

# Disclosure of earlier designs in RCD invalidity proceedings

*(Article 7 CDR)*

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Elisabetta FERRARO  
20/09/2022

## PROGRAMME

**50'**  
**Presentation**

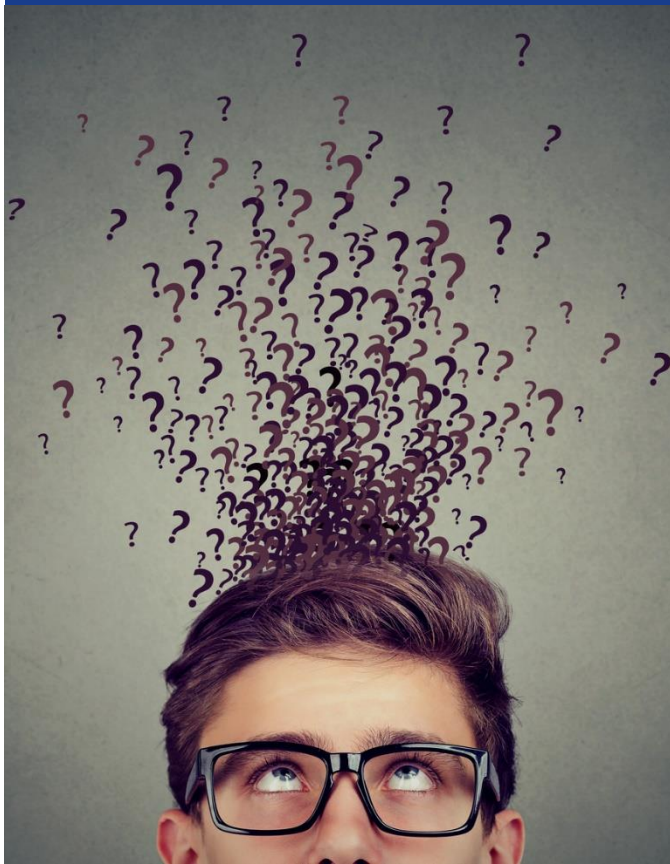
1. GENERAL PRINCIPLES
2. ESTABLISHING THE EVENT OF DISCLOSURE
  - The prior invoked design
  - The sources of disclosure
3. EXCEPTIONS
  - The safeguard clause
  - The grace period

**10'**  
**Questions and answers**

# 1

# GENERAL PRINCIPLES

## GENERAL PRINCIPLES

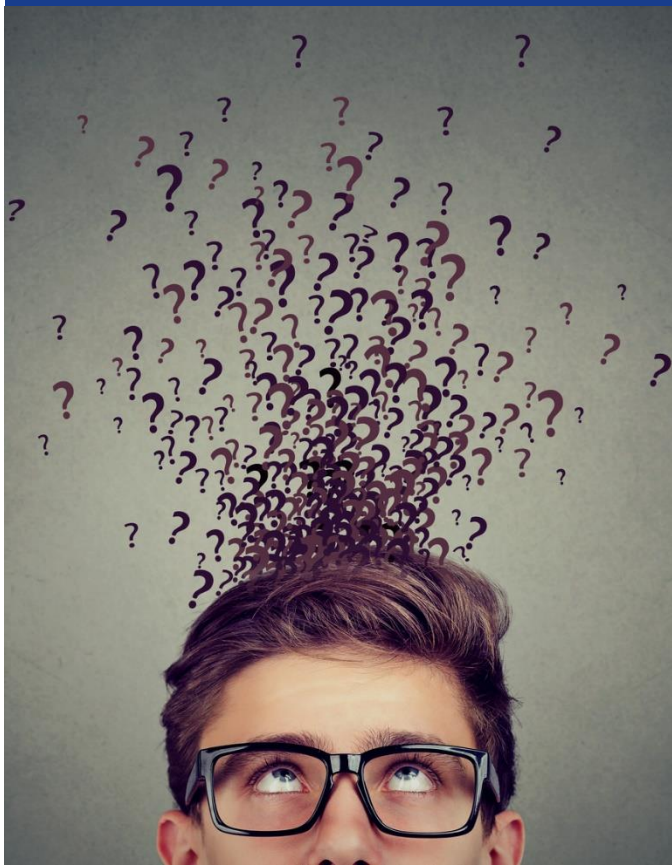


### Art. 25 CDR - Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:  
[...]

b) if it does not fulfil the **requirements of Articles 4 to 9**;

## GENERAL PRINCIPLES



### Art. 25 CDR - Grounds for invalidity

1. A Community design may be declared invalid only in the following cases:  
[...]

b) if it does not fulfil the **requirements of Articles 4 to 9**;

### Art. 4 CDR - Requirements for protection

A design shall be protected by a Community design to the extent that it is **new** and has **individual character** [...]

## GENERAL PRINCIPLES – Novelty, Art. 5 CDR

	What	Before the date...
<b>Unregistered</b> community design	No <b>identical</b> <b>design</b> disclosed	...on which the design for which protection is claimed <b>has first been made available to the public</b>
<b>Registered</b> community design		... <b>of filing of the application</b> for registration of the design for which protection is claimed (or of the <b>priority date</b> )

## GENERAL PRINCIPLES – Individual character, Art. 6 CDR

	What	Before the date...
<b>Unregistered</b> community design	<b>Different overall impression</b> from any design disclosed	...on which the design for which protection is claimed <b>has first been made available to the public</b>
<b>Registered</b> community design		... <b>of filing of the application</b> for registration of the design for which protection is claimed (or of the <b>priority date</b> )

## GENERAL PRINCIPLES – Preliminary steps

### Step 1 – Art. 7 (1) CDR

The **invalidity applicant** must **prove the event of disclosure**



## GENERAL PRINCIPLES – Preliminary steps

### Step 1 – Art. 7 (1) CDR

The **invalidity applicant** must **prove the event of disclosure**

### Step 2 – Art. 7(1 - second half), (2) and (3) CDR

The **holder** of the contested Community design can **claim an exception to disclosure**

(14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 48).

