

THE DESIGN HANDBOOK



OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET
TRADE MARKS AND DESIGNS

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THE COMMUNITY DESIGN SYSTEM

If you don't protect your design you may not be able to profit from it!!

Good design knows no frontiers and the Community Design is a form of protection that should always be considered when a design is going to be marketed or displayed in part or the whole of the EU.

This Handbook **explains the basics of the Community Design system**, so that you can choose the type of protection that suits you best.

You will find basic information under "Community Design system" and if you opt for the stronger protection of the registered Community design, you will **find the practical details about filing under "Protecting your rights"**.

THE COMMUNITY DESIGN SYSTEM

WHAT IS A COMMUNITY DESIGN?

The Community Design system includes two kinds of protection, both covering all the EU Member States and any which might join in the future:

The Unregistered Community Design (UCD)

and

The Registered Community Design (RCD)



THE REGISTERED COMMUNITY DESIGN.

If you have registered a radio as a Community Design and someone else either:

- copies it
 - or uses the same design for another type of device,
 - or even prints it on a T-shirt to be sold,
- you can prevent him/her from doing so!

The protection of the **RCD**, or the **Registered Community design**, is **much stronger** than the UCD.

There is no need to prove disclosure since the design is registered.

The design is protected for periods of 5 years up to a maximum of 25 years.

But, be careful, you can only register an RCD within the first 12 months of disclosure without having the risk of it being cancelled because of lack of novelty.

THE UNREGISTERED COMMUNITY DESIGN.

The **UCD** or the **Unregistered Community design** gives **limited protection** against copies without the need for registration.

Protection exists during the first 3 years after disclosure of the design in the EU.

The disadvantage of the UCD is that it is difficult to prove **disclosure**. So, **it is a good idea to consider the stronger protection provided by the RCD.**

disclosure: made available to the public, published, exhibited etc .



WHAT CAN BE PROTECTED

What can be protected as a **design** is the **appearance** of the whole or a part of a product resulting from its:



colours



texture



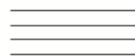
shape



contours



materials



lines



ornamentation

Almost any industrial or handicraft item can be eligible for registration (except for computer programs).

For instance.....

RCD 000785522-0001



You can protect the packaging of products

You can protect the design of "normal single products"....

RCD 000408166-0001



You can protect the design of composite products

RCD 000465679-0016



You can protect sets of articles

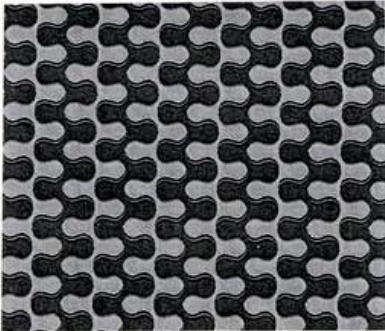
appearance: outward or visible aspect.



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RCD 000614656-0002



You can protect ornamentation that can be put on several different items.....

RCD 000789417-0002

You can even protect maps...



RCD 000197405-0001



You can protect web design



WHAT CAN NOT BE PROTECTED

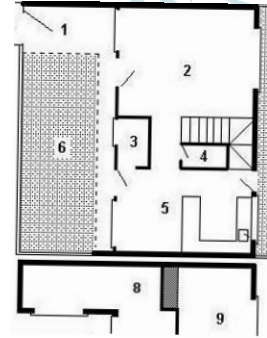
Any item not complying with the definition of design given by the RCD Regulation i.e.:

- Any item which does not consist of the outward appearance of a product or part of it.

The following plan cannot be registered as the design of a flat because the final appearance of the flat is not actually shown.

The plan itself can be protected, but then it is **only the plan not the flat that is protected.**

Something that is **not a handicraft or industrial item** cannot be protected.



- Any item which is **not an industrial or handicraft item.**

Something that is not a handicraft or industrial item cannot be protected.

Anything belonging to the natural world cannot be registered as a design.

- Any item whose **appearance is exclusively dictated by its technical function.**

- Any item which is deemed to be **against morality or public policy.**



RCD 80841

Sometimes it is not easy to draw a line between an offence to morality and bad taste.

