

THE COMMUNITY DESIGN (European Union)

Since 1st April 2003, it is possible to register a European Community design¹ that covers all the European Union countries² through one application followed by its registration.

A design consists in the *appearance of a product* resulting from the features of, in particular, the lines, contours, colors, shape, textures and/or materials of the product itself and/or its ornamentation.

A *product* means any industrial or handcrafted item, including inter alia parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, excluding computer programs.

¹ Designs concern the protection of two-dimensional (2-D) objects, whilst models concern the protection of three-dimensional (3-D) objects. Consequently, the word “design” when used in the present note covers both designs (2-D) and models (3-D). The procedure and protection of both is the same, except for multiple applications.

² The EU legislation provides protection for both registered and unregistered designs. Protection is limited for 3 years from disclosure and it protects only against slavish imitation. The present note covers only the protection of registered designs.

THE REGISTERED COMMUNITY DESIGN

OBJECT OF PROTECTION

A design does not protect the idea but the product itself or part thereof. Only its concrete appearance can be the object of protection. Only the characteristics which are clearly materialized on the reproductions of the design application will be protected, therefore the quality of those reproductions is very important.

LEGAL CONDITIONS

A design is only protected to the extent that it is new and has an individual character. A design shall be considered new if no identical design has been made available to the public before the application or priority date. Designs shall be considered identical if their features differ only in immaterial details. A design is considered to have an individual character if the overall impression it produced on the informed user, differs from the overall impression produced on such user by any design, which has been made available to the public before the application or priority date. It is preferable not to release information about a design before it is filed. But if that occurred, the designer still benefits from a one-year-grace period to file the design.

COMMUNITY OF PROTECTION

A design (RCD) is registered for 5 years (as from its application date). It may be renewed by payment of a renewal fee for 4 successive periods of 5 years.

OWNERSHIP

The applicant may be a physical or moral person, alone or in co-ownership.



RIGHTS OF THE OWNER

The owner of a registered design has the right to:

- › the exclusive use of his design. However, he does not have to use it;
- › prohibit any third party from registering or using his design or any similar one;
- › assign his right or allow a third party to use it under certain conditions, by a license agreement.

MULTIPLE APPLICATION

It is possible to file a multiple design application that has the advantage of a decreased fee. However, all the designs must be of the same nature namely, they must belong to the same class of Locarno (which is the administrative and official classification of designs). Flexibility: as regards ornamentation (2-D designs), the designs may belong to different classes.

REGISTRATION PROCEDURE

The procedure is as follows:

■ 1 The formal examination

The Office verifies the basic requirement of the application, the quality and number of representations, the covered products and the payment of the fees.

■ 2 The publication

The design is published in the Community Design Register (online). It is however possible, upon payment of an extra fee, to ask for the deferment of the publication for a period of 30 months.

■ 3 The registration

If the design meets all the Office's requirements it is registered. The sign® can be put on the design.

Because an examination of your design's validity does not exist, any third party can try to obtain its nullity before the Community Design Office or the European Court of Justice.

GEVERS

The main objective of GEVERS is the development of your innovation, by activating and enhancing your intellectual property rights. The integrated group we work in offers flexible services throughout the whole process, from innovation to valorisation.

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European Intellectual Property Architects

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