2

# ESTABLISHING THE EVENT OF DISCLOSURE

## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

It is **immaterial** whether or not an ‘**earlier design**’ within the meaning of Article 3(a) CDR **enjoys or enjoyed legal protection** (as a design, trade mark, copyright work, patent, utility model or otherwise)

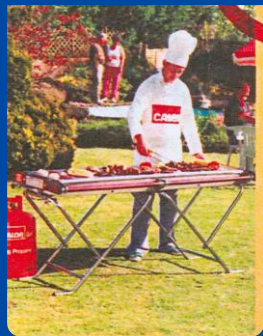
*(21/05/2015, T-22/13 & T-23/13, UMBRELLAS, EU:T:2015:310, § 24).*

## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

Should be **identified and reproduced precisely and in its entirety**

(21/09/2017, C-361/15 P& C-405/15 P, Shower drains, EU:C:2017:720, § 65).

Prior design



Contested design



10/03/2008, R 586/2007-3, Barbecues

## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



### Is it reproduced precisely ?

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**In this article:**  
Enigma Variations  
Overview  
Seeing The Light(s)  
First Lights  
Conclusions

**M Audio Trigger Finger  
MIDI Controller**  
Reviews: Software, ALL

Published in SOS September 2009  
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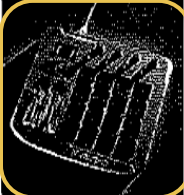
**The Trigger Finger is clearly intended for those of us who prefer hitting to clicking when it comes to percussion, but, as we discover, there's much more to it than that...**


Nicholas Howland

Some clever stick once said that attaching a keyboard to early synthesizers was probably one of the worst things anyone ever did. I think their point was that as an interface, a piano keyboard simply wasn't versatile enough to exploit the creative potential of the new technology.

I'm not sure I agree wholeheartedly with that statement — it was probably made by someone resentful of the fact that their band's keyboard player had more musical knowledge in their little finger than all the other members put together. But one belief I would carry a card for is that keyboards and drum sounds don't make for a particularly happy mix. Not only does it seem so much more intuitive to trigger a percussion sound with a percussive action, it's physically a lot easier to get the right kind of dynamics by hitting a surface with a stick or drumming your fingers on a pad than it is to try pressing keys on a keyboard.

That's certainly the vein of thought that has led to the launch of M Audio's new Trigger Finger, a USB/MIDI control surface designed primarily for software-based musicians to tap out rhythms and trigger percussion loops. Its main attribute is a four-by-four matrix of finger-sized, velocity sensitive pads — similar to the arrangement you'd find on Akai's MPC range of sampling rhythm workstations. But the Trigger Finger goes much further than just being a set of disembodied drum machine pads. With eight assignable knobs, four sliders and a high degree of overall programmability, it offers the level of general MIDI parameter control that you would normally expect to find on a controller keyboard, potentially making it a very versatile member of any musician's MIDI studio.

  
Photos: Mark Ewing

  
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Scan Pro Audio has it all covered.



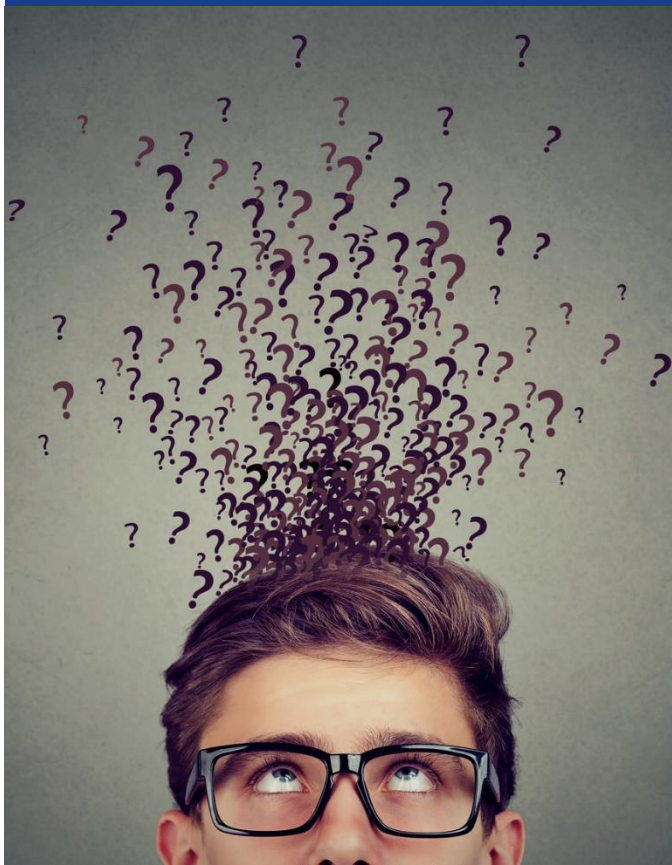
## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design

Is it reproduced **precisely** ?





## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure



### Art. 7 CDR – Disclosure

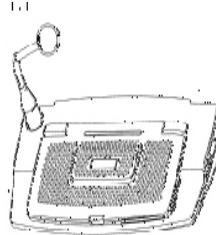
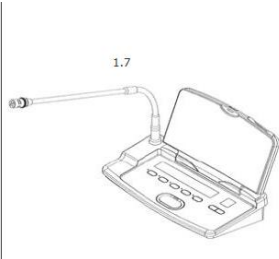
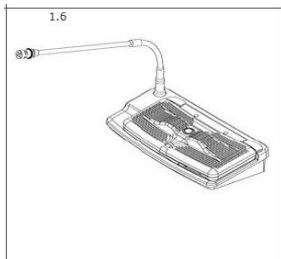
For the purpose of applying Articles 5 and 6, a design shall be deemed to **have been made available to the public** if it has been:

- published following registration;
- exhibited;
- used in trade;
- or ‘otherwise disclosed’ [...]



