

No. 13922

NETHERLANDS, BELGIUM and LUXEMBOURG

Benelux Convention on designs or models (with annexed Benelux Uniform Law on designs or models). Concluded at Brussels on 25 October 1966

Protocol concluded pursuant to article 2, paragraph 1, of the above-mentioned Convention (with annexed Regulations for the implementation of the Benelux Uniform Law on designs or models). Concluded at Brussels on 21 November 1974

Authentic texts: Dutch and French.

Registered by the Netherlands on 29 April 1975.

PAYS-BAS, BELGIQUE et LUXEMBOURG

Convention Benelux en matière de dessins ou modèles (avec, en annexe, la loi uniforme Benelux en matière de dessins ou modèles). Conclue à Bruxelles le 25 octobre 1966

Protocole conclu en exécution de l'article 2, alinéa 1, de la Convention susmentionnée (avec, en annexe, le Règlement d'exécution de la loi uniforme Benelux en matière de dessins ou modèles). Conclu à Bruxelles le 21 novembre 1974

Textes authentiques : néerlandais et français.

Enregistrés par les Pays-Bas le 29 avril 1975.

[TRANSLATION — TRADUCTION]

BENELUX CONVENTION¹ ON DESIGNS OR MODELS

His Majesty the King of the Belgians,
His Royal Highness the Grand Duke of Luxembourg,
Her Majesty the Queen of the Netherlands,

Desiring to revise their legislation and to establish uniformity of the law relating to designs in their countries,

Have decided to conclude a Convention for this purpose and have appointed as their plenipotentiaries:

His Majesty the King of the Belgians:

His Excellency Mr. P. Harmel, Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg:

His Excellency Mr. C. Dumont, Ambassador Extraordinary and Plenipotentiary at Brussels;

Her Majesty the Queen of the Netherlands:

His Excellency Baron J.A. de Vos van Steenwijk, Ambassador Extraordinary and Plenipotentiary at Brussels,

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

Article 1. The High Contracting Parties shall incorporate into their domestic legislation, in one or both of the original texts, the Benelux Uniform Law on Designs or Models annexed to this Convention and shall establish an office common to their countries under the name "Benelux Design or Models Bureau".

Article 2. Implementation of The Uniform Law shall be effected through regulations drawn up by agreement between the High Contracting Parties after consultation with the Board of Administration of the Benelux Design or Models Bureau referred to in article 3 and through rules drawn up by the said Board.

The regulations and rules have obligatory force in each country, in accordance with the provisions of its domestic legislation.

The regulations and rules shall be published in the Official Gazette of each of the High Contracting Parties.

Article 3. The Benelux Designs Bureau shall be responsible for the implementation of the Uniform Law and of the regulations and rules.

¹ Came into force on 1 January 1974, i.e. the first day of the month that followed the deposit of the third instrument of ratification with the Government of Belgium, in accordance with article 13(1), the annexed Uniform Law itself having entered into force on 1 January 1975, in accordance with article 13(2). The instruments were deposited as follows:

<i>State</i>	<i>Date of deposit of instrument</i>
Belgium	15 December 1970
Luxembourg*	17 December 1973
Netherlands	21 December 1973
(For the Kingdom in Europe.)	

* See p. 373 of this volume for the text of the declaration made upon ratification.

The work of the Bureau shall be directed by a Board of Administration, composed of members appointed by the High Contracting Parties; there shall be one administrator and one alternate administrator for each country.

The Board of Administration shall elect its Chairman annually.

Article 4. The Board of Administration shall decide on all matters connected with the general work of the Benelux Design or Models Bureau.

It shall draw up the rules of procedure and financial regulations of the Bureau as well as the implementation rules.

It shall offer advice and suggestions concerning the implementation of regulations.

It shall appoint the Director of the Bureau, who must be a national of one of the High Contracting Parties, and shall determine his functions.

It shall draw up the annual budget of receipts and expenditures and such amending or additional budgets as may be necessary and shall lay down in the financial regulations the procedures by which control is to be exercised over the budgets and budget administration. It shall approve the Director's accounts.

Decisions of the Board shall be unanimous.

Article 5. One half of the costs of establishing the Benelux Design Bureau shall be borne by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

The Board of Administration may request a contribution from the High Contracting Parties to cover extraordinary expenses; one half of that contribution shall be paid by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

Article 6. The operating expenses of the Bureau shall be defrayed out of its receipts, comprising:

- (1) Fees collected pursuant to the Uniform Law;
- (2) Income accruing to the High Contracting Parties from the application of the Agreement of The Hague concerning the International Deposit of Industrial Designs, signed on 28 November 1960;
- (3) Income from the sale of publications and copies.

If necessary, a contribution shall be made to the Bureau by the High Contracting Parties; one half shall be paid by the Kingdom of the Netherlands and one half by the Belgo-Luxembourg Economic Union.

Article 7. A percentage of the fees collected for operations carried out through a national officer shall be paid to the said officer to cover the costs of such operations; the percentage shall be fixed by the regulations.

No national fee for such operations may be established by domestic legislation.

Article 8. The Benelux Design or Models Bureau shall be under the protection of the Government of the Netherlands and its headquarters shall be at The Hague.

Article 9. The authority of judicial decisions rendered in any one of the three States pursuant to article 15 of the Uniform Law shall be recognized in the two other States and cancellations under court orders shall be effected by the Bureau on the

responsibility of the Board of Administration at the request of the party instituting the proceedings, provided that:

- (1) Under the laws of the country in which the decision was rendered the copy of the decision which is produced fulfils the conditions necessary for authenticating it;
- (2) The decision is no longer liable to a motion for reconsideration or to appeal on facts or on law.

Article 10. As soon as a Benelux Court of Justice is set up, it shall have jurisdiction over questions of interpretation of the Uniform Law.

Article 11. This Convention shall apply only to the territories of the High Contracting Parties in Europe.

Article 12. This Convention shall be ratified. The instruments of ratification shall be deposited with the Government of the Kingdom of Belgium.

Article 13. This Convention shall enter into force on the first day of the month following the deposit of the third instrument of ratification.

The Uniform Law shall enter into force one year after the entry into force of this Convention.

