Registered Community Design

International Symposium, Protection on Industrial Designs,
Santiago, Chile
16-17 November 2011
RCD began on 1\textsuperscript{st} of April 2003.

Exclusive right to use the design and prevent others from making, offering, putting on the market, importing, exporting or using any product where the design is incorporated or applied to.

Administrative centre – Office for Harmonization in the Internal Market (OHIM), Alicante
One application procedure

One language (any of the 22 EU languages)

One payment, in one currency (€)

Multiple application
- unlimited number of designs
- reduced cost
- all designs in the same Locarno class

Deferment
delay of publication up to 30 months
from filing/priority

Maximum life: 25 years
Definitions

Requirements for protection

Scope of protection
Design: the appearance of the whole or a part of a product resulting from its features.

Product: any industrial or handicraft item, including inter alia:

- Parts assembled into a complex product
- Packaging
- Get-up
- Graphic symbols
- Typographic typefaces

Excluded: computer programs
Natural products

Mere words and sequences of letters without figurative elements

Ideas

Functions

Smells and fragrances

Music and sounds

…do not constitute the appearance of a product and therefore do not comply with the definition of a design.
Requirements for Protection
(Art. 4, 5, 6, 8, 9 CDR)

Novelty

Individual character

No protection for:
- component parts of a complex product which are not visible during normal use
- designs which are solely dictated by the technical function of the product
- designs of interconnections
- designs contrary to public policy and accepted principles of morality
**Novelty**
*(Art. 5 CDR)*

**Novelty** = no identical design disclosed to the public earlier

A design shall be deemed to have been made available to the public before a certain date if:
- it has been published following registration
- exhibited
- used in trade
- otherwise disclosed (internet, magazines…)

*No need that such disclosure takes place in EU*
Grace Period

Art. 7(2) CDR

The novelty of the design is destroyed 1 year

after its first disclosure to the public
Individual Character
(Art. 6 CDR)

Individual character = different overall impression on the “informed user” from any design disclosed earlier

The degree of freedom of the designer in developing the design is taken into consideration
Scope of Protection
(Art. 10 CDR)

Includes any design producing the same overall impression on the “informed user”
Applications can be filed in any of the 22 EU languages directly to OHIM by…

- e filing (electronic application)
- Fax (confirmation copy within 1 month)
- Post/Courier
- Hand delivery

or through any National IP Office of the EU
(filing date: the date of receipt in the national office)

www.oami.europa.eu
Art. 77 CDR

Applicants who do not have either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must appoint a representative with its domicile or its principal place of business or a real and effective industrial or commercial establishment in the Community.
Grounds for Non-Registrability

• Not corresponding to the definition of a design

• Against public policy and accepted principles of morality

No examination on:

- Art. 4 to 8 CDR (novelty, individual character, visible in normal use, dictated by its technical function, interconnections)
- relative grounds (earlier rights)
- whether the applicant is entitled
• Obscene or immoral images, racist images or messages and Nazi symbols are not acceptable.

• Flags and religious symbols are acceptable provided they are used in a proper and decent way.

• Registering images of famous people without their permission would not be seen as being against public policy.
Art. 36(1)CDR

1. Request for design registration

2. Information identifying the applicant

3. Representation of the design suitable for reproduction according to Art. 4(1)CDIR:
   - **Good quality** - it should clearly show the details of the design for which protection is sought
   - **Neutral background** - it should be only the design and nothing else shown
INDP: Lounge chairs
• The representation can be photos, computer drawings or drawings by hand, in BW or colour.

• Maximum seven (7) different views.

• All views should show the **same product**.

• All views should show the **same colour**.

• **Only one view per electronic attachment** (e-filing restriction).
• Views should not contain explanatory text, wording, numbers or symbols

• Detailed views of portions of the design should not be shown together with the design

• Set of articles & complex products must contain in the representation a global view of the design
The application must contain an indication of product. The term must be clear and not too generic, so that the classification is possible.