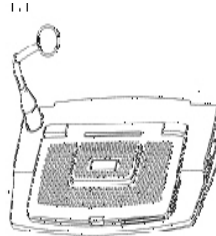
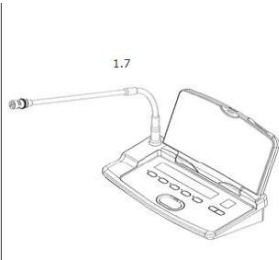
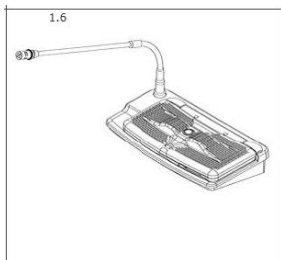
## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Evidence are **not conclusive in themselves**, may yet contribute to establishing the event of disclosure **in combination with other items** (22/06/2010, T-153/08, EU:T:2010:248, *Communications equipment*)



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

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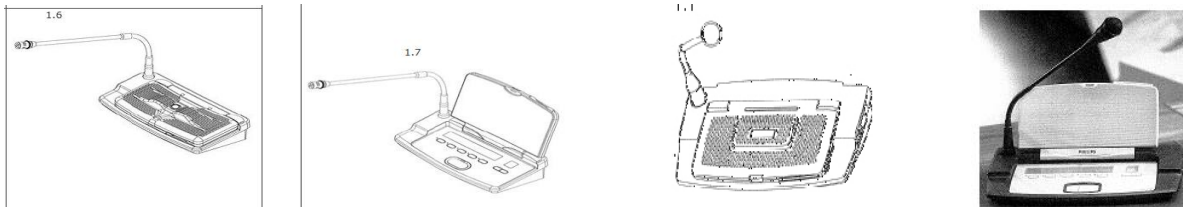


Disclosure **anywhere in the world**

(14/03/2018, T-651/16, *Footwear*, EU:T:2018:137, § 67)

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

Evidence are **not conclusive in themselves**, may yet contribute to establishing the event of disclosure **in combination with other items** (22/06/2010, T-153/08, EU:T:2010:248, *Communications equipment*)



Disclosure **anywhere in the world**

(14/03/2018, T-651/16, *Footwear*, EU:T:2018:137, § 67)

Evidence **not in the language of the proceedings** must be **translated** within 2 months



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

**Exhibitions:** Exhibiting a design at a trade fair exhibition

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

**Exhibitions:** Exhibiting a design at a trade fair and exhibition

**Evidence:** any document able to prove that the design has been exhibited in the fair (a list of participants, a plan of stands, leaflets, pictures...)

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

### Use in trade:

Disclosure of a design can be the result of use in trade even where there is no proof that the products in which the earlier design is incorporated have actually been produced or put on the market

*(21/05/2015, T-22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36).*

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*(21/05/2015, T 22/13 & T 22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36).*

It may be sufficient that the products were offered for sale in catalogues *(22/10/2007, R 1401/2006 3, ORNAMENTACIÓN, § 25)*, imported from a country outside the European Union *(14/06/2011, T 68/10, Watches, EU:T:2011:269, § 31-32)* or were the object of an act of purchase between two European operators *(09/03/2012, T 450/08, Phials, EU:T:2012:117, § 30-45).*



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

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It may be sufficient that the products were offered for sale in catalogues *(22/10/2007, R 1401/2006 3, ORNAMENTACIÓN, § 25)*, imported from a country outside the European Union *(14/06/2011, T 68/10, Watches, EU:T:2011:269, § 31-32)* or were the object of an act of purchase between two European operators *(09/03/2012, T 450/08, Phials, EU:T:2012:117, § 30-45).*

**Evidence:** catalogues (also extracts), invoices...

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure

### Otherwise disclosed: Invoices

Evidence 3

343 1518

**Faktura VAT** Nr 72/08/2008  
ORYGINAL  
Pogwizdów Nowy 14-08-2008

Sprzedawca: [redacted] Nabywca: [redacted]  
Adres: [redacted] Adres: [redacted]  
NIP: 813-30-83-967 NIP: 817-20-35-201

Sposób płatności: gotówka Termin płatności: -

Lp.	Nazwa	Ilość	J.m.	Cena netto	Wartość netto	Stawka VAT	Kwota VAT	Wartość brutto
1	Druk i opracowanie katalogu WHITE w języku Czeskim	5 000	szt.	0,16 zł	4 000,00 zł	22%	880,00 zł	4 880,00 zł
<b>RAZEM:</b>				4 000,00 zł	X	880,00 zł	4 880,00 zł	
<b>W tym:</b>				4 000,00 zł	22%	880,00 zł	4 880,00 zł	

**Razem do zapłaty:** 4 880,00 zł

Słownie: cztery tysiące osiemset osiemdziesiąt złotych, 00/100 groszy

po rozłożeniu / after unfolding  
šír./hl./výš.  
width/length/height  
860/1850/770



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### CP10 Common Practice –

Criteria for assessing disclosure of designs on the internet

([https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document\\_library/News/cp10/CP10\\_en.pdf](https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/News/cp10/CP10_en.pdf))

Evidence:

SCREENSHOTS

IMAGES

PRINTOUTS

VIDEOS

...hyperlinks?