Article 14. This Convention is concluded for a period of 50 years. Thereafter it shall remain in force for consecutive periods of 10 years unless one of the High Contracting Parties notifies the other Contracting Parties, one year before the expiration of the current period, of its intention to terminate it.

Any proposals for revision made after the expiration of a period of 10 years from the date of the entry into force of this Convention which have not gained the approval of all the High Contracting Parties must be submitted to the Benelux Consultative Interparliamentary Council.

Any one of the High Contracting Parties whose proposals for revision have obtained from the Benelux Consultative Interparliamentary Council a favourable opinion which has not gained the approval of one or both of the other Contracting Parties shall have the right to denounce the Convention. This right must be exercised within a reasonable period.

The denunciation may not take effect until five years have elapsed from the date of notification thereof to the other two Contracting Parties.

IN WITNESS WHEREOF the Plenipotentiaries have signed this Convention and have thereto affixed their seals.

DONE at Brussels, on 25 October 1966, in triplicate, in the Dutch and French languages, both texts being equally authentic.

For the Kingdom of Belgium:
PIERRE HARMEL

For the Grand Duchy of Luxembourg:
C. DUMONT

For the Kingdom of the Netherlands:
J. A. DE VOS VAN STEENWIJK

BENELUX UNIFORM LAW ON DESIGNS OR MODELS

Chapter I. DESIGNS

Article 1. The new appearance of a product having a utilitarian function may be protected as a design.

Article 2. 1. Anything indispensable for obtaining a technical result shall be excluded from protection under this law.

2. The appearance of certain categories of products, the application to which of this law would give rise to major difficulties, may be permanently or temporarily excluded from protection under this law by the regulations.

Article 3. 1. Without prejudice to the right of priority provided for in the Paris Convention for the Protection of Industrial Property, the exclusive right to a design shall be acquired by the first deposit, whether made in Benelux territory and registered with the Benelux Design or Models Bureau (Benelux deposit) or registered with the International Bureau for the Protection of Industrial Property (international deposit).

2. In case of concurrent deposits, if the first deposit is not followed by publication as specified in article 9, paragraph 3, of this law or in article 6, paragraph 3, of the Agreement of The Hague concerning the International Deposit of Industrial Designs, the subsequent deposit shall be accorded the status of first deposit.

Article 4. The deposit of a design shall not confer an exclusive right where:

- 1) The design is not new, that is, where:
 - (a) At any time during the 50 years prior to the date of deposit or the date of priority under the Paris Convention, a product identical in appearance with the deposited design, or differing from it only in minor respects, has enjoyed *de facto* notoriety in the relevant industrial or commercial circles in Benelux territory, or
 - (b) An identical design, or one differing only in minor respects, has been deposited previously and publication has followed as specified in article 9, paragraph 3, of this law or in article 6, paragraph 3, of The Hague Agreement;
- 2) The design is contrary to morality or public policy in one of the Benelux countries;
- 3) The deposit does not sufficiently disclose the characteristic features of the design.

Article 5. 1. Within a period of five years from the publication of the deposit, the creator of a design, or the person considered to be its creator, according to article 6, may lay claim to the Benelux deposit or the rights accruing in Benelux territory from the international deposit of that design if the deposit was made by a third party without his consent; he may, on the same ground, sue for the avoidance of the deposit, or the rights without limitation in time. The action for recovery shall be registered with the Benelux Bureau by the claimant, in such manner and on payment of such fees as shall be laid down by the regulations.

2. If the depositor referred to in the preceding paragraph has applied for cancellation in whole or in part of the registration of the Benelux deposit or has renounced the rights accruing in Benelux territory from the international deposit, such cancellation or such renunciation shall, save as provided in paragraph 3, have no effect in respect of the creator or the person considered to be the creator according to article 6, provided that the deposit was claimed within one year following the date of publication of the cancellation or renunciation, and before the expiry of the five-year time-limit referred to above.

3. If in the interval between the cancellation or renunciation referred to in paragraph 2 and the registration of the action for recovery a *bona fide* third party has exploited a product identical in appearance, that product shall be considered to have been lawfully placed on the market.

Article 6. 1. If a design has been created by a worker or employee in the exercise of his employment, the employer shall, unless otherwise stipulated, be considered its creator.

2. If a design has been created pursuant to a commission, the person who commissioned it shall, unless otherwise stipulated, be considered its creator, provided that the commission was placed with a view to the commercial or industrial utilization of the product in which the design is incorporated.

Article 7. Subject to the provisions of article 5, paragraph 2, the exclusive right to a design shall lapse:

- 1) Through voluntary cancellation or through expiration of the registration of the Benelux deposit;
- 2) Through expiration of the registration of the international deposit, through renunciation of the rights accruing in Benelux territory from the international deposit, or through the *ex officio* cancellation of the international deposit as provided for in article 6, paragraph 4 (c), of the Agreement of The Hague.

Article 8. 1. The Benelux deposit of designs shall be made either at national offices or at the Benelux Design or Models Bureau in such manner and on payment of such fees as shall be laid down by the regulations. It shall consist of a photographic or graphic representation of the appearance of the product and a statement on the method of reproduction used to make that representation; it may be accompanied when appropriate by a colour claim and by a statement as to who is the true creator of the design. The representation may be accompanied by a description of the characteristic features of the design, within the limits defined by the regulations.

2. The Benelux deposit may consist of a single design (single deposit) or several (multiple deposit), and shall be made in such manner and payment of such fees or shall be laid down by the regulations.

3. The authorities responsible for accepting deposits shall ascertain whether the documents submitted are in due form and shall draw up the instrument of deposit, which shall indicate the date on which the deposit was made and the existence of any colour claim or of any description as provided for in paragraph 1 of this article.

4. Any claim to priority under article 4 of the Paris Convention shall be made in the instrument of deposit or by a special declaration to the Benelux Bureau within one month following the deposit, in such manner and on payment of such fees or shall be laid down by the regulations. Failure to file such a claim shall entail forfeiture of the right of priority.

Article 9. 1. The deposit of a design shall not give rise to any examination of the deposit as to substance whose findings might be invoked by the Benelux Bureau against the applicant without prejudice, insofar as Benelux deposits are concerned, to the application of paragraph 3 of this article.

