

EXPLANATORY MEMORANDUM TO
THE INTELLECTUAL PROPERTY (ENFORCEMENT, ETC)
REGULATIONS 2006

2006 No. 1028

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations implement the Directive of the European Parliament and the Council on the enforcement on intellectual property rights (Directive 2004/48/EC) (“the Enforcement Directive”) and make some amendments to further implement the Agreement establishing the World Trade Organisation (including the Agreement on Trade-Related Aspects of Intellectual Property Rights), the Directive of the European Parliament and of the Council on the legal protection of designs (Directive 98/71/EC), Council Regulation (EC) No. 6/2002 on Community designs) and the European Economic Area Agreement.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Regulation 3 of these Regulations implements Article 13(1) of the Enforcement Directive (although other amendments to implement that provision are made elsewhere in the Regulations). Article 13(1) sets out a range of factors which must be taken into account in awarding damages. It includes a number of terms the meaning of which is unclear, for example “actual prejudice” and “moral prejudice”. It does not therefore seem appropriate to attempt to translate these terms into those of national law, and accordingly to ensure that the United Kingdom is in compliance with Article 13(1) the copy out approach has been adopted. However, it is necessary to avoid the implication that Article 13(1) provides a complete code that displaces the national law of damages (in particular any suggestion that it introduces punitive damages). Accordingly, regulation 3(3) makes it clear that the existing rules of national law are preserved, except to the extent that there is an actual inconsistency with Article 13(1).

4. Legislative background

4.1 These Regulations are made under section 2(2) of the European Communities Act 1972.

5. Extent

5.1 This instrument extends to all of the United Kingdom.

6. European Convention on Human Rights

The Minister, Barry Gardiner, made the following statement regarding Human Rights:

In my view the provisions of the Intellectual Property (Enforcement, etc) Regulations 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 The aim of the Enforcement Directive is to harmonise civil enforcement of intellectual property rights across the European Community. It sets out a common framework covering elements including evidence, injunctions, protection of evidence and damages. Many of its provisions are based on the best practice across member States and much is derived from French and English law. Effective protection of intellectual property rights is important. The Directive should result in less expensive litigation, more uniformity, and more certainty for individuals and companies who take action to enforce their rights across the European Community, thereby promoting innovation, developing employment opportunities and improving competitiveness.
- 7.2 The Directive applies to the United Kingdom, and given the different legal systems in England and Wales, Scotland and Northern Ireland, the changes required to implement the Directive vary across the United Kingdom. The implementation has also provided an opportunity to update the legislation to place certain remedies on a statutory footing (in particular, in relation to registered designs). This will ensure that the implementation of the Enforcement Directive is as transparent as possible.
- 7.3 In addition, these Regulations grant the exclusive licensee of a registered design similar rights and remedies to the proprietors of registered designs. In relation to patents, designs, copyright and trade marks such licensees have long had a right of action. Article 4 of the Enforcement Directive requires member States to provide the same remedies to, amongst others, exclusive licensees as they provide to right owners, but only as far as national law permits. Thus there is not a Community obligation to provide such rights to exclusive licensees, and granting them a right of action goes beyond the requirements of the Directive. However, it is closely related to the obligations contained in the Directive, and aligning the position with regard to registered designs to that of the other rights removes an undesirable anomaly.
- 7.4 In addition to implementing the Enforcement Directive, these Regulations also make further provision to implement other Community obligations. Most of these are minor amendments either correcting missed consequential amendments or updating references relating to the European Economic Agreement.
- 7.5 However one more substantive change is that these Regulations create a property right in an application for a registered design (although they do not grant any exclusive rights in relation to this new property). This change in the law is made to remedy a problem that can arise where the applicant for a registered design wishes to transfer his design before it is granted (at present the design itself is property and can be transferred, but the application is not and cannot).

7.6 Making a registered design application an item of property also remedies a discrepancy between national registered designs, and registered Community designs, the latter being an item of property. The fact that applications for registered Community designs are an item of property creates some uncertainty as the rules for dealing with such application is, according to Community law, dealt with under the same rules as those for dealing in national registered designs. The amendments made by these regulations arise out of this problem and remedy it.

7.5 A full transposition note is attached to this memorandum.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Jeff Watson at the Patent Office: tel: 01633 813650 or e-mail jeff.watson@patent.gsi.gov.uk can answer any questions on the Regulations.