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### WEBSITES

**Evidence: Printout or a Screenshot**

URL address + representation of the  
earlier invoked design + relevant date















## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

Boxes & Baskets - Rinascente <https://www.rinascente.it/en/list/casa-e-design/design-e-accessor...>

Menu Find something to buy

**RINASCENTE**

 Driade Love, Container €15,00	 Alessi Circus Marcel ... €20,00	 Hay Bead Basket €189,00	 Hay Colour Crate S €18,80
 Hay Colour Crate M €82,00	 Hay Paper Paper Bin €23,70	 Hay Bead Basket W... €400,00	 Puebco Hanging Tool S... €99,00
 Puebco Glass Tube Wit... €23,70	 Puebco Woven Woode... €400,00	 Danese Citera, large b... €99,00	 Iittala Kuru Ceramic B... €99,00

2 of 4 13/10/2021, 09:48

Hay Bead Basket With Handle - Rinascente <https://www.rinascente.it/en/item/hay-bead-basket-contentore...>

Menu Find something to buy

**RINASCENTE**

Save

Home & Design > Design & Accessories > Boxes & Baskets

**Hay Bead Basket With Handle**

€189,00

Red Basket Weave One Size

→ →

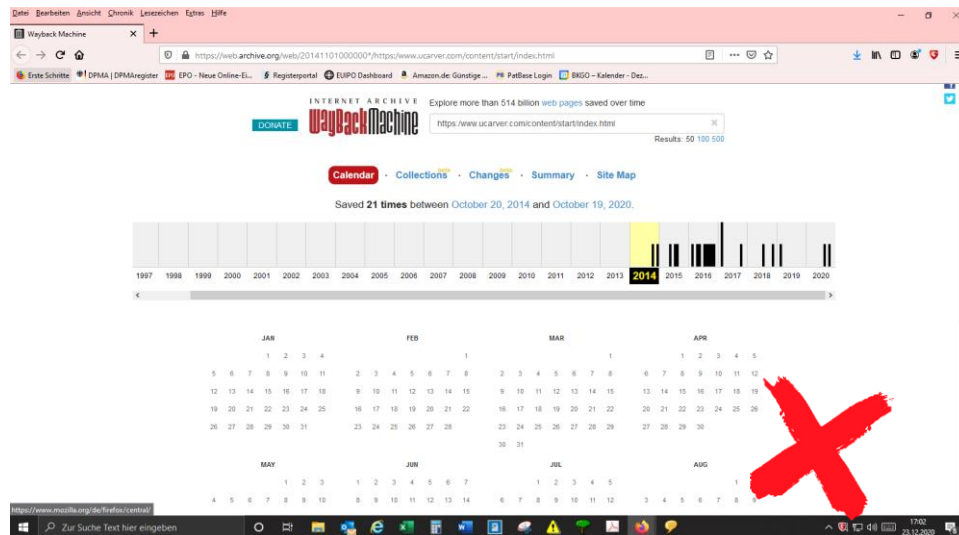
**Details**

Brand: Hay  
 Composition: wool  
 Diameter: 40 cm  
 Height: 27 cm  
 Item code: 508461  
 Product reference: 21461150

1 of 4 13/10/2021, 09:50

## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

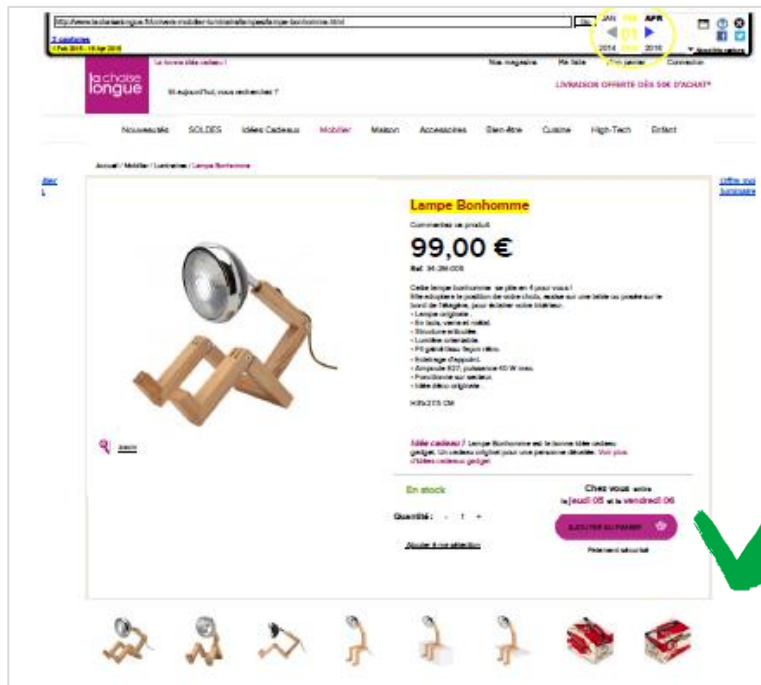
### WEBSITE ARCHIVING SERVICES - «WayBack Machine»



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### WEBSITE ARCHIVING SERVICES - «WayBack Machine»

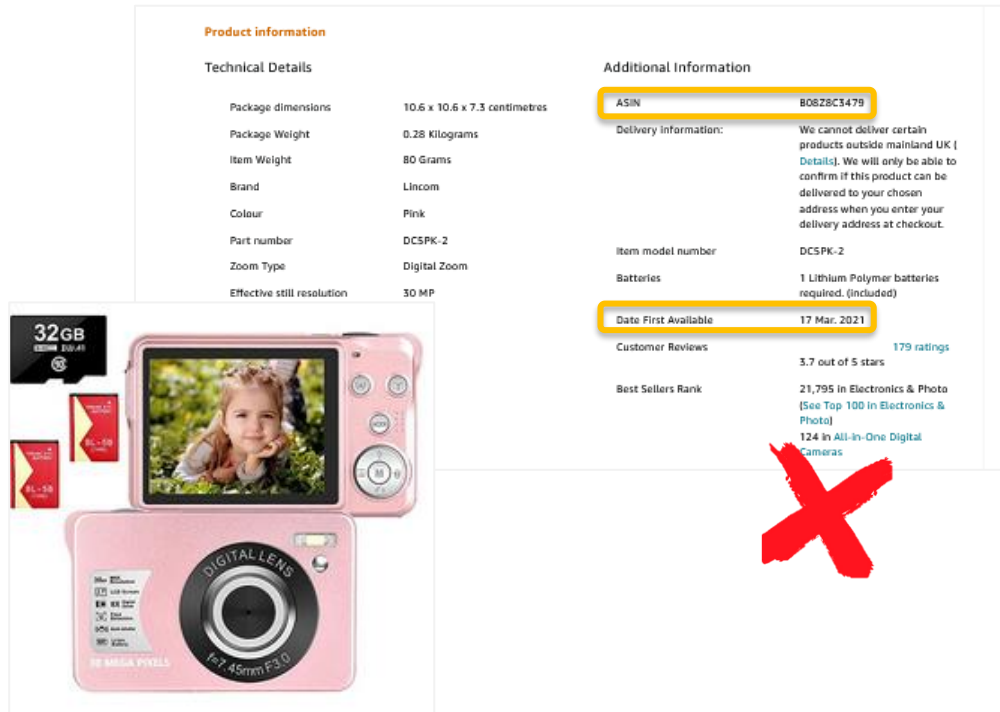
**Evidence:** URL address +  
screenshot showing the  
earlier invoked design +  
relevant date