2. The Benelux Bureau shall register without delay instruments of Benelux deposit and shall deliver a certificate of deposit to the owner; it shall also register the publication of registered international deposits which have been published in the "International Design Gazette—*Bulletin International des Dessins ou Modèles*" and which the applicants have requested should have effect in Benelux territory.

The legal date of registration shall be that of the Benelux deposit or the international deposit.

The registration shall indicate the date of and basis for any priority that may be claimed.

3. The Benelux Bureau shall publish registrations of Benelux deposits as soon as possible, in accordance with the regulations. Such publication shall include the representation of the product incorporating the design and, when appropriate, the date of and basis for any priority claimed and the colour claim or description referred to in article 8, paragraph 1.

Publication shall be deferred if the applicant makes use of the right referred to in article 11 or if the Bureau considers that the design falls within the scope of article 4, paragraph 2. In the latter case, the Bureau shall notify the applicant accordingly and invite him to withdraw his deposit within a period of two months. When, upon expiration of that period, the applicant has not withdrawn his deposit, the Bureau shall, as soon as possible, invite the Public Prosecutor to sue for the avoidance of the deposit. If the Public Prosecutor considers that such an action cannot properly be brought or if such an action is defeated by a judicial decision having the force of *res judicata*, the Bureau shall publish the registration of the design without delay.

4. If publication does not sufficiently disclose the characteristic features of the design as shown by the method of reproduction referred to in article 8, paragraph 1, the applicant may, within a time-limit to be laid down in the regulations, request that the Bureau effect a new publication free of charge.

5. After the publication of the design, the registration and the documents submitted at the time of the deposit shall be open to inspection by the public.

Article 10. International deposits shall be effected in accordance with the provisions of the Agreement of The Hague.

Article 11. The applicant may, when making the Benelux deposit, request that publication of the registration be deferred for a period not exceeding 12 months from the date of deposit or, when the applicant claims the benefit of article 4 of the Paris Convention, from the date of the deposit which gave rise to the right of priority.

Article 12. 1. The registration of a Benelux deposit shall be for a period of five years from the date of deposit. The design deposited may not be altered either during the period of registration or at the time of renewal.

2. The registration may be renewed for two successive periods of five years by paying the renewal fee to the Benelux Bureau. The amount of and procedure for the payment of the fee shall be laid down by the regulations.

The payment shall be effected during the year prior to the expiration of the registration. Subject to the payment of a surcharge fixed by the regulations, a period of grace of six months shall be granted for renewals.

The renewal shall, in any case, take effect from the date of expiration of the registration.

3. Renewal may be limited to less than all the designs included in a multiple deposit.

4. Six months before the expiration of the first and second periods of registration, the Benelux Bureau shall send a written reminder of the exact date of expiration to the owner of the design at his real or elected domicile and to third parties claiming rights in respect of the design, if their names appear in the register.

5. Reminders from the Bureau shall be sent to the last known address of the persons concerned. Failure to send such notice or non-receipt thereof shall not relieve the said persons of their obligation to apply for renewal within the prescribed period; it may not be relied on either in legal proceedings or vis-à-vis the Bureau.

6. The Bureau shall register renewals and publish them in accordance with the regulations.

Article 13. 1. The exclusive right to a design shall be transmissible or licensable. The following shall be void:

(a) Assignments *inter vivos* and licences which are not in written form;

(b) Assignments or other transfers which are not effected for the whole of Benelux territory.

2. Any limitation of a licence other than a limitation in time shall be without effect for the purposes of the application of this law.

3. An assignment or other transfer, or a licence, shall be legally valid vis-à-vis third parties only after registration of the deposit, in such manner and on payment of such fees as shall be laid down by the regulations, of a true copy of the instrument evidencing it or of a declaration pertaining thereto signed by the Parties concerned.

4. The licensees may take joint action with the owner to recover compensation for any damage suffered by him as a result of the infringement of the exclusive right referred to in article 14.

Article 14. 1. The exclusive right to a design shall entitle the owner to oppose any manufacture, importation, sale, offer for sale, hire, offer for hire, display, delivery, use, or possession for any of these ends, whether for industrial or commercial purposes, of a product identical in appearance to the design as deposited, or differing from it only in minor respects.

2. The exclusive right to a design shall entitle the owner to claim compensation for the acts referred to in paragraph 1 above only if those acts take place after the publication referred to in article 9, which must include an adequate description of the characteristic features of the design, unless the third party acted with a knowledge of the deposit.

3. However, the exclusive right to a design shall not include the right to oppose the acts mentioned in paragraph 1 of this article, in respect of products placed in circulation in Benelux territory by the owner, by any other person acting with his consent, or by the persons referred to in article 17.

4. Action may not be brought in respect of products placed in circulation in Benelux territory before the deposit.

5. An action may not be brought on the basis of legal provisions against unfair competition in connexion with facts which would only constitute a counterfeiting of the design.

Article 15. Any interested party, including the Public Prosecutor, may sue for avoidance of the Benelux deposit or the rights accruing in Benelux territory from the international deposit if the deposit does not meet the requirements of articles 1 and 2 or if the exclusive right to a design is not acquired from it, in accordance with article 4.

Where the action for avoidance is brought by the Public Prosecutor, the courts at Brussels, The Hague and Luxembourg shall have sole jurisdiction. The action brought by the Public Prosecutor shall have the effect of suspending any other action brought on the same grounds.

Article 16. The civil courts shall have sole jurisdiction to adjudicate upon actions brought on the basis of the present law; they shall *ex officio* order the cancellation of registration of deposits which are declared void.

Article 17. 1. A right of personal ownership, defined below, shall be granted to third parties who, before the date of deposit of a design or, when appropriate, before the date on which the right of priority provided for in article 4 of the Paris Convention arises, have manufactured in Benelux territory products identical in appearance to the design deposited or differing from it only in minor respects.

2. The same right shall be granted to persons who, under the same conditions, have taken steps to realize their intention to manufacture.

3. This right shall not however, be granted to third parties who, without the consent of the creator, have copied the design in question.

4. The right of personal ownership entitles its holder to continue or, in the case envisaged in paragraph 2 of this article, to undertake the manufacture of these products and to perform, notwithstanding the rights accruing from deposit, all the other acts referred to in article 14, paragraph 1, except importation.