FINAL REGULATORY IMPACT ASSESSMENT

Title of Proposal

It is intended that Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights will be implemented in the UK by:

- the Intellectual Property (Enforcement, etc.) Regulations 2006;
- in England and Wales, changes to the Civil Procedure Rules included in 41st Update (http://www.dca.gov.uk/civil/procrules_fin/contents/frontmatter/guidancenotes41preview.htm);
- in Northern Ireland – equivalent changes to the relevant court rules.

The Intellectual Property (Enforcement, etc.) Regulations 2006 include amendments to the Registered Designs Act 1949, the Patents Act 1977, the Copyright, Designs and Patents Act 1988, the Trade Marks Act 1994, the Patents Act 2004 and related secondary legislation.

Purpose and Intended Effects of the Measures

The Objective

The aim of the Directive is to harmonise civil enforcement of intellectual property rights across the European Community. It sets out a common framework covering elements such as; rights for litigants, evidence, injunctions, evidence protection and damages. Many of its provisions are based on EU best practice, much derived from French and UK law. Effective protection of intellectual property rights is important. The Directive should result in less expensive litigation, more uniformity and certainty for individuals and companies who take action to enforce their rights across the European Community. This should promote innovation, develop employment opportunities and improve competitiveness.

The Directive applies to the UK and given the different civil law and procedures that apply in England and Wales, Scotland and Northern Ireland, the changes required to implement the Directive vary within the UK.

The background

The European Commission presented a proposal for a Directive on the enforcement of intellectual property rights on 30th January 2003 as part of a broad-based approach to tackle counterfeiting and piracy (the original proposal included criminal sanctions). The Patent Office consulted on the proposal, and after extensive negotiations under the co-decision procedure, the Directive was adopted in April 2004 without the need for a second reading. The adopted proposal is considerably different from the

Commission's original proposal and does not include criminal sanctions. The UK along with most other member states opposed the inclusion of criminal sanctions as their inclusion would be inappropriate given the legal base chosen for the Directive. However it is recognised that criminal sanctions are an appropriate means of dealing with counterfeiting and piracy, and such measures are already included in our national law.

In July 2005 in anticipation of the European Court of Justice's judgment C-176/03 (which dealt with the Commission's general powers to propose criminal sanctions), the Commission have made proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights (2005/0127(COD)) and a proposal for a Framework Decision to strengthen the criminal law framework to combat intellectual property offences (2005/0128 (CNS)). These proposals are currently under discussion.

Risk Assessment

During the negotiation of the Directive various views were expressed as to whether the Directive went too far or did not go far enough in terms of enforcing rights. It is believed the adopted Directive reflects an appropriate balance between the various interests as set out in the recitals. A consistent approach to the enforcement of intellectual property rights across the European Community should reduce risks to rights holders arising from court action. However given the different legal traditions of the various member states, there are bound to be some differences in court procedures across the European Community.

Options

The UK has a Treaty obligation to implement all EC Directives, failure to implement this Directive would result in infraction proceedings being initiated against the UK by the European Commission. It would also fail to provide consistency and clarity for the enforcement of intellectual property rights across the European Community.

The changes proposed to implement this Directive are relatively minor, and some changes are a clarification of court procedures rather than a change to them. In their response to the consultation, the National Consumer Council made particular reference to the risk assessment and the need to take full account of consumer concerns. They raised the following points:

- Use of sanctions and the need to distinguish between organised commercial infringement and non-commercial infringing users – The term “commercial use” was much debated during the negotiation of the Directive, and Recital 14 provides some clarification “Acts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end consumers acting in good faith.” This interpretation is reflected in our implementation;
- Exceptions and exclusions need to be preserved – Other than for providing presumptions of authorship or ownership as required by Article 5 of the Directive no changes are proposed;

- Enforcement of unfair contracts should not be extended – It is not thought that the Directive encourages the enforcement of unfair contracts, and intellectual property issues were considered during the negotiation of the Unfair Commercial Practices Directive and will continue to be during this Directive's implementation (due to come into force by 12 December 2007);
- Data protection – No changes are planned in England, Wales and Northern Ireland to implement Article 8 (Right of information) of the Directive. The existing Civil Procedure Rules make provision for the protection of confidential information. Changes are being made in Scotland in order to implement Article 8 but the rights and privileges of the people affected must be considered by the court in each case before ordering any disclosure of information.

Benefits

Most business sectors should benefit from this Directive, many of whom are vulnerable to the infringement of their intellectual property rights. A harmonised approach to the enforcement of intellectual property across the recently enlarged European Community should be helpful to businesses with export interests.