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### AMAZON

**Evidence:** printouts showing the earlier design + URL address visible in the printout + product information (ASIN + date of first availability)



**Product information**

**Technical Details**

Package dimensions	10.6 x 10.6 x 7.3 centimetres
Package Weight	0.28 Kilograms
Item Weight	80 Grams
Brand	Lincom
Colour	Pink
Part number	DCSPK-2
Zoom Type	Digital Zoom
Effective still resolution	30 MP

**Additional Information**

ASIN	B08Z8C3479
Delivery information:	We cannot deliver certain products outside mainland UK (Details). We will only be able to confirm if this product can be delivered to your chosen address when you enter your delivery address at checkout.
Item model number	DCSPK-2
Batteries	1 Lithium Polymer batteries required. (included)
Date First Available	17 Mar. 2021
Customer Reviews	3.7 out of 5 stars 179 ratings
Best Sellers Rank	21,795 in Electronics & Photo (See Top 100 in Electronics & Photo) 124 in All-in-One Digital Cameras

**32GB**  
SanDisk Ultra  
SDXC UHS-I

**18 MEGA PIXELS**  
f=7.45mm F3.0

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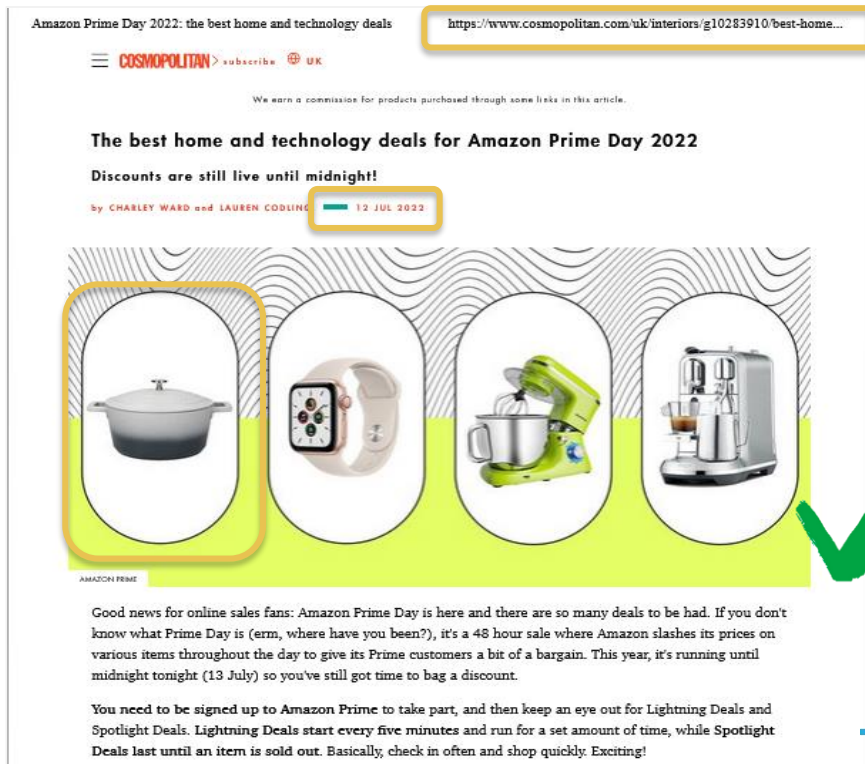




## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### ARTICLES

**Evidence:** printouts showing the earlier design + URL address visible in the printout + date of publication



## ESTABLISHING THE EVENT OF DISCLOSURE – The prior invoked design



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

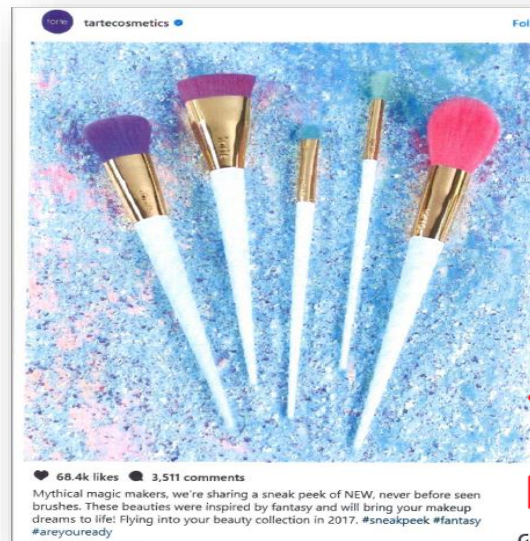
**Will this evidence on disclosure of an earlier design be accepted?**