5. This right of personal ownership can only be transmitted with the establishment in which the activity that gave rise to it took place.

Article 18. 1. The owner of the registration of a Benelux deposit may at any time request cancellation of that registration, unless there are third party rights in respect thereof which have been created by contract or are the subject of litigation and of which the Benelux Bureau has been notified.

In the case of a multiple deposit, the cancellation may apply to some only of the designs included therein.

If a licence has been registered, cancellation of the registration of the design or of the licence must be requested jointly by the owner of the registration and the licensee.

The cancellation shall have effect for the whole of Benelux territory, notwithstanding any declaration to the contrary.

2. The rules laid down in paragraph 1 of this article shall also apply to renunciation of the protection afforded in Benelux territory by an international deposit.

Article 19. Avoidance, voluntary cancellation or renunciation shall apply to the design in its entirety.

Article 20. 1. In addition to the functions assigned to it in the preceding articles, the Benelux Bureau shall:

- (a) Incorporate in registrations any changes requested by the owner or resulting from notifications by the International Bureau for the Protection of Industrial Property or from judicial decisions, where necessary informing the International Bureau accordingly;
- (b) Publish a monthly journal in the Dutch and French languages reporting registrations of Benelux deposits and containing any other notices prescribed by the regulations;
- (c) Issue copies of registrations upon the request of any interested party;
- (d) Provide information concerning designs registered.

2. The amount of fees to be collected for the operations referred to in paragraph 1 of this article, the price of the journal and the charge for copies shall be fixed by the regulations.

Chapter II. DESIGNS OF MARKED ARTISTIC CHARACTER

Article 21. 1. A design of marked artistic character shall be entitled to protection simultaneously under this law and under copyright laws if the conditions for application of both laws are fulfilled.

2. Designs which are not of marked artistic character shall be barred from protection under copyright legislation.

3. The avoidance of the deposit of a design of marked artistic character or the expiration of the exclusive right arising out of the deposit of such a design shall involve the simultaneous expiration of copyright in respect of that design when both deposit and copyright are owned by the same person; such expiration, however, shall not take place if the owner of the design files a special declaration for the purpose of retaining copyright in accordance with article 24.

Article 22. 1. If the creator of a work of art protected by copyright authorizes a third party to deposit a design incorporating that work of art, such authorization shall involve assignment of copyright in respect of the work of art, insofar as it is incorporated in the design.

2. The depositor of a design of marked artistic character shall also be presumed to be the holder of copyright in respect thereof; that presumption, however, shall not apply vis-à-vis the true creator or his successor in title.

3. Assignment of copyright in respect of a design of marked artistic character shall involve assignment of the right to the design and vice versa, without prejudice to the application of article 13.

Article 23. When a design of marked artistic character is created in the conditions described in article 6, copyright in respect of that design shall belong to the person who is considered its creator, in accordance with the provisions of that article.

Article 24. 1. The declaration referred to in article 21, paragraph 3, shall be filed, in such manner and on payment of such fees as shall be laid down by the regulations, within the year prior to the expiration of the exclusive right to the design. In the case of avoidance of that right, the declaration shall be filed within three months following the date on which the judicial decision avoiding the right becomes *res judicata*.

2. The declaration shall be registered and the registration published.

Chapter III. TRANSITIONAL PROVISIONS

Article 25. Subject to the provisions of article 26, any design which, before the entry into force of this law, was protected in any way in a Benelux country under the law of that country shall continue to be protected in that country.

Article 26. Deposits of industrial designs made in Belgium before the date of entry into force of this law shall have no effect thereafter unless a confirmative deposit is made with the Belgian industrial property service within one year after that date.

These confirmative deposits shall not be subject to the payment of any fee.

Article 27. If the exclusive right to a design, maintained in accordance with articles 25 and 26, belongs to different owners in two or three of the Benelux countries, the owner of the right in one of the said countries may not oppose the importation of a product incorporating the design from another Benelux country, nor claim compensation for such importation, where the product has been manufactured or placed in circulation by or with the consent of the owner of the right to the design in that other country and where a business relationship exists between the two owners with respect to the exploitation of the product concerned.

Chapter IV. GENERAL PROVISIONS

Article 28. In the present law, the expression "Benelux territory" means the aggregate of the territories of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands in Europe.

Article 29. 1. Unless otherwise expressly agreed, territorial judicial competence in respect of designs shall be determined by the domicile of the defendant or by the place where the obligation which is the subject of litigation originated, was performed or is to be performed.

The place of deposit or registration of a design shall in no case constitute in itself the basis for determining competence.

Where the rules set forth above are inadequate for the purpose of determining territorial competence, the plaintiff may bring the action before the court of his domicile or place of residence or, if he has no domicile or place of residence in Benelux territory, before the court of his choice at Brussels, The Hague or Luxembourg.

2. The courts shall *ex officio* apply the rules set forth in paragraph 1 of this article and shall expressly establish their competence.

3. The court before which the principal claim referred to in paragraph 1 is pending shall hear claims for the performance of a guarantee, applications for intervention, and incidental pleadings, as well as counter-claims, unless it is incompetent *rationae materiae*.

4. The courts of any one of the three countries shall, if one of the Parties so requests, refer disputes before them to the courts of one of the other two countries, if the disputes in question are already pending before the latter courts or are related to other disputes submitted

to them. Such referral may be requested only when actions are pending at the first stage of jurisdiction. The dispute shall be referred to the court before which the case was first brought by an order instituting proceedings, unless another court has rendered a decision on the case other than a procedural order, in which event it shall be referred to the latter court.

Article 30. 1. Nothing in the present law shall affect the application of the Paris Convention and of the Agreement of The Hague.

2. Nationals of the Benelux countries and nationals of countries which are not members of the Union established by the Paris Convention and who have their domiciles or real and effective industrial or commercial establishments in Benelux territory may, under the present law, request that the provisions of that Convention and of the Agreement of The Hague be applied to their benefit throughout that territory.

DECLARATION MADE UPON RATIFICATION
LUXEMBOURG

[TRANSLATION — TRADUCTION]

The French text of the Benelux Uniform Law on Designs or Models annexed to the Convention has been incorporated into the law of Luxembourg. It will enter into force on the date indicated in article 13, paragraph 2, of the Convention.