Ineffective enforcement of intellectual property rights is a significant cost to industry in terms of damage to innovation and wealth creation. The Annual Enforcement Report 2004¹ reported that the loss to UK businesses from counterfeiting and piracy could be much as £1,414 million each year. A report by the Centre for Economics and Business Research in 2000 that estimated that counterfeiting within the EU costs over 17,000 jobs each year and reduces the annual GDP by €8bn. This Directive deals with civil enforcement of intellectual property rights rather than criminal sanctions, and is only able to address the problem of enforcement within the EU when much of the infringement occurs outside the Community. However ineffective enforcement of rights leads to financial losses and is a disincentive to right holders and potential rights holders.

The expansion of the European Community from 1st May 2004 to include a further 10 member states increased the need for consistent enforcement of intellectual property rights across the Community.

It is believed that organisations or individuals in all business sectors are likely to benefit from the implementation of this Directive, improved enforcement should be of more real benefit to SMEs and private individuals given the cost and resources that may be required to deal with enforcement issues.

Compliance Costs

The changes proposed are relatively minor and likely to give rise to few compliance costs. Essentially they consist of changes or clarifications to court procedures to aid the enforcement of intellectual property rights. However these changes take full account of the established legal framework to ensure that appropriate checks and

¹ <http://www.patent.gov.uk/about/enforcement/annreport04.pdf>

balances are included to protect consumer and other interests as highlighted by the National Consumer Council.

Small Firms Impact Test

This Directive has been discussed with the Small Business Service and other SME interests. By improving the enforcement of intellectual property rights, the Directive should be generally helpful to small businesses.

Competition Assessment

It is thought that the changes should only have beneficial effects on competition any new measures introduced include appropriate checks and balances to ensure they are not abused. The Directive should ensure that intellectual property rights are enforced consistently across the European Community, and hence reduce unfair commercial practices.

Enforcement and sanctions

The proposed changes will be enforced by the courts in relevant cases. Article 18 of the Directive specifies that member States shall submit a report to the Commission on its implementation in April 2009 (three years after implementation). Using these reports the Commission are required to report to the European Parliament, Council and the European Economic and Social Committee. The report will include (if appropriate), proposals to amend the Directive.

Consultation

Within government

The Patent Office has consulted and will continue to consult other government departments and agencies on this Directive.

The Office ran a formal consultation on our implementation proposals for the Directive from 15 July to 7 October 2005. This was published on the Patent Office website and went to an extensive list of interests (see Annex E of the consultation document).

In January 2006 the Patent Office published a post-consultation report see:
<http://www.patent.gov.uk/about/consultations/enforcement-ipr.htm>

This post-consultation report was accompanied by some proposals for revisions to the implementation proposals. In particular provisions for “representative” court actions for intellectual property collective rights-management bodies and professional defence bodies on behalf of their members as a result of comments received and further discussions (such rights would arise out of, or relate to, Article 4 of the Directive).

As a result of this further informal consultation a number of comments were received regarding the provisions for representative court actions, some of these pressing for

the provisions to go further and others querying the need for them. Given that providing a right of action for representative associations was not a requirement to implement the Directive, it was concluded that the issue needed further investigation before any details proposals were made.

Summary and recommendation

The Directive should provide benefits to UK business through consistent enforcement procedures across the European Community with much based on UK best practice.

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed *Barry Gardiner*

Date 5th April 2006

Directive 2004/48/EC on the Enforcement of Intellectual Property Rights

These Regulations do more than is necessary to implement this Directive by granting exclusive licensees of registered designs the rights and remedies afforded to proprietors of registered designs. This brings the law of registered designs into line with the law of unregistered designs, copyright, patents and trade marks.

