

To:

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Questionnaire on the accession of the European Community to the Hague Agreement Concerning the International Deposit of Industrial Designs (Geneva Act, 1999)

1. What, in your opinion, would be the impact, in your sector of activity or more generally, of the accession of the European Community to the Geneva Act (1999) of the Hague Agreement Concerning the International Deposit of Industrial designs on:

- **facilitating access by European Union Industrial design creators and owners to protection of their designs in third countries**
- Every year Swedish designers, working in different industrial sectors, create numerous of successful designs. However, despite the value connected to the appearance of a product, relatively few seek protection for their creations by registering the design. The main reason is without doubt the costs associated with the obtaining of a registration and the subsequent management thereof.

In most countries, novelty is an absolute requirement for protection. Consequently, the designer or right holder must bear the costs for registration, often including attorney fees, during the vulnerable stage of the product cycle when the new product is not yet introduced on the market. For natural reasons only few designers or right holders are willing to risk their money on design protection before they can estimate with some certainty that they actually have a product, which will attract consumers.

Sweden is a small country and thus to a large extent dependent on international trade. The European market is the most important market. Still, it was not until the dawn of the Community Design system that design protection on the Common market became economically feasible also for the small and medium sized Swedish companies. The success of the Community Design can be seen in the light of statistics from the Swedish Patent- and Registration Office, PRV, which shows that the number of national design applications has decreased in favour of the new Community Design. In 2001 PRV received 2019 design applications, in 2002 1838 and in 2003 only 1162.

But the Community Design does not fulfil the needs of those companies, which also operate on markets outside the European Union. To facilitate for these companies, the Committee working on the revision of the Swedish De-

sign Act has proposed that Sweden should ratify the Geneva Act of the Hague Agreement. The comments from the referral bodies considering the proposal have been univocally in favour of accession. Consequently, we expect that Sweden will ratify the Agreement within a few years time. To what extent Swedish companies will actually make use of the Hague system will of course depend on the possibility to designate important industry nations, which are not members of the European Union, for example the United States and Japan.

The accession of the European Community to the Geneva Act would be very welcomed from a Swedish point of view as it would definitely facilitate and, more importantly, make protection of designs abroad *affordable* for Swedish companies.

- **research and development activities and innovation in the field of industrial design,**
- One of the main objectives for granting exclusive rights to producers of designs and other intellectual goods is to encourage innovation, research and development, contributing to economic and social development. It is obvious that the possibility of obtaining exclusive rights to creations promotes investments in the field of industrial design. It is equally a fact that designers and right holders rather invest their money in product development than in applications for industrial property rights. The accession of the European Community to the Geneva Act (1999) of the Hague Agreement Concerning the International Deposit of Industrial Designs would lower the costs for registered design protection with the desirable result that designers and right holders in all Member states can spend less on obtaining exclusive rights and more on innovation, research and development activities.
- **the European Union's competitiveness at world level**
- Following an accession of the European Union to the Geneva Act of the Hague Agreement, a single application will be enough to protect designs in the European Union and in those third countries party to the Geneva Act. The cost savings will be significant and more money will be available for the innovation, research and development and marketing of products of the European Union

Today, the Community Design system is available to designers and right holders from all countries, not only members of the European Union. While everyone can enjoy the advantages of the Community design and rapidly obtain design protection on the Common Market to a low cost, the lack of equivalent systems in other parts of the world makes it very expensive for Member State companies to protect designs on other markets. In other words, it may be more worthwhile for companies from third countries to protect their designs in the European Union, than it would be for Member State companies to protect their designs in certain third countries. This fact leads to obvious competitive disadvantages for European Union companies operating on third country markets.

An accession of the European Union to the Geneva Act of the Hague Agreement will be cost effective and facilitate access to protection of European de-

signs in third countries, thus strengthening the European Union's competitiveness at world level.

2. Which would be, in your opinion, the main advantages of the system as described in point 1 for European Union companies? Would there be any disadvantages?

- The establishment of a link between the European Community design system and the 1999 Act would imply great advantages for European Union companies, as it would significantly facilitate and make affordable design protection in the European Union and in third countries.
- We cannot see any disadvantages with such an accession..

3. If the system described in point 1 was set up, how many international applications designating the European Community would you be likely to file per year? How many applications designating a Third Country? In your opinion, what would be the total amount of international applications coming from a Member State and designating a Third Country?

The first two questions are not relevant for the Swedish National Group of AIPPI.

- It is not possible to estimate the total amount of international applications coming from a Member State designating a Third Country. The number of applications will depend on a number of factors, especially the size and economic importance of third countries available for designation as parties to the Geneva Act.

The number of priority documents issued by the PRV can give some indication on Swedish companies' interest of registered design protection in third countries. In 2001 PRV issued 836 priority documents, in 2002, 936 and in 2003, when the Community Design was introduced, 536. Based on this information it would be fair to estimate that the number of applications would in any event exceed 500. We strongly believe that the access to a cost-effective system will increase the interest and incentive to obtain design protection in third countries.

4. Would your reply to question 3 be different if the international application could not be filed through the Office for Harmonization of the Internal Market but only directly at the International Bureau?

- The Swedish National Group of AIPPI can see no reason why the number of applications would be affected if the indirect path through the OHIM were closed.

5. On the basis of your replies to the previous question, would you be in favour of the accession of the European Community to the Geneva Act as described in point 1?

- Yes.

6. If your reply to the previous question was negative, what could make you change your position?

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7. Do you have any further comments regarding the accession of the European Community to the Geneva Act?

- The establishment of a link between the Community design and the Geneva Act will bring many positive effects in the field of industrial designs. The Swedish National Group of AIPPI welcomes the European Union accession to the Geneva Act and hope that a proposal in this direction will be put forward soon. And even more so, knowing that the accession by the European Union might be crucial for the survival of the Hague system as such, the loss of which would be a step backwards in view global harmonisation and international trade in the filed of Industrial Property.

The special study of this Questionnaire has been made within the Swedish National Group of AIPPI by Lottie-Ann Hulth and has been communicated with the Executive Committee of the Swedish National Group of AIPPI. Its secretary hereby transfers the answers on behalf of the Group,

Håkan Borgenhäll