The classification of the Community Designs is based on the 9th Edition (2008) of LOCARNO international system (32 classes & 223 sub-classes).

OHIM has prepared in the 22 EU languages an extended version of Locarno, the “EUROLOCARNO” list (+/-13000 terms) which is searchable online and constantly enriched with new terms.

The classification is not mandatory for the applicant. OHIM classifies the designs ex officio.
Art 36(6) CDR

Indication and classification of the products does not affect the scope of protection of the design. What is protected is the appearance of the product and not the product itself…
Art. 42 & 44 CDR

- Previous application/registration filed maximum 6 months before the filing date of the Community design application.

  Possible to claim priority at the time of filing or within 1 month from the filing date.

  Certified copy of the previous application/registration certificate should be received at the OHIM within 3 months after the date of claiming the priority.

- Exhibition priority can be claimed within 6 months from the date of the first disclosure during the exhibitions falling within the terms of the Convention on International Exhibitions signed in 1928.

  Aichi, Japan 2005
  Saragossa, Spain 2008
  Shanghai, China 2010
• Registration fee
• Publication fee
• Deferment fee (only when the applicant requests deferred publication)

Payment should be made at the time of filing the application
Surcharge for late payment: 25% of the missing amount

Ways of payment:
• Current account in OHIM held by the applicant
• Transfer to a bank account held by OHIM
• Credit card (allowed only in e-filing)
• In cash at the premises of OHIM

• Cheques are not acceptable
## Table of fees

<table>
<thead>
<tr>
<th>Reason for Fee</th>
<th>Fee (1&lt;sup&gt;st&lt;/sup&gt; design)</th>
<th>Additional fee (each design from 2&lt;sup&gt;nd&lt;/sup&gt; to 10&lt;sup&gt;th&lt;/sup&gt;)</th>
<th>Additional fee (each design after the 11&lt;sup&gt;th&lt;/sup&gt;)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registration</td>
<td>€230</td>
<td>€115</td>
<td>€50</td>
</tr>
<tr>
<td>Publication</td>
<td>€120</td>
<td>€60</td>
<td>€30</td>
</tr>
<tr>
<td>Deferred Publication</td>
<td>€40</td>
<td>€20</td>
<td>€10</td>
</tr>
</tbody>
</table>
- Community Designs Bulletin
- Daily publication
- Only electronic
e-Certificate since 15/11/2010
The Community design is renewable in blocks of 5 years

Maximum protection: 25 years

“e-Renewal” is possible and recommended, also available in paper form in all 22 languages

OHIM informs the right holders via mail 6 months before the end

Late renewal is possible, no later than 6 months after the end
<table>
<thead>
<tr>
<th>Reason for Fee</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renewal (first)</td>
<td>€90</td>
</tr>
<tr>
<td>Renewal (second)</td>
<td>€120</td>
</tr>
<tr>
<td>Renewal (third)</td>
<td>€150</td>
</tr>
<tr>
<td>Renewal (fourth)</td>
<td>€180</td>
</tr>
<tr>
<td>Late Renewal</td>
<td>25% of late fee (per design)</td>
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</tbody>
</table>
Time limits:
Invalidity can be filed any time after publication

Invalidity application must contain all grounds for invalidity (no submission of new grounds after date of filing)

Language of proceedings:
1st language of the contested Community design

Invalidity fee: 350€

Invalidity is for the whole EU territory
(a) Not a design
(b) Does not fulfil requirements of Art. 4 to 9 CDR:
   novelty, individual character, designs dictated by their technical function, designs of
   interconnections, component parts invisible in normal use, designs contrary to public
   policy or morality
(c) Holder not entitled
(d) Anticipated by prior design
(e) Interfering earlier sign
(f) Interfering earlier copyright
(g) Improper use of items listed in Art. 6ter of the Paris Convention or other emblems
   of public interest in a Member State
**Who can appeal?**
Any party to the proceedings adversely affected by a decision
- Applicant in case of total or partial rejection of his design application
- The losing party in an Invalidity decision