However, if under article 26 of the Agreement of The Hague concerning the International Registration of Industrial Designs or Models of 6 November 1925,¹ as amended on 28 November 1960, the Agreement does not enter into force before the Uniform Law referred to in the preceding paragraph, the provisions of that Law relating to international deposit shall enter into force only when the above-mentioned Agreement, in the version of 28 November 1960, has become applicable in the three Benelux countries.

The Industrial Property Service will be responsible for carrying out the duties assigned to national offices under the Uniform Law and, in particular, for receiving deposits of designs in accordance with article 8 of the Law.

¹ League of Nations, *Treaty Series*, vol. LXXIV, p. 341.

PROTOCOL¹ CONCLUDED PURSUANT TO ARTICLE 2, PARAGRAPH 1, OF THE BENELUX CONVENTION² ON DESIGNS OR MODELS

The Government of the Kingdom of Belgium,
The Government of the Grand Duchy of Luxembourg,
The Government of the Kingdom of the Netherlands,

Desiring to establish, on the basis of article 2, paragraph 1, of the Benelux Convention on Designs or Models, signed at Brussels on 25 October 1966,² regulations for the implementation of the Uniform Law annexed to that Convention,

Noting the opinion of the Board of Administration of the Benelux Design or Models Bureau,

Have agreed as follows:

Article 1. The regulations annexed to this Protocol shall govern the implementation of articles 5, 8, 9, 12, 13, 20 and 24 of the Benelux Uniform Law on Designs or Models.

Article 2. Pursuant to article 1, paragraph 2, of the Treaty concerning the establishment and the statute of a Benelux Court of Justice,³ the provisions of this Protocol, of the regulations annexed thereto and of the implementation of rules to be drawn up by the Board of Administration of the Benelux Design or Models Bureau are hereby designated as common juridical rules for the purposes of the application of chapters III and IV of that Treaty.

Article 3. 1. This Protocol shall enter into force on the day of its signature.

2. The regulations annexed to this Protocol shall enter into force in accordance with the provisions of article 31 of those regulations.

3. This Protocol and the regulations shall be terminated at the same time as the Benelux Convention on Designs or Models, signed at Brussels on 25 October 1966.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

DONE at Brussels, on 21 November 1974, in triplicate, in the French and Dutch languages, both texts being equally authentic.

For the Government of the Kingdom of Belgium:

R. VAN ELSLANDE

For the Government of the Grand Duchy of Luxembourg:

M. FISCHBACH

For the Government of the Kingdom of the Netherlands:

C. J. VAN SCHELLE

¹ Came into force on 21 November 1974 by signature, in accordance with article 3(1), the annexed Regulations themselves having entered into force on 1 January 1975, in accordance with article 3(2) of the Protocol and article 31 of the Regulations.

² See p. 364 of this volume.

³ United Nations, *Treaty Series*, vol. 924, p. 2.

A N N E X

REGULATIONS FOR THE IMPLEMENTATION OF THE BENELUX UNIFORM LAW
ON DESIGNS OR MODELS

Chapter I. BENELUX DEPOSIT

Article 1. 1. Benelux deposit of a design shall be made in French or in Dutch by producing a document bearing:

- (a) The name and address of the applicant;
- (b) A photographic or graphic representation or representations of the appearance of the product;
- (c) An indication of the product in which the design is or will be incorporated;
- (d) An indication of the colour or colours of the design, if the applicant claims protection in that respect;
- (e) The signature of the applicant or his agent.

2. The document may also contain:

- (a) A description in 100 words or less of the characteristic features of the design;
- (b) The name of the true creator of the design;
- (c) A request for deferment of the publication of the registration under article 6;
- (d) A description of colours, in 50 words or less, indicating which parts of the design bear those colours.

3. The applicant must use an application form; its format and the number of copies required shall be established by the rules.

4. If article 16, paragraph 3, is applicable, the form must mention the postal address.

5. The representation of the design must conform to the provisions of the rules.

6. The product in which the design is or will be incorporated must be designated in precise terms, preferably in the terms contained in the alphabetical list of the international classification provided for in the Locarno Agreement establishing an international classification for industrial designs of 8 October 1968.¹

Article 2. 1. The deposit must be accompanied by the following:

- (a) The method of reproduction used for the representation of the design. A photographic representation, as provided for in article 1, paragraph 1 (b) shall be considered as equivalent to the method of reproduction;
- (b) A power of attorney, if the deposit is made by an agent;
- (c) As many representations of the design as shall be required by the rules;
- (d) Proof of payment of the deposit fees and publication or deferment fees provided for in article 26, paragraph 1, subparagraphs (a), (b) or (c).

2. The method of reproduction referred to in the preceding paragraph must satisfy the provisions of the rules.

Article 3. One Benelux deposit may include up to 50 designs. In that case, the provisions of article 1, paragraph 1, subparagraphs (b), (c) and (d), paragraph 2, paragraph 5 and paragraph 6, and those of article 2, paragraph 1, subparagraphs (a) and (c) shall apply to each design. Each design shall, moreover, bear a different number which shall be indicated both on the method of reproduction referred to in article 2, paragraph 1, subparagraph (a), and on the representation referred to in article 2, paragraph 1, subparagraph (c). In the case of a multiple deposit the applicant shall use a special form; its format and the number of copies required shall be established by the rules.

¹ United Nations, *Treaty Series*, vol. 828, p. 435.

Article 4. 1. The date of deposit shall be the date on which the Benelux Bureau or the national office received all the documents, subject to compliance with the provisions of articles 1, 2, 3, 15 and 16.

2. If those provisions are not complied with at the time of deposit, the authority which has received the deposit shall notify the applicant without delay and fix a time-limit for him to comply with them or to make any comments. The time-limit may be extended on request or *ex officio*, but shall not exceed four months from the date of dispatch of the first notice. The request for authentication referred to in article 15, paragraph 3, shall be regarded as equivalent to such notice.

3. If the provisions of the articles referred to in paragraph 1 are not complied with within the time-limit, the documents received shall be filed and no action shall be taken on them; the fees received less one quarter shall be reimbursed. In the case of multiple deposits, this provision shall apply only to those designs which have not been deposited in due form.

