.

It takes the courts approximately between one and two months to decide an interim injunction matter. *Ex parte* decisions may be handed down, but the courts normally allow the alleged infringer to comment on the interim request.

Successful infringement actions may result in the court ordering the infringer to:

- cease the unauthorised use;
- pay a penalty in the event that the order is not met;
- pay damages; and
- pay for the distribution of information regarding the infringement.

The court may also order the infringer and third parties to provide the plaintiff with information regarding production, distribution and pricing of the infringing goods.

First-instance courts take approximately one to two years to decide an infringement case in full. Leave to appeal is required, but is usually granted in IP cases. As a rule of thumb, the appeal proceedings take about half the time as the first-instance proceedings. However, the appeal proceedings sometimes become rather protracted, depending on the court's workload and the parties' procedural strategies. The duration of the proceedings is the same irrespective of whether the right in question is a registered or unregistered Community design or a Swedish national design.

Ownership changes and right transfers

Swedish law provides no formal requirements for transfers or licences involving design rights. A transfer or licence can be established orally or can even simply be implied by the parties' behaviour. A granted licence cannot be transferred to a third party without the rights holder's consent, unless the business of the first licensee is transferred to the same third party. Parties are advised to sign written agreements, for clarity and evidentiary purposes.

A number of matters of legal procedure also speak in favour of keeping the PRV register updated:

- Correct information in the register will clarify to third parties who owns or has a licence to a registered design.
- In the event of a court action involving a

registered design, the action can be served on the correct rights holder or its agent, as noted in the register.

- Anyone wishing to initiate a cancellation action against a registered design, or an action for transfer of the rights, must first inform all licensees that are listed in the register.

Related rights

Design rights may overlap with Swedish copyright and with figurative or three-dimensional trademarks.

The Copyright Act explicitly stipulates that copyright may overlap with design rights for the same object (discussed above). The design object and the copyright object are usually created by the same person and both rights naturally rest in the same hands. In the event of assignment of a registered design, it is prudent to include a transfer of copyright in the assignment agreement in order to avoid separation of the two forms of exclusive right. In the event of the coincidence of a prior copyright interfering with a later right created by another party, the design right would normally be considered invalid due to lack of novelty. Since copyright need not be registered under Swedish law, a prior copyright may come as a surprise.

Design rights may also overlap with figurative or three-dimensional trademarks. Again, in the event of different rights holders, the prior right may invalidate the later right. In Sweden, trademarks may be established not only by registration, but also through use. [WTR](#)

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Anita Gillior is an attorney at law at Awapatent AB. She graduated with an LLM from Lund University and also studied law at *Université Robert Schumann* in Strasbourg for one year. After serving as a court clerk, and later acquiring five years' experience as an associate at one of Sweden's major business law firms, primarily handling litigation and arbitration cases, she joined Awapatent to specialise in IP law. She is now active across the entire IP field. Ms Gillior has a special interest in commercial advice, contracts and dispute resolution. She is also a popular lecturer.