Article	Objective	Implementation
2-3	<i>These Articles set out the subject matter and scope of the Directive, which concerns the measures and procedures and remedies necessary to ensure the enforcement of intellectual property rights whether these rights arise from Community or national law.</i>	None required.
4	<i>The purpose of this Article is to identify persons entitled to apply for the remedies described in the Directive, in so far as such persons are entitled to apply for those remedies in accordance with national law.</i>	<p>This Article in itself imposes no obligations on member States. Instead, it requires member States to ensure that where a person has a direct interest and legal standing under UK law they should have access to the measures, procedures and remedies provided for in the Directive (see recital (18)).</p> <p>Paragraph 3 of Schedule 1 to the Regulations inserts, amongst other things, section 24F into the Registered Designs Act 1949.</p> <p>This provision grants an exclusive licensee of a registered design the same rights and remedies as the proprietor. This provision is not strictly required by Article 4, but it is enacted to remove the anomaly that, in relation to copyright, performers' property rights, (unregistered) design right, trade marks and patents, exclusive licensee have a right of action.</p> <p>Paragraph 2 of Schedule 1 to the Regulations inserts, amongst other things,</p>

		<p>section 15C into the Registered Designs Act 1949. This provision provides a definition of an “exclusive licensee” that matches the definition used in other intellectual property legislation.</p>
5	<p><i>This Article relates to the presumptions of authorship in respect of intellectual property rights</i></p>	<p>No action is required to implement Article 5(1)(a) as a number of presumptions already apply to copyright and database right. However, the presumptions do not apply to other rights related to copyright.</p> <p>Paragraph 10 of Schedule 2 to the Regulations inserts section 197A into the Copyright, Designs and Patents Act 1988. This creates a new presumption, so that where copies of a recording of a performance bear the name of the performer that statements shall be admissible as evidence and shall be presumed to be correct until the contrary is proved. This presumption does not apply in criminal proceedings.</p> <p>Paragraph 5 of Schedule 3 to the Regulations inserts paragraphs 17A and 17B into the Copyright and Related Rights Regulations 1996. The former provision creates a similar new presumption in relation to publication right. The latter excludes its application from criminal proceedings.</p>
6	<p><i>The purpose of this Article is to ensure that a party who has put forward evidence in support of its claims, can obtain relevant evidence in the control of the opposing party, subject to the protection of confidential information.</i></p> <p><i>There are two parts to the Article</i> <i>(i) obtaining the evidence and</i> <i>(ii) protecting confidential information.</i></p>	<p>No specific implementation is required as these measures are already available before the courts in the various UK jurisdictions.</p>
7	<p><i>This Article requires member States to ensure that parties may apply for certain measures to be taken for the preservation of relevant evidence in respect</i></p>	<p>No specific implementation is required as courts in each of the UK jurisdictions already have the power to make such orders.</p>

	<i>of an infringement that is alleged to have taken place. The Directive suggests a number of method, including taking a detailed description and physical seizure of the infringing goods.</i>	
8	<i>Article 8 requires that member States shall ensure that, in proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the court may order that information concerning the origin and distribution networks of the goods or services which infringe an intellectual property right shall be provided by the infringer and/or any other person who possessed, used, or was involved in the production of the goods. This information may include the names and address of such persons and information on the quantities produced.</i>	<p>In England and Wales and Northern Ireland no implementation is required as this type of order is already available.</p> <p>Regulation 4 of the Regulations implements this obligation in Scotland by creating a new type of court order, for disclosure of information about infringing goods and services.</p>
9	<i>This sets out a number of provisional and precautionary measures that must be available, including interim injunctions, seizure and delivery up etc.</i>	<p>In England and Wales and Northern Ireland some amendment is necessary to the various rules of court. In England and Wales these changes have been made, but they still need to be made to the Northern Ireland rules of court.</p> <p>In Scotland, no implementation is required as the necessary measures are already available.</p>
Section 5 to 7 (Articles 10 to 15)	<i>These sections of the Directive sets out the remedies that should be available to a successful claimant (plaintiff/pursuer)</i>	To ensure the transparent implementation of the Directive various amendments have been made to put certain remedies on a statutory footing. Paragraph 3 of Schedule 1 to the Regulations inserts a new section 24A in to the Registered Designs Act 1949 (section 9 is repealed and re-enacted as section 24B), this makes it clear that relief by way of damages, injunctions,