**Time Frame:**
the appeal must be filed to OHIM (3rd Board of Appeal) 2 months as from the date of the notification of the decision

**Appeal fee:** 800€
• Action against decisions of the Board of Appeal

• Time Frame:
  2 months as from the date of notification of the decision of the Board of Appeal

• General Court can annul or alter the contested decision

• OHIM is required to give execution to the judgment
Statistics
DESIGN RECEIVED
### 2011:

| Category                          | Value  
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Nr. of applications/year:</td>
<td>≈ 20,000</td>
</tr>
<tr>
<td>Single applications:</td>
<td>≈ 49%</td>
</tr>
<tr>
<td>Multiple applications:</td>
<td>≈ 51%</td>
</tr>
<tr>
<td>Nr. of designs/application:</td>
<td>≈ 4</td>
</tr>
<tr>
<td>Method of filing:</td>
<td>≈ 70% e-filing</td>
</tr>
<tr>
<td>Office response time:</td>
<td>≈ 95% within 10 days</td>
</tr>
<tr>
<td>Objections:</td>
<td>≈ 80% no objection</td>
</tr>
<tr>
<td>Registrations:</td>
<td>≈ 95%</td>
</tr>
<tr>
<td>Fast track (publication within 48h):</td>
<td>≈ 8%</td>
</tr>
<tr>
<td>Percentage of designs deferred:</td>
<td>≈ 9%</td>
</tr>
</tbody>
</table>

### In total:

| Category                                      | Value  
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Designs subject to an invalidity claim:</td>
<td>≈ 0.25%</td>
</tr>
<tr>
<td>Design renewal rate:</td>
<td>≈ 50%</td>
</tr>
</tbody>
</table>
Electronic applications with:

- Payment by current account
- Indication of product from the EuroLocarno classification tool
- No priority claim/Priority claim with supporting documents submitted

=> FAST TRACK
Design invalidity requests

≈ 1300 invalidity requests
≈ 700 decisions issued
### RCD per country

<table>
<thead>
<tr>
<th>Country</th>
<th>2003 - 2010</th>
<th>Total</th>
<th>%</th>
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<tbody>
<tr>
<td>DE</td>
<td>129,002</td>
<td>129,002</td>
<td>22.68</td>
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<tr>
<td>IT</td>
<td>76,820</td>
<td>76,820</td>
<td>13.51</td>
</tr>
<tr>
<td>FR</td>
<td>45,609</td>
<td>45,609</td>
<td>8.02</td>
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<tr>
<td>US</td>
<td>43,351</td>
<td>43,351</td>
<td>7.62</td>
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<tr>
<td>GB</td>
<td>35,428</td>
<td>35,428</td>
<td>6.23</td>
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<td>ES</td>
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<td>NL</td>
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<td>BE</td>
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<td>CN</td>
<td>5,258</td>
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<td>Class - Klasse - Classe</td>
<td>%</td>
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<tr>
<td>06</td>
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<tr>
<td>26</td>
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<td>07</td>
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<tr>
<td>21</td>
<td>3.61</td>
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</tbody>
</table>

- **Furniture**
- **Packaging**
- **Electronic equipment**
- **Household goods**
- **Building elements**
- **Jewels**
- **Clothing, footwear**
- **Sanitary equipment**
- **Lighting apparatus**
- **Logos**
- **Tools**
- **Vehicles and part of**

78% RCDs in 13 classes

www.oami.europa.eu
OHIM
www.oami.europa.eu

Design Service

Publication Bulletin Online

RCD-Online
http://oami.europa.eu/RCDOnline/RequestManager
Possible search by:

- Design number
- Owner’s name
- Filing Date
- Locarno Class
- Product indication
Appeal decisions on designs
http://oami.europa.eu/search/legaldocs/la/EN_boa_index.cfm

RCD Invalidity decisions

Case-Law of the General Court
Information: (+34) 965 139 100 (switchboard)
(+34) 965 139 400 (e-business technical incidents)
(+34) 965 131 344 (main fax)
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youtube/oamitubes