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### SOCIAL MEDIA

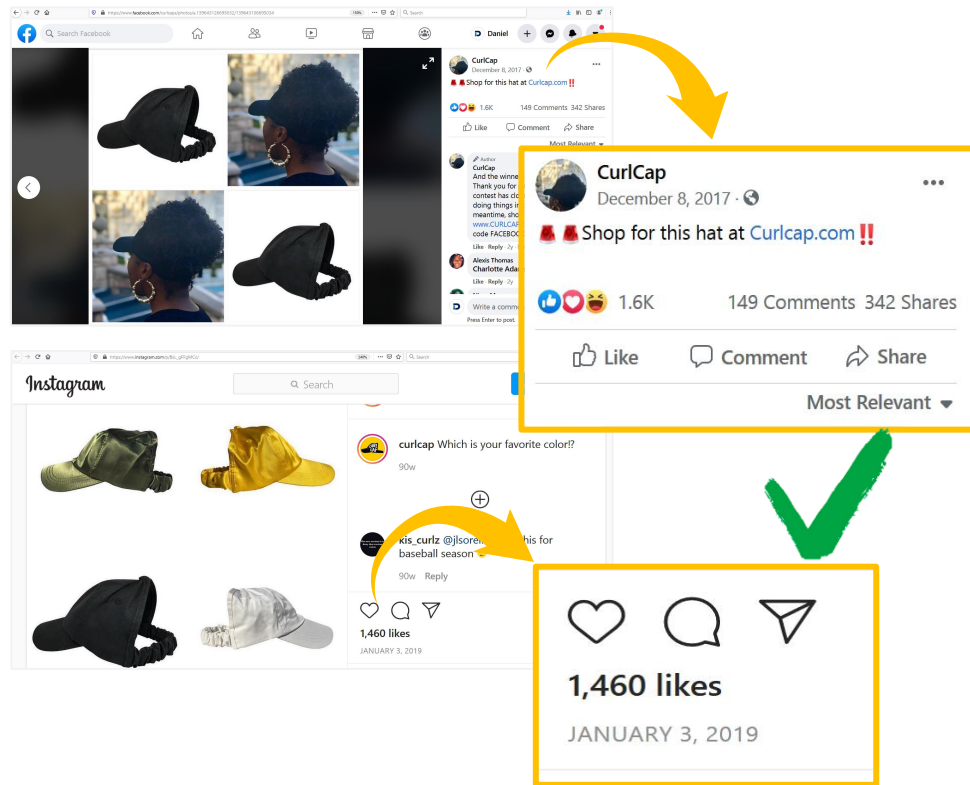
**Evidence:** printouts or screenshots showing a clear image of the relevant design + URL address + date of publication + any other relevant information (the ‘popularity’ indicators, views, likes...)



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### SOCIAL MEDIA

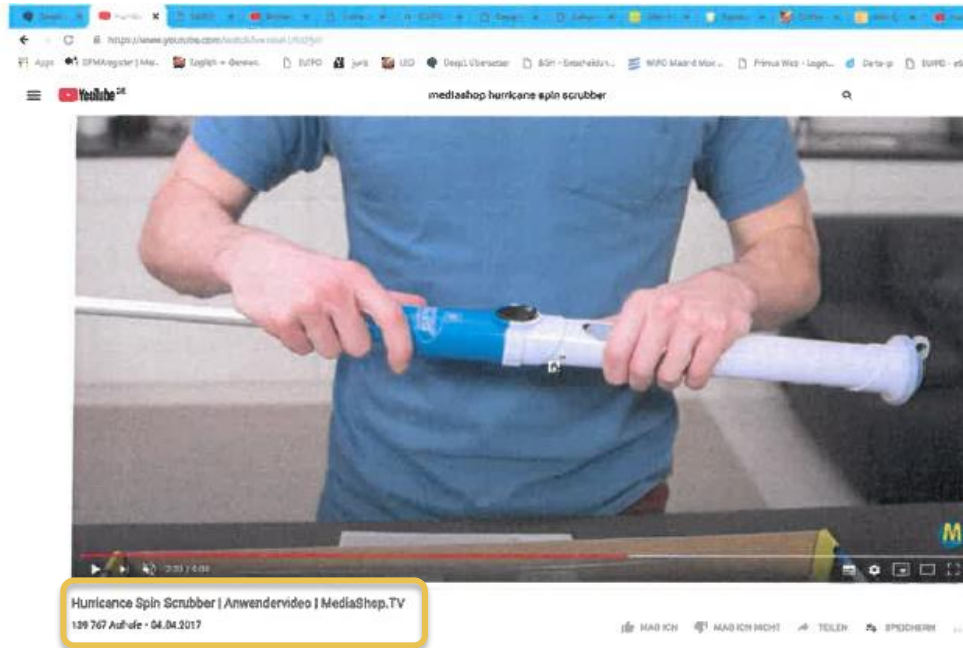
**Evidence:** printouts or screenshots showing a clear image of the relevant design + URL address + date of publication + any other relevant information (the ‘popularity’ indicators, views, likes...)



## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

### YOUTUBE

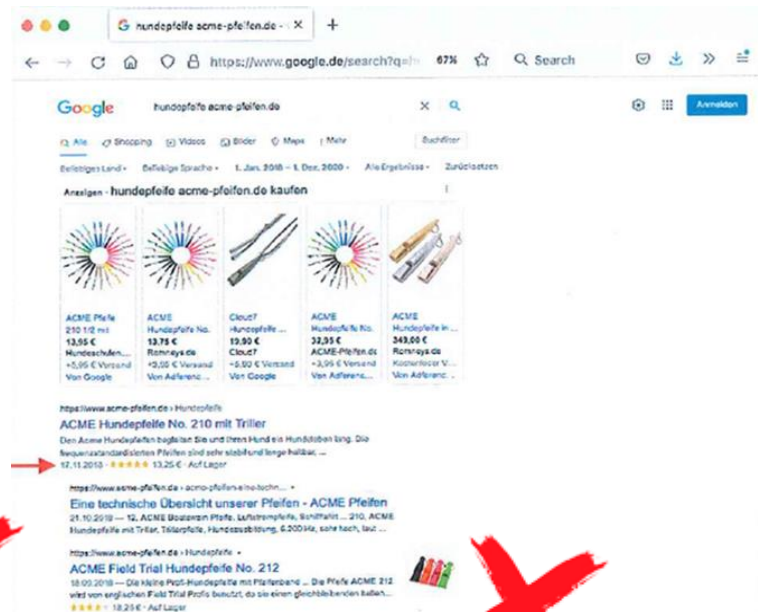
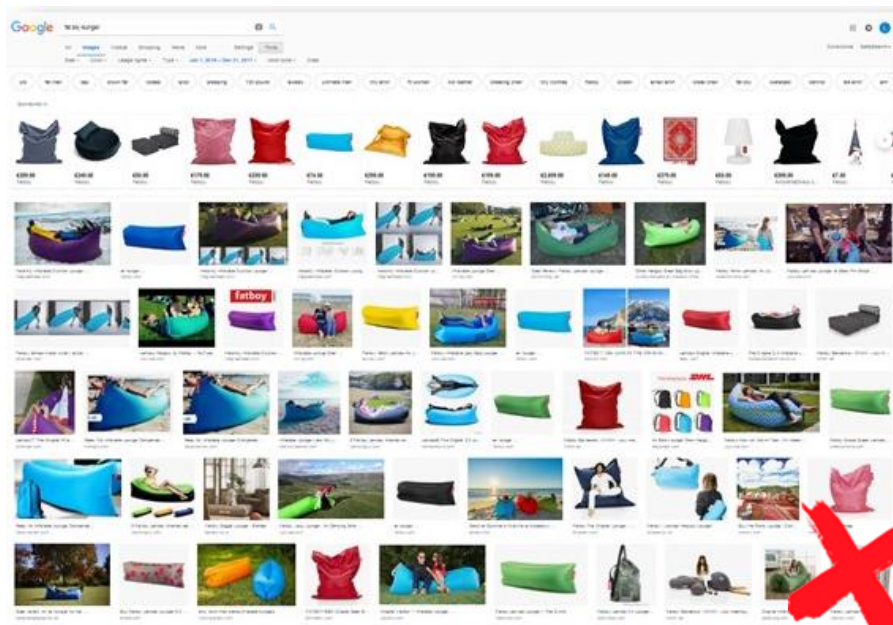
**Evidence:** printouts or screenshots showing a clear image of the relevant design + URL address + date of publication of the video + any other relevant information (the ‘popularity’ indicators, views, likes...)





## ESTABLISHING THE EVENT OF DISCLOSURE – Sources of disclosure from Internet

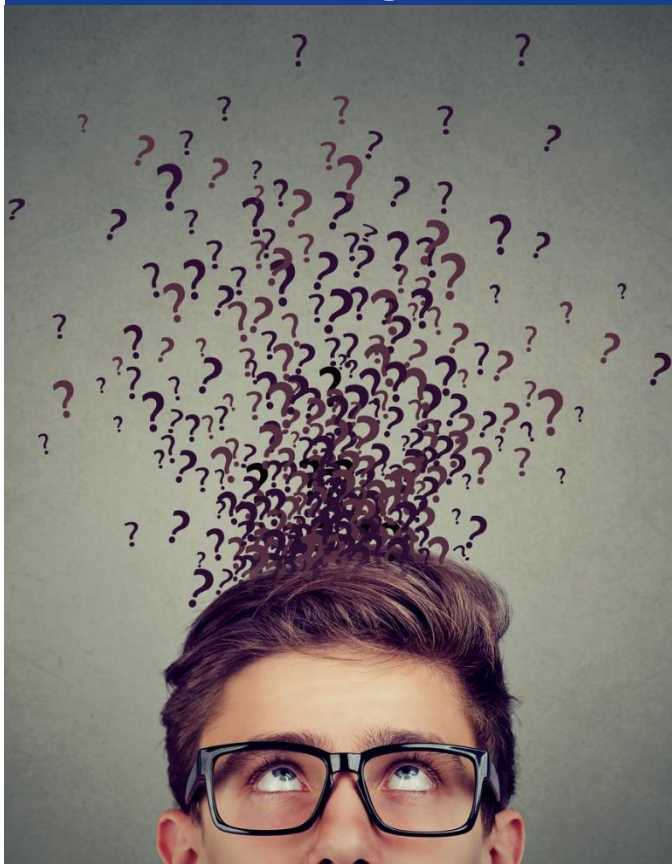
### Google search list





# 3 EXCEPTIONS

## EXCEPTIONS – Safeguard clause



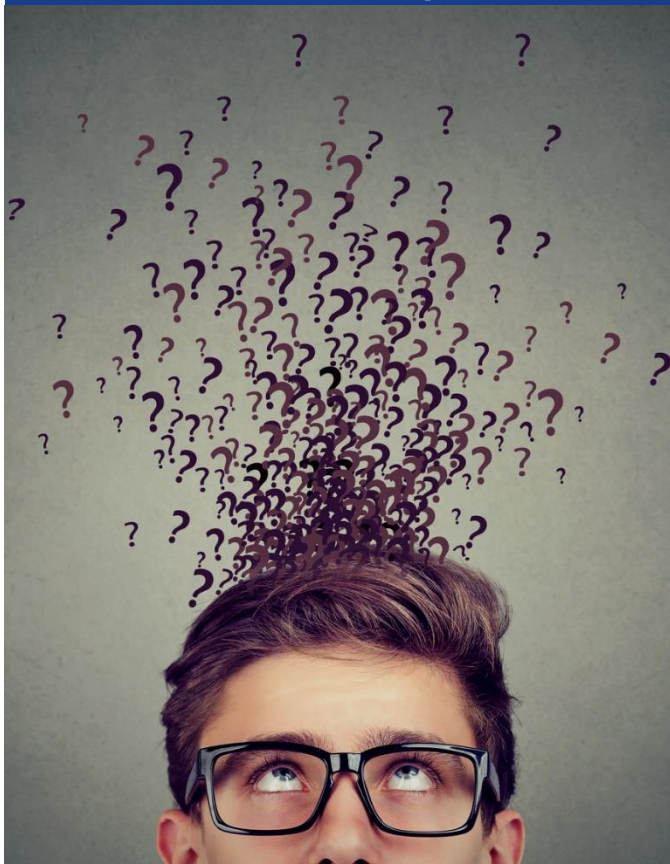
### Art. 7 (1) CDR

1. [...] except where these events could not reasonably have become known **in the normal course of business** to the **circles specialised** in the **sector concerned**, operating within the Community [...].