		<p>accounts and so forth are available for an infringement of registered design rights. A similar amendment has been made to the Community Design Regulations 2005 by paragraph 9 of Schedule 3 to the Regulations.</p> <p>Paragraph 6 of Schedule 3 amends the Copyright and Rights in Databases Regulations 1997 and applies various remedies to databases.</p> <p>Similarly, these remedies are now included on the face of the Community Trade Marks Regulations 2006 (which come into force on the same day as these Regulations).</p>
10(1)	<p><i>This requires that Member States shall ensure that courts may order that appropriate measures be taken in respect of goods that have been found to be infringing and with regard to materials and implements used in the creation or manufacture of those goods in appropriate cases. Those measures shall include recalling or removing the goods from the channels of commerce, or destroying the goods or related materials</i></p>	<p>In relation to registered designs it is possible to rely on the common law remedies of delivery up and destruction. However, to ensure transparency of implementation paragraph 3 of Schedule 1 to the Regulations inserts sections 24C and 24D into the Registered Designs Act 1949. This provides a statutory scheme for delivery up and disposal of articles which infringe the registered design.</p> <p>In relation to Community designs, Article 89(1) of the Community Design Regulation requires certain remedies to exist. Article 89(1)(d) allows orders imposing other sanctions which are appropriate to the acts of infringement in question. Article 88(2) states that where the matter is not covered by the Community Design Regulation it shall be governed by national law. Therefore, to ensure transparency and consistency between registered designs and registered Community designs the Community Designs Regulations 2005 are amended by paragraph 9 to Schedule 3 of the Regulations. This paragraph inserts provisions to provide for delivery up and destruction in relation to such designs.</p> <p>In relation to Community trade marks some similar provisions were included in</p>

		<p>the Community Trade Mark Regulations 2006.</p> <p>A small consequential omission (which was a mistake in the original enactment) has been made to section 231 of the Copyright, Designs and Patents Act 1988 by Schedule 4 to the Regulations.</p>
10(2)	<p><i>Article 10(2) provides that the court shall order that such measures be carried out at the expense of the infringer.</i></p>	<p>In England and Wales and Northern Ireland some amendments are necessary to the rules of court. These have been made in England and Wales and will be made in Northern Ireland. In Scotland no action is necessary.</p>
11 and 12	<p><i>Article 11 requires that member States shall ensure that where goods have been found to be infringing, the court may issue an injunction against the infringer to prevent continuation of the infringement. The injunction, being equitable in origin, is discretionary. This Article also requires that rightholders must be in a position to apply for an injunction against intermediaries whose services are being used by a third party to infringe an intellectual property right.</i></p> <p><i>Article 12 permits member States to provide for compensation in lieu of these measures if the infringer acted unintentionally and the particular measure would cause disproportionate harm.</i></p>	<p>No specific implementation is required as injunctions (or in Scotland, interdicts) are already available before the English, Scottish and Northern Irish courts.</p>
13	<p><i>Article 13 requires that member States shall ensure that the competent judicial authorities may order the infringer to pay the right holder damages appropriate to the actual prejudice suffered as a result of the infringement.</i></p> <p><i>When judicial authorities set the damages they must:</i></p>	<p>Regulation 3 of the Regulations sets out the general approach to the assessment of damages required by Article 13.</p> <p>Section 62(3) of the Patents Act 1977 is amended by paragraph 2 of Schedule 2 to the Regulations. This removes the absolute bar on the recovery of damages in certain circumstances following the amendment of a patent's specification. Such a bar is prohibited by Article 13(1).</p>

	<p><i>-take into account all appropriate aspects such as negative economic consequences and, in appropriate cases, elements other than economic factors, such as moral prejudice;</i></p> <p><i>or</i></p> <p><i>-set damages as a lump sum on the basis of such elements as lost royalties.</i></p> <p><i>Article 13(2) provides that where an infringer did not knowingly engage in infringing activity, member states may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.</i></p> <p><i>Article 13 is not intended to allow punitive damages, but requires compensation to be based on objective considerations (see recital 26)</i></p>	<p>In future, those circumstances precluding recovery have become factors to be taken into account when assessing damages (along with a new factor of knowledge). Similar amendments are made to section 63(2) of the Patents Act 1977 by paragraph 3 of Schedule 2 to the Regulations, where recovery is barred following a finding of partial invalidity.</p> <p>Section 68 of the Patents Act 1977 and section 25(4) of the Trade Marks Act 1994 both prohibited the recovery of damages prior to the registration of a transaction. This restriction is also incompatible with Article 13(1). Therefore, paragraph 4 and 17 of Schedule 2 to the Regulations change the restriction so that damages become recoverable, but costs can no longer be recovered. This is compatible with Article 14 as an exception to the “general rule”.</p> <p>Certain amendments were due to be made to sections 62(3) and 63(2) of the Patents Act 1977 by section 2(3) and (4) of the Patents Act 2004. The amendments, in their original form, will not now be commenced, and so are repealed by Schedule 4 to the Regulations. However, a factor is included in sections 62(3) and 63(2) corresponding to that proposed change.</p>
14	<p><i>Article 14 requires that member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall be borne by the unsuccessful party.</i></p>	<p>No specific implementation is required as this rule reflects the general practice before the English, Scottish and Northern Irish courts.</p>
15	<p><i>This Article requires that member States must ensure that, in legal proceedings for infringement of intellectual property, the court may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning</i></p>	<p>In England and Wales and Northern Ireland the rules of court require amendment to accommodate this requirement. This change has been made in England and Wales, a change to the Northern Ireland rules is anticipated.</p> <p>Regulation 5 of the Regulations implements this obligation in Scotland by creating a new type of court order for the</p>