Nevertheless, if the irregularity resides only in the fact that the applicant has not complied with the provisions of article 1, paragraph 2, subparagraphs (a) and (d), or has not paid the fee referred to in article 26, paragraph 1, subparagraph (a), (3) or (4), or the fee referred to in article 26, paragraph 1, subparagraph (b), (6) or (7), the deposit shall be treated as though the applicant had not availed himself of the possibilities provided for by article 1, paragraph 2, subparagraphs (a) and (d).

4. In the case referred to in paragraph 2, the date of deposit shall be the date of receipt of the documents referred to in article 1, paragraph 1, and article 2, paragraph 1, subparagraph (d), concerning deposit fees, and of the method of reproduction referred to in article 2, paragraph 1, subparagraph (a), subject to compliance with the time-limits provided for by the other provisions of articles 1, 2, 3, 15 and 16.

Article 5. 1. If the right of priority referred to in article 4 of the Paris Convention for the protection of industrial property is claimed at the time of deposit, the country, date, number and owner of the deposit on which that right of priority is based must be indicated.

If the applicant in the country of origin is not the person who made the Benelux deposit, the latter must include in his deposit a document appointing him successor in title.

2. The special declaration of right of priority provided for in article 8, paragraph 4, of the Uniform Law shall contain the name and address of the applicant, his signature or that of his agent, when appropriate the postal address referred to in article 16, paragraph 3; an indication of the design and the information referred to in paragraph 1. It must be accompanied by proof of payment of the fee referred to in article 26, paragraph 1, subparagraph (f).

3. If the provisions of paragraphs 1 or 2, and those of articles 15 and 16, are not complied with, the competent authority shall notify the applicant without delay and fix a time-limit for compliance.

The time-limit may be extended on request but shall not exceed four months from the date of dispatch of the notice. The request for authentication referred to in article 15, paragraph 3, shall be regarded as equivalent to such notice.

4. If within that time-limit the provisions of paragraphs 1 or 2 and those of articles 15 and 16 are not complied with, the right of priority shall lapse.

5. The competent authority shall be empowered to require that the applicant claiming right of priority provide a certified true copy of the documents supporting that right.

Article 6. 1. If an applicant wishes the publication of the registration to be deferred he must request such deferment at the time of deposit, indicating the period for which deferment is requested and providing proof of payment of the fee referred to in article 26, paragraph 1, subparagraph (c).

2. Deferment of publication of the registration of a multiple deposit may be requested only in respect of all the designs and for the same period.

3. If an applicant who has requested deferment of the publication of the registration of a multiple deposit informs the Benelux Bureau at the end of the period of deferment that he wishes publication in respect of only some of the designs, he must indicate the numbers of the designs in respect of which he wishes publication.

4. When publication is deferred, the publication fee must be paid before the expiration of the period of deferment. In the case of a multiple deposit, failure to pay that fee, or partial payment, shall be regarded as equivalent to a request for cancellation or limitation.

5. The applicant may at any time terminate the period of deferment by a request to that effect accompanied by proof of payment of the publication fee.

Article 7. The time-limit referred to in article 9, paragraph 4, of the Uniform Law, within which the applicant may request a new publication of the design by the Benelux Bureau, shall be three months from the date of the first publication.

Article 8. The competent authority shall mention the following in the instrument of deposit:

- (a) The information referred to in article 1, and, when appropriate, the claim of priority and the information referred to in article 5, paragraph 1;
- (b) Submission of the items referred to in article 2;
- (c) The amount of the fees;
- (d) When appropriate, the fact that publication of registration has been deferred at the request of the applicant;
- (e) The date and number of the deposit.

Chapter II. REGISTRATION

Article 9. 1. The Benelux Bureau shall register the instrument of deposit in its register of Benelux deposits, mentioning:

- (a) The serial number of the registration;
- (b) The date and number of the deposit;
- (c) The information referred to in article 1, and, when necessary, the claim of priority and the indications referred to in article 6, paragraph 1, and the fact that publication of the registration has been deferred;
- (d) The date on which the registration will expire;
- (e) The number of the class and subclass of the international classification of the above-mentioned Locarno Agreement corresponding to the product in which the design is or will be incorporated.

2. If the right of priority has been claimed in accordance with article 5, paragraph 2, the Benelux Bureau shall register that claim in its register of Benelux deposits and mention the country, date, number and owner of the deposit on the basis of which priority is claimed.

Article 10. A certificate of registration containing the information referred to in article 9 shall be dispatched without delay to the owner by the Benelux Bureau.

Article 11. 1. At the request of the owner, modifications in the status of the design subsequent to the registration of the instrument of deposit shall be recorded in the register of Benelux deposits. However, in the case referred to in article 18, paragraph 1, third subparagraph, of the Uniform Law, the owner and the licensee must act jointly.

2. All requests for modifications in the register of Benelux deposits shall be addressed to the Benelux Bureau and shall contain the registration number, the name and address of the owner of the design, his signature or that of his agent and, when appropriate, the address referred to in article 16, paragraph 3.

If a request referring to a multiple deposit does not concern all of the designs, it must indicate the numbers of the designs concerned.

If the assignment or transfer concern the exclusive right to one or more designs forming part of a multiple deposit, that part shall henceforth be considered a separate deposit.

3. The true copy of the instrument evidencing an assignment or other transfer, or a licence, referred to in article 13, paragraph 3, of the Uniform Law must be certified, if need be, by the Contracting Parties.

4. Cancellation of a deposit pursuant to a judicial decision having the force of *res judicata* shall be effected *ex officio* or at the request of the Party which instituted proceedings.

Chapter III. RENEWAL

Article 12. Renewal of registration shall be effected by the payment to the Benelux Bureau of the fee referred to in article 26, paragraph 1, subparagraph (d) or (e). However, if the owner of a multiple deposit wishes to avail himself of the right afforded by article 12, paragraph 3, of the Uniform Law, he must indicate the numbers of the designs for which he wishes to renew the registration.

Article 13. The Benelux Bureau shall record renewals in the register of Benelux deposits, indicating the date of renewal and the date on which the registration will expire.

