

***GUIDELINES FOR EXAMINATION OF
REGISTERED COMMUNITY DESIGNS***

***EUROPEAN UNION
INTELLECTUAL PROPERTY OFFICE
(EUIPO)***

***EXAMINATION OF APPLICATIONS FOR
REGISTERED COMMUNITY DESIGNS***

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1 Introduction

1.1 Purpose of the Guidelines

The Guidelines explain how, in practice, the requirements of the Community Design Regulation¹ (CDR), the Community Design Implementing Regulation² (CDIR), and the Fees Regulation³ (CDFR) are applied by the Office's Operations Department from the receipt of an application for a registered Community design (RCD) up to its registration and publication. The Office has no competence with regard to **unregistered** Community designs.

The purpose of the Guidelines is to ensure consistency among the decisions taken by the Operations Department and to ensure a coherent practice in file handling. These Guidelines are merely a set of consolidated rules setting out the line of conduct that the Office itself proposes to adopt, which means that, to the extent that those rules comply with the legal provisions of a higher authority, they constitute a self-imposed restriction on the Office, in that it must comply with the rules which it has itself laid down. However, these Guidelines cannot derogate from the CDR, the CDIR or the CDFR, and it is solely in the light of those regulations that the applicant's capacity to file an application to register a Community design must be assessed.

The Guidelines are structured to follow the sequence of the examination process, with each section and subsection constituting a step in the registration proceedings from the receipt of the application up to registration and publication. The general principles (see paragraph 1.2 below) should be kept in mind throughout the whole examination process. (see the Guidelines, Part A, General Rules, Section 2, General Principles to be Respected in Proceedings).

1.2 General principles

1.2.1 Duty to state reasons

The decisions of the Office must state the reasons on which they are based (Article 62 CDR). The reasoning must be logical and it must not lead to internal inconsistencies.

The Office is, however, not required to give express reasons for its assessment of the value of each argument and each piece of evidence submitted to it, in particular where it considers that the argument or evidence in question is unimportant or irrelevant to the outcome of the dispute (see, by analogy, judgment of 15/06/2000, C-237/98 P, 'Dorsch

¹ [Council Regulation \(EC\) No 6/2002 of 12 December 2001 on Community Designs](#)), amended by Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

² [Commission Regulation \(EC\) No 2245/2002 of 21 October 2002 implementing Council Regulation \(EC\) No 6/2002 on Community designs](#), as amended by Commission Regulation (EC) No 876/2007 on 24 July 2007 amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

³ [Commission Regulation \(EC\) No 2246/2002 of 16 December 2002 on the fees](#), as amended by Commission Regulation (EC) No 877/2007 of 24 July 2007 amending Regulation (EC) No 2246/2002 concerning the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs.

Consult Ingenieurgesellschaft mbH, EU:C:2000:321, § 51). It is sufficient if the Office sets out the facts and legal considerations with decisive importance in the context of the decision (judgment of 12/11/2008, T-7/04, Limoncello, EU:T:2008:481, § 81).

Whether the reasoning satisfies those requirements is a question to be assessed with reference not only to its wording, but also to its context and the legal rules governing the matter in question (judgment of 07/02/2007, T-317/05, Guitar, EU:T:2007:39, § 57).

1.2.2 Right to be heard

The decisions of the Office will be based only on reasons or evidence on which the applicant has had an opportunity to present its comments (Article 62 CDR, second sentence).

The right to be heard covers all the factual and legal evidence which forms the basis for the act of taking the decision, but it does not apply to the final position that the Office intends to adopt.

The obligation to state reasons has two purposes: to allow interested parties to know the justification for the measure taken so as to enable them to protect their rights, and to enable the next instance to exercise their power to review the legality of the decision. Moreover, the obligation to state reasons is an essential procedural requirement, as distinct from the question whether the reasons given are correct, which goes to the substantive legality of the contested measure (judgment of 27/06/2013, T-608/11, 'Instruments for writing', EU:T:2013:334, § 67-68 and the case-law cited therein).