Here is an some example of a registered design which has been considered not to be against public policy or morality....

WHY IS THE FILING DATE IMPORTANT?

The filing date is important because it determines the starting point of the right and it is important to prove that you were the first to register the design.

In a court case, this may be crucial in deciding who wins.

That's why **you should file as soon as possible!**

In order to grant a filing date The OHIM must receive –

- a request for registration (the form),
- information identifying the applicant,
- a representation of the design suitable for reproduction (or specimen).

Without this the applicant will lose the filing date

WHEN SHOULD YOU FILE?

As soon as possible!

The **novelty** of a design is a very important factor. In many national registration systems you can no longer protect a design after it has been disclosed.

If you want to register a Community Design you must do it within the first 12 months of disclosure.

After that, it is considered that the design no longer has novelty and it would be vulnerable to a cancellation action.

specimen: Only for two-dimensional designs and for deferred publication. 5 copies pasted on A4 paper sent in single mail with the application, Dimensions A4 not folded 50 grams, 3 mm thickness.

novelty : A design shall be considered to be new if no identical design has been made available to the public.

WHAT DOES PRIORITY MEAN?

To claim **priority** when applying for an RCD means that, within six months from its filing date with a national office, you can file your RCD under the priority of the first application, and protection will run from the first date..

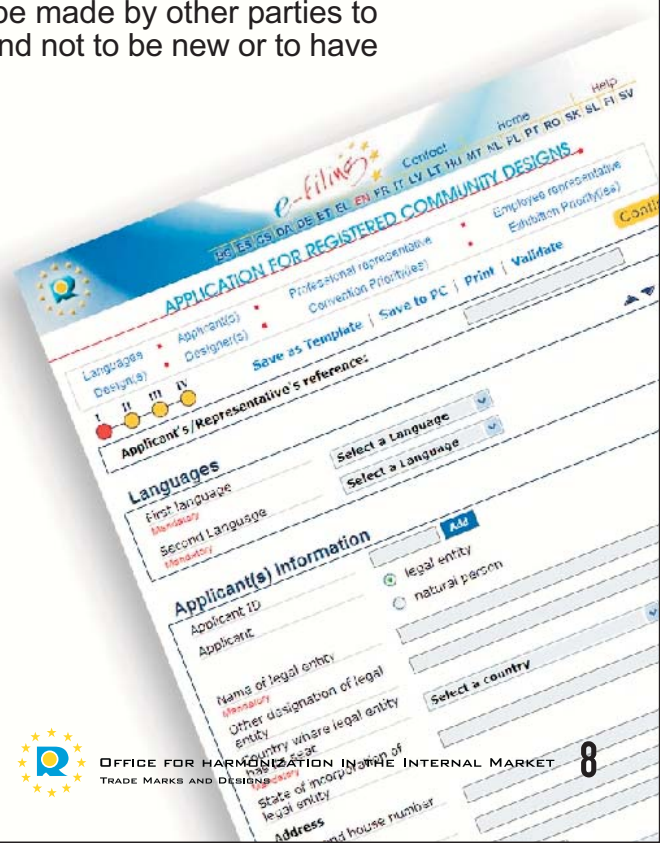
PRIORITY

THE EXAMINATION OF AN APPLICATION

Applications are mainly checked for **formalities** for instance to verify that it is a design application and that the design is not contrary to public policy or morality.

There is no search for **earlier rights** in order to determine novelty. After registration and publication, an application may be made by other parties to declare the design invalid if, for example, it is found not to be new or to have an individual character.

- formalities:** adherence to established rules and procedures.
- earlier rights:** that is if someone else has registered the design already.



HOW CAN AN RCD BE INVALIDATED?

To invalidate an RCD, an **invalidity application** needs to be sent in and a fee has to be paid.

The invalidity procedure takes place between the holder and the opponent who is requesting the invalidation of the registered design. The reason for the invalidity application could be, for instance, that there are prior rights valid in the EU for a similar design or the same one.

When it is considered that the arguments and evidence provided are sufficient, a decision is taken by the OHIM on the case.

If the invalidity application is accepted, then the RCD will be declared invalid. If not, then it will remain in force.