## EXCEPTIONS – Safeguard clause



## EXCEPTIONS – Grace period

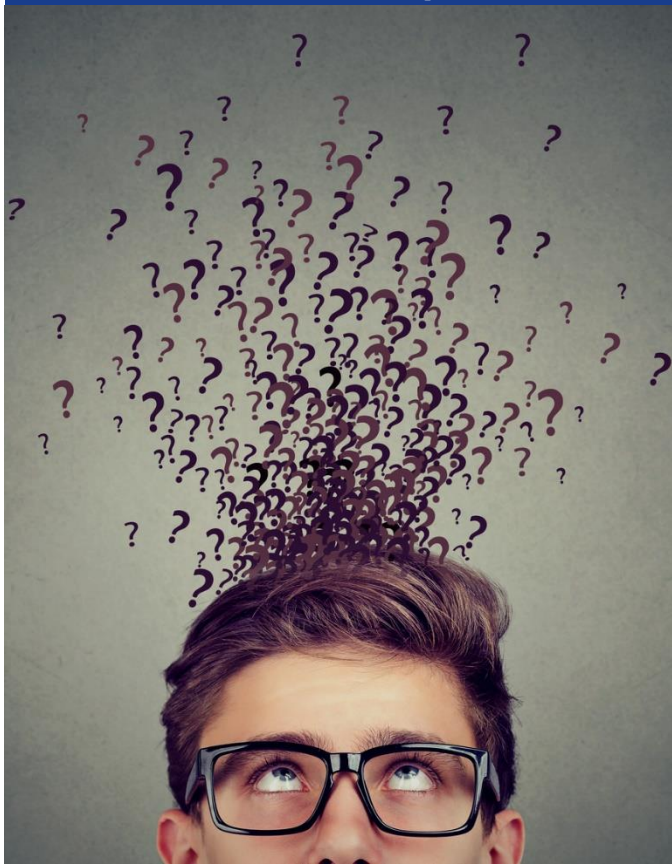


### Art. 7 (2) CDR

Disclosure of the Community design within **12 months** preceding **the date of filing** or the **priority** date of the contested Community design will not be taken into consideration if it was made by:

- the **designer**, or
- its **successor in title**

## EXCEPTIONS – Grace period



### Art. 7 (2) CDR

Disclosure of the Community design within **12 months** preceding **the date of filing** or the **priority** date of the contested Community design will not be taken into consideration if it was made by:

- the **designer**, or
- its **successor in title**

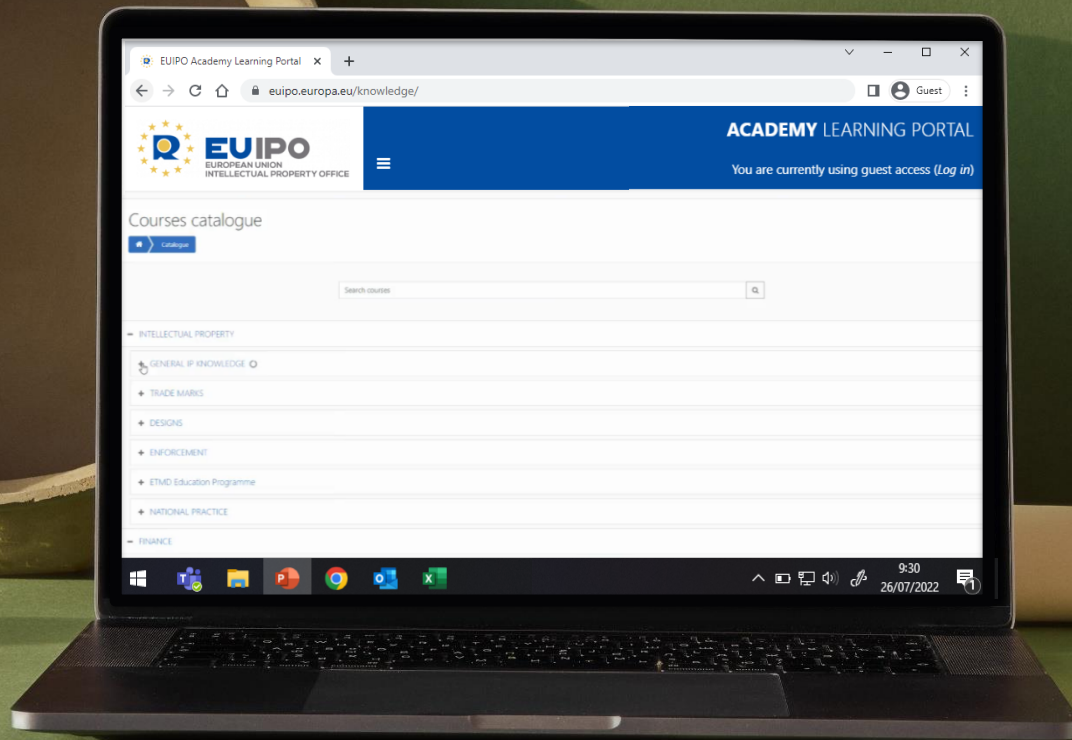
The **holder must therefore establish** that it is either:

- the creator of the design upon which the application is based, or
- its successor in title





## Keep in touch with EUIPO Academy





**EUIPO**

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INTELLECTUAL PROPERTY OFFICE

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**THANK YOU**



**Jessica Norma LEWIS**  
Operations Department



**Elisabetta FERRARO**  
Operations Department