2. The Benelux Bureau shall dispatch a certificate of renewal to the owner without delay.

Chapter IV. INTERNATIONAL DEPOSIT

Article 14. 1. When applicants request that international deposits should have effect in Benelux territory, the Benelux Bureau shall record in the register of international deposits the publications or notifications of the International Bureau for the Protection of Industrial Property referred to in articles 9 and 20 of the Uniform Law.

2. Decisions concerning avoidance and expiration, as well as licences, shall also be mentioned in the register if they concern Benelux territory.

3. The operations referred to in paragraph 2 shall be registered in accordance with the provisions of article 11.

Chapter V. ADMINISTRATIVE PROVISIONS

Article 15. 1. All documents transmitted to the Benelux Bureau or to national officer must be legible and drawn up in French or in Dutch. However, documents attesting to a change of name, true copies of instruments evidencing an assignment or other transfer, or a licence, or declarations in respect thereof, drawn up in another language shall be accepted if accompanied by a French or Dutch translation.

However, the Benelux Bureau may waive the requirement to provide such a translation if the aforementioned documents are submitted in German or in English or are accompanied by a translation in one of those languages.

2. When a document submitted for registration in the registers of the Benelux Bureau is signed on behalf of a juridical person, the signer must indicate his capacity.

3. No authentication of the signature of documents submitted for registration shall be required, unless the Benelux Bureau or a national office deems it necessary.

Article 16. 1. All operations with the Benelux Bureau or with a national office may be effected through an agent. The latter must have a domicile or headquarters in Benelux territory and produce a power of attorney. A general power of attorney may be deposited with the Benelux Bureau and with national offices.

2. When an agent is appointed, all communications provided for in these regulations shall be addressed to him.

3. Persons who do not have a headquarters or domicile in Benelux territory must indicate a postal address there as required by these regulations.

Article 17. 1. If the provisions of these regulations concerning requests for modifications in the registers of the Benelux Bureau are not complied with or if the fees and charges due are not paid or are not paid in full, the Benelux Bureau shall notify the person concerned without delay and fix a time-limit for compliance.

2. If the provisions of article 1 are not complied with within the time-limit, the documents received shall be filed and no action shall be taken on them, and the fees received shall be reimbursed.

Article 18. The special declaration concerning the retention of copyright referred to in article 21, paragraph 3, of the Uniform Law must include the name and address of the owner, his signature or that of his agent, and, when appropriate, the postal address referred to in article 16, paragraph 3, as well as the registration number.

Article 19. 1. The request for registration of the action for recovery referred to in article 5, paragraph 1, of the Uniform Law shall include the name and address of the claimant, his signature or that of his agent and, when appropriate, the postal address referred to in article 16, paragraph 3, as well as the name and address of the owner of the deposit and the registration number of the instrument of Benelux or international deposit of the design.

2. Registration of the action for recovery referred to in article 5, paragraph 1, of the Uniform Law shall be cancelled at the request of either party which can produce either a judicial decision with the force of *res judicata* declaring that the claim has been rejected or a document proving that the action has been withdrawn.

Article 20. 1. The competent authority shall acknowledge receipt of all documents handed or posted to it for registration in the registers of the Benelux Bureau.

2. Upon receipt by the competent authority, all documents shall be marked with a stamp indicating the hour, day, month and year of receipt.

3. Documents which arrive after office hours shall, until proven otherwise, be presumed to have been received at midnight of the same day and shall be stamped with that hour.

Article 21. 1. If the office of the competent authority is closed on the last day of a period laid down by the Uniform Law or by these regulations, that period shall be extended until the end of the first subsequent working day of the office.

2. With respect to operations affecting the date of the Benelux deposit, the Benelux Bureau and national offices shall be open on the same days and during the same hours.

Article 22. 1. On the basis of its registers, the Benelux Bureau shall provide the person concerned with information, copies and certificates, upon payment of the sums laid down by article 26.

2. The priority documents referred to in article 4, paragraph D (3), of the Paris Convention shall be provided to the persons concerned by the Benelux Bureau or, if need be, by the national offices, upon payment of the sum laid down in article 26, paragraph 4, subparagraph (d).

Such documents may not be provided unless the deposit conforms to the provisions of article 1, paragraph 1, and of article 2, paragraph 1, subparagraph (d), with respect to deposit fees.

Article 23. The Benelux Bureau and national offices shall make available to the persons concerned the forms provided for in these regulations.

Article 24. 1. The Benelux Bureau shall keep a register of Benelux deposits and a register of international deposits.

2. The Registers, as well as the documents produced to substantiate information registered therein, may be consulted at the Benelux Bureau from the time of publication of the registrations. Such consultation shall be free of charge.

3. A copy of the registers of Benelux deposits and international deposits shall be transmitted to the national offices of Belgium and Luxembourg, where they shall be available for consultation free of charge.

Article 25. 1. The journal referred to in article 20 of the Uniform Law shall bear the title "*Recueil des Dessins ou Modèles Benelux — Benelux-Tekenningen- of Modellenblad*" (Benelux Design or Models Gazette).

2. This journal shall contain, in the language of registration only:

- (a) All the information registered with respect to Benelux deposits, referred to in articles 9 and 11; in the case of renewal, only the number and the date of expiration of the registration shall be mentioned. In the case of limited renewal of a multiple deposit, publication of the renewal shall mention the numbers of the designs maintained;
- (b) All information registered with respect to international deposits referred to in article 14, paragraph 2;
- (c) The registration of the declaration referred to in article 18;
- (d) The registration of the action for recovery referred to in article 19.

Chapter VI. FEES AND CHARGES

Article 26. 1. Fees for the various operations concerning Benelux deposits shall be as follows:

a. Deposit of a single design (single deposit):

- (1) A deposit fee of F 1,470 or f 100;
- (2) The fee for publication of the design shall be F 147 or f 10 per standard space to be fixed by the rules.

A standard space shall not contain more than two representations of the same design;

- (3) The fee for publication of the description of the characteristic features of the design shall be F 368 or f 25;
- (4) The fee for publication of the description of the colours of the design shall be F 368 or f 25;

b. Deposit of several designs (multiple deposit):

- (1) For the first design, a deposit fee of F 1,470 or f 100;
- (2) For the second to the tenth design inclusive, a deposit fee of F 735 or f 50 per design;
- (3) For the eleventh to the twentieth design inclusive, a deposit fee of F 368 or f 25 per design;
- (4) For the remaining designs, a deposit fee of F 294 or f 20 per design;
- (5) For publication of the designs, a fee of F 147 or f 10 per standard space to be fixed by the rules.