The decision reached at the end of the invalidity procedure may be appealed before the Boards of Appeal of the OHIM by either party.



RCD 5269-0001

PUBLICATION AND/OR DEFERMENT ?

Unless an application contains a request for deferment of publication, publication takes place immediately after registration.

A deferment is a delayed publication.

At the time of applying for an RCD you can ask for the deferment (delay) of the full publication of all the design details for up to a maximum of 30 months from the filing or the priority date.

If at any time you wish to cancel the deferment, you can ask the OHIM to publish the design.



WHAT HAPPENS IF I AM COPIED?

THAT IS, IF SOMEONE COPIES MY DESIGN.

Holders of valid registered designs have exclusive rights to use the design concerned and to prevent any third party from using it anywhere within the European Union. They will be protected against both deliberate copying and the independent development of a similar design.

The rights cover, in particular, the making, offering, marketing, importing, exporting or use of a product in which the design is incorporated or to which it is applied, or holding stock of such a product for those purposes.

The protection is against the unauthorised use of the design, whatever the product applied to.

If you find that someone is **infringing your design**, you can enforce the right by applying to a court for an infringement action.

If successful, you can obtain an “**injunction**” against the infringer which means they will have to stop.

You may also get compensation – this could be in the form of damages according to any detriment that has been caused to your business or it may be possible to have the profits made by the infringer paid over to you.

This is a very complicated area and it is always advisable to take legal advice! Even though there will be an initial cost for you, it may well mean a more successful outcome!

infringing: using your IP without your permission



PROTECTING YOUR RIGHTS

WHO CAN FILE?

Any natural or legal person (e.g. a company) without any restrictions as to nationality or state of incorporation.



HOW MUCH DOES IT COST?

The cost depends on how many designs are being registered and on whether **publication** or **deferment** is requested.

The cost of registering only one design is €350. This amount includes the registration fee of €230 and a publication fee of €120.

If deferment is requested, the cost of registering one design would be €270, divided into the registration fee of €230 and a deferment fee of €40.

HOW CAN I GET A DISCOUNT?

The more designs you register, the cheaper the cost.

For instance, if you register 2-10 designs, the registration fee is halved. And if more than 11 are registered, the registration fee is only €50 per design.

The only requirement for a multiple application is that all the designs have to belong to the same class of products in the Locarno Classification. If that is the case, you can apply for as many as you want.

The best way to check in which Locarno Class your designs belong is to search in the classification database.



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PROTECTING YOUR RIGHTS

HOW AND WHERE DO YOU FILE?

Electronically in <http://oami.europa.eu/en/design/efentry.htm>

You can also file at the same time you see a demo on the Hands off my design website.

By post or courier to:

The OHIM
Apartado de correos 77
E-03080 Alicante, Spain

By hand – either at the OHIM in Alicante or via a National IP Office.



IN WHICH LANGUAGE?

You can file in any of the official languages of the Community.

In addition, you must indicate a second language (different from the first) which must be a language of the OHIM, that is Spanish (ES), German (DE), English (EN), French (FR) or Italian (IT).



REPRESENTATION OF THE DESIGN?

WHAT IS SEEN IS WHAT IS PROTECTED.

If the views are from different angles, the protection will be stronger.

But remember, **at least one view has to represent the product as a whole.**



RCD 225503

NUMBER AND QUALITY OF THE VIEWS.

A maximum of 7 views is accepted.



RCD 000733993-0001

NUMBER AND QUALITY OF THE VIEWS.

If the quality of the view is bad, which is usual when sent by fax, the filing date will be refused.

You can obtain a new date if you send in new good quality pictures, but it is always a risk to lose a filing date.



RCD 246657

ADDITIONAL MATERIAL/NEUTRAL BACKGROUND.

Only the design should be shown.

What do you think they wanted to protect in this photo? It was rejected and the filing date changed.



RCD 313150

NUMBER AND QUALITY OF THE VIEWS.