	<i>the decision, including displaying the decision and publishing it in whole or in part.</i>	dissemination and publication of judgments.
16	<i>This Article states that, without prejudice to civil and administrative measures, procedures and remedies laid down by this Directive, member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.</i>	See commentary on sections 5 to 7 above.
17 to 22	<i>Codes of Conduct and Administrative Cooperation</i>	No implementation required.

*It should be noted a more detailed transposition note, explaining why certain actions were not necessary was included in the Consultation Document: Consultation on the UK implementation of the Directive on the enforcement of intellectual property rights (2004/48/EC). This document is available at:
www.patent.gov.uk/about/consultations/enforce05/index.htm*

<p>Further implementation of Regulation (EC) No 6/2000 on the Community Design and the Directive of the European Parliament 98/71/EC and of the Council on the legal protection of designs</p>

These Regulations do more than is necessary to implement the Directive and Regulations in that they create a right of property in a national registered design application. This change is made to avoid any uncertainty in dealings with Community designs and to allow the law to reflect commercial practice.

Paragraph 2 of Schedule 1 to the Regulations inserts a new section 15A and 15B into the Registered Designs Act 1949. Article 34 of the Regulation (EC) No. 6/2000 states that:

“An application for a registered Community design as an object of property shall be dealt with in its entirety, and for the whole of the Community as a national design right of the Member State determined in accordance with Article 27.”

A Community design application should be dealt with as if it were registered as a national design in the seat or domicile of the holder (as set out in Article 27). This creates an anomaly as the domestic application for a registered design is not property and so cannot be assigned or transferred.

In addition, it is clear from Article 1(d) that applications for registered designs fall within the scope of Directive 98/71/EC. The provision made to enable the dealing in

applications for registered designs therefore also relates to or arising out of that Directive as well.

To avoid confusion, and avoid conflicting parallel regimes, section 15A of the Registered Designs Act 1949 makes an application for a registered design an item of personal property. Section 15B of the Registered Designs Act 1949 sets out expressly the requirements for dealing with registered designs, which will also apply to Community registered designs by reason of Article 34.

Further implementation of the European Economic Area Agreement

The definition of the EEA in the Copyright, Designs and Patents Act 1988, the Duration of Copyright and Rights in Performances Regulations 1995 and the Copyright and Related Rights Regulations 1996 contains a reference to the EEA Agreement as originally signed. Given that, with the enlargement of the EU, the contracting parties to the Agreement have changed, the definition of EEA State in those enactments has been restated in a simpler form, and certain other anomalies have been removed by paragraphs 8, 9 12 and 13 of Schedule 2 and paragraphs 1 and 3 of Schedule 3 and Schedule 4 to the Regulations.

Further implementation of WTO Agreement (and the Trade Related Aspects of Intellectual Property Agreement) specified as a Community treaty by SI 1995/265

The amendments made to section 130(1) of the Patents Act 1977 (by paragraph 5 of Schedule 2 to the Regulations) and section 55 of the Trade Marks Act 1994 (by paragraph 18 of Schedule 2 to the Regulations) are in effect missed consequential amendments (from SI 2004/2357, made under the Regulatory Reform Act 2001 and SI 1999/1899 made under the European Communities Act 1972 respectively).

The failure to make the consequential change to section 130 of the Patents Act 1977 means that (but for section 17 of the Interpretation Act 1978) there may be doubts that the United Kingdom complies with Article 29(1) of TRIPS, which requires, amongst other things, Member States to require an applicant to disclose the invention in a sufficiently clear and complete manner.

This requirement means that the description of the invention must be adequate. The formal requirements set out how that description should be presented and so relate to the adequacy of that disclosure.

The failure to make the amendment to the Trade Marks Act 1994 by SI 1999/1899 left some ambiguity in section 55, which these Regulations remove.