A standard space shall not contain more than two representations of the same design, or of different designs included in the same deposit;

- (6) For publication of the description of the characteristic features of the designs, a fee of F 368 or f 25 per design;
- (7) For publication of the description of the colours of the designs, a fee of F 368 or f 25 per design.

- c. The fee for deferment of the publication of the deposit shall be F 735 or f 50.
 - d. The fee for renewal of the registration of a single deposit shall be F 1,764 or f 120;
 - e. The fee for renewal of the registration of a multiple deposit shall be:
 - (1) F 1,764 or f 120 for the first design;
 - (2) For the second to the tenth design inclusive, F 882 or f 60 per design;
 - (3) For the eleventh to the twentieth design inclusive, F 441 or f 30 per design;
 - (4) For the remaining designs, F 368 or f 25 per design;
 - f. The fee for registration of the special declaration referred to in article 5, paragraph 2, concerning the right of priority shall be: F 294 or f 20 per design; however, this fee shall be payable only once if the declaration refers to several designs grouped in a multiple deposit;
 - g. The fee for registration of an assignment or transfer of one or more designs shall be: F 588 or f 40 per deposit;
If the registration concerns several deposits assigned or transferred to the same person: F 294 or f 20 for each of the remaining deposits;
 - h. The fee for registration of a licence for one or more designs or for its cancellation shall be: F 588 or f 40 per deposit;
If the registration or the cancellation concerns several deposits and the licence is granted to the same person: F 294 or f 20 for each remaining deposit;
 - i. The fee for registration of a change of name or of address of the owner or of licensee, or of a change of postal address, shall be: F 220 or f 15 per deposit;
If the registration concerns several deposits belonging to the same person or licenced to the same licensee: f 110 or f 7.50 for each remaining deposit;
 - j. The fee for publication of a change of postal address following removal to a new address by the person with whom domicile was elected: F 220 or f 15 for up to 100 designs.
If the change of address concerns more than 100 designs there shall be a surcharge of: F 220 or f 15 per group of 100 designs or fraction thereof.
2. The fees in respect of the various operations concerning international deposits shall be as follows:
- Fee for registration or cancellation of a licence for one or more designs: F 588 or f 40 per deposit;
If the registration or cancellation concerns several deposits and the licence is granted to the same person: F 294 or f 20 for each of the remaining deposits.
3. The following operations shall be subject to the fees indicated:
- a. Registration of the special declaration concerning the retention of copyright referred to in article 18: F 294 or f 20;
 - b. Registration of the action for recovery referred to in article 19: F 294 or f 20.
4. The following operations shall be subject to the fees indicated:
- a. The provision of information referred to in article 22, paragraph 1: F 426 or f 29, plus F 735 or f 50 per hour when the search for and formulation of the information requested requires more than one hour;
 - b. Copies referred to in article 22, paragraph 1: F 19 or f 1.30 per page;
 - c. Certified true copies referred to in article 22, paragraph 1: F 191 or f 13;
 - d. Priority documents referred to in article 22, paragraph 2: F 294 or f 20;
 - e. Certificates referred to in article 22, paragraph 1: F 294 or f 20;
 - f. Corrections, after registration, of any drafting errors committed by the owner, at his request: F 220 or f 15 per deposit;

If the correction concerns several deposits: F 110 or f 7.50 for each of the remaining deposits.

5. The surcharge due under article 12, paragraph 2, of the Uniform Law shall be: F 294 or f 20.

Article 27. 1. Payment of fees and charges due under article 26 in respect of operations effected with the Benelux Bureau or with national officer may be paid in one of the following ways:

- (a) By a transfer to or deposit in the postal checking account or bank account of the Benelux Bureau in the country where the operations are effected;
- (b) By written instructions in duplicate to the effect that the amount due should be debited to a current account opened by the applicant or his agent with the Benelux Bureau. In this case, the owner of the account shall receive, at least every quarter, a statement of payments and shall be informed of his balance.

2. Payment for copies of the *Recueil des Dessins ou Modèles Benelux* and for yearly subscriptions shall be made as provided in paragraph 1.

3. All payments shall indicate clearly and completely the purpose of the payment, giving details of each operation, if necessary.

4. Payments under paragraph 1 must be made prior to each operation, subject to the provisions of article 4. Proof of payment must be produced for each operation effected with the Benelux Bureau or with a national office.

The following shall be considered proof of payment:

- (a) A document issued by the postal service, the postal checking accounts office or the Bank, certifying that the transfer or deposit has in fact been made, or a copy thereof.
- (b) Written instructions to debit a current account with the Benelux Bureau, if there are sufficient funds in the account.

Article 28. The price of the *Recueil des Dessins ou Modèles Benelux* shall be F 147 or f 10 per copy.

The price of an annual subscription shall be F 1,470 or f 100.

There shall be an additional charge of F 15 or f 1 per copy and of F 147 or f 10 per subscription outside Benelux territory.

Article 29. Pursuant to article 7 of the Benelux Convention on Designs or Models, the Benelux Bureau shall pay to the national offices 20 per cent of the fees it receives in respect of operations effected through them.

Article 30. 1. The Board of Administration may adjust the rates laid down by these regulations to take into account increases in the operating costs of the Benelux Bureau. Such adjustment may be made no more than once a year.

2. If the official parties of the Belgian franc, the Luxembourg franc or the guilder are modified in relation to one another, the Board of Administration shall adjust the rates laid down by these regulations accordingly. This decision may be taken following an emergency procedure provided for in the rules of procedure of the Board of Administration.

3. The new rates shall be published in the official gazette of each of the Benelux countries and in the *Recueil des Dessins ou Modèles Benelux*; they shall enter into force on the date fixed by the Board of Administration, but no sooner than the date of publication of the last official gazette to be published.

Chapter VII. ENTRY INTO FORCE

Article 31. These regulations shall enter into force on 1 January 1975.