Additional material:

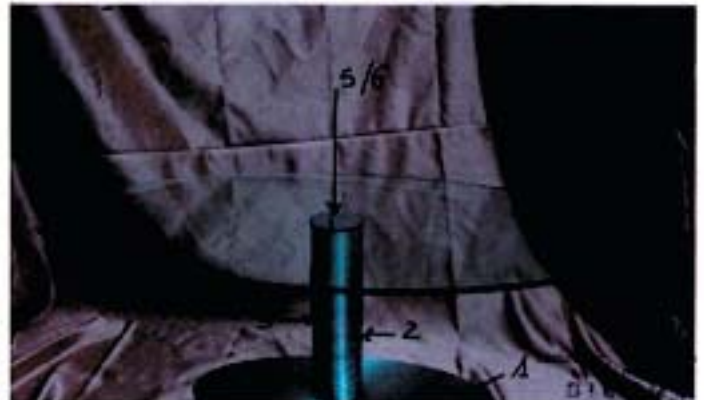
If additional material such as a human body, is used in a view to clarify the design concerning e.g. its use or its size and if it is quite clear that it is not part of the design itself, it is acceptable.



RCD 276050

The first photo was rejected.

The second was accepted.



VIEWS IN DIFFERENT COLOURS.

Different colours.

A design is the appearance of a product (or part of it) resulting from the features of, among others, its colours.

The OHIM does not accept views showing different colours, these views do not relate to the same design:

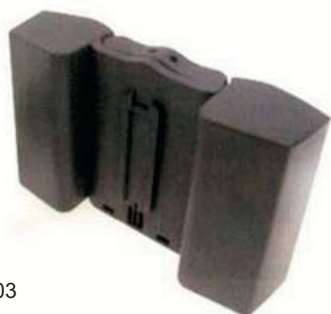


RCD 68606

VIEWS OF COMPLEX PRODUCTS.

This is a product consisting of multiple components which can be replaced, permitting disassembly and re-assembly.

The OHIM requires that at least one of the **7 views** shows the product in **its assembled form** if it is not clear whether the application is a single or multiple application.



RCD 225503

VIEWS OF SETS OF ARTICLES.

A **set of articles can be accepted as one design**, provided the articles have features in common which closely link the articles in such a way that it is clear that protection is sought for a design resulting from the combination of the articles.

In addition, the articles should ordinarily be on sale or intended to be used together.

For a set of articles, at least one view must show the set of articles together.

Example of set of article



RCD 187018

PROTECTING PART OF A PRODUCT.

The OHIM accepts **dotted lines** to indicate the elements for which no protection is sought or to indicate portions of the design which are not visible in that particular view, i.e. non-visible lines.

The OHIM accepts **boundaries** to be used to surround features of the design for which protection is sought.

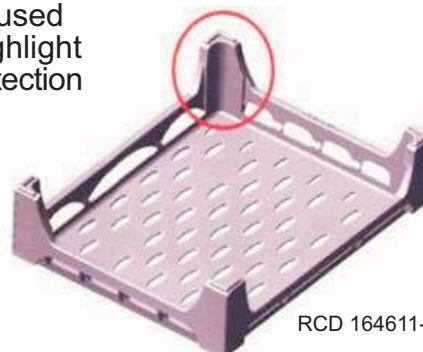
The OHIM accepts **colouring** to be used on a black and white drawing to highlight the features of the design for which protection is sought only.



RCD 30606-0005



RCD 229752



RCD 164611-0004

THE RCD ID NUMBER

Applicants and their representatives who have been given an ID number for Community trade mark matters should use this ID number also for the Community design.

The indication of the ID number together with the name of the applicant is sufficient.



SIGNATURE AND AUTHORISATION

The application must be signed!!

An authorisation of the representative is not obligatory, even where representation is required.

Neither the qualification nor authorisation of the appointed representatives is subject to examination.

However, an employee must have an authorisation to represent his employer.

This authorisation must be filed with the OHIM.



HELP WITH APPLICATIONS

You will find a demo on the Hands off my design website which will guide you through the application if you are a designer and you want to register your own design.

If you still think you need personal help, you could contact one of the IP agents that are on the OHIM's list of qualified agents.

You can also ask for specific help by contacting the OHIM's info desk either by e-mail to information@oami.europa.eu or by phone (+34) 965138800.