1.2.3 Compliance with time limits

Applicants must respond to the Office's communications within the time limits set by those communications.

Any written submission or document that has not been submitted within the time limits set by the Office is late. The same applies to supplementary materials attached only to the confirmation copy of a letter that was in itself sent on time (usually by fax), where this confirmation mail arrives after the expiry of the time limit. This is irrespective of whether such materials are specifically mentioned in the initial letter (for specific rules as regards applications filed by fax, see paragraph 2.7.2.3 below).

The Office may disregard facts or evidence that the applicant does not submit in due time (Article 63(2) CDR).

For calculation of time limits see Article 56 CDIR.

A request to extend a time limit by an applicant has to be made before its expiry (Article 57(1) CDIR).

As a general rule, a first request to extend a time limit will be granted. Further extensions will not automatically be granted. Reasons in support of any further request for extension must be submitted to the Office. The request for extension of the time limit must indicate the reasons why the **applicant** cannot meet the deadline. The obstacles faced by the parties' **representatives** do not justify an extension (see, by analogy, order of 05/03/2009, C-90/08 P, Corpo livre, EU:C:2009:135, § 20-23).

The extension cannot result in a time limit longer than six months (Article 57(1) CDR). The applicant is informed about any extension.

Applicants failing to observe the time limits run the risk that their observations may be disregarded, which may result in a loss of rights. In such a case, the applicant may file a request for *restitutio in integrum* (Article 67 CDR. See also the Guidelines, Part A, General Rules, Section 8, *Restitutio in integrum*).

1.2.4 Scope of the examination carried out by the Office

When examining an application for a Community design, the Office will examine the facts of its own motion (Article 63(1) CDR).

The examination procedure is kept to a minimum, that is, mainly an examination of the formalities. However, the grounds for non-registrability foreseen in Article 47 CDR must be examined *ex officio* by the Office:

- (a) whether the subject matter of the application corresponds to the definition of a design as set forth in Article 3(a) CDR; and
- (b) whether the design is contrary to public policy or accepted principles of morality.

Where one of these two grounds is applicable, the procedure explained below in paragraph 4 will apply.

Other protection requirements are not examined by the Office. A Community design that has been registered in breach of the protection requirements referred to in Article 25(1)(a) to (g) CDR is liable to be invalidated if an interested party files a request for a declaration of invalidity (see the Guidelines on Examination of Design Invalidity Applications).

1.2.5 User-friendliness

One of the fundamental objectives of the CDR is that the registration of Community designs should present the minimum cost and difficulty to applicants, so as to make it readily available to any applicant including small and medium-sized enterprises and individual designers.

To that end, examiners are encouraged to contact the applicant or, if a representative has been appointed (see paragraph 2.5 below), its representative by telephone, in order to clarify issues arising from the examination of an application for a Community design, before or after an official deficiency letter has been sent.

2 Filing an Application at the Office

2.1 Introduction

There are two ways of applying for registration of a Community design, that is, (i) either via a direct filing, at the Office or at the central industrial property office of a Member State or, in Benelux countries, at the Benelux Office for Intellectual Property (BOIP)

(Article 35 et seq. CDR) or (ii) via an international registration filed with the International Bureau of the World Intellectual Property Organisation and designating the European Union (Article 106a et seq. CDR).

This section will deal with direct filings. The examination of the formalities relating to international registrations designating the European Union will be explained in paragraph 12 below.

2.2 Form of the application

2.2.1 Different means of filing

An application for a registered Community design may be directly filed at the Office by fax, post, personal delivery or e-filing. It may also be filed at the central industrial property office of a Member State or in Benelux countries, at the Benelux Office for Intellectual Property (BOIP) (Article 35 CDR).

2.2.2 Use of the official form

The Office provides a form (Article 68(1)(a) CDIR) that may be downloaded from the Office's website⁴. The use of the form is not mandatory but it is strongly recommended (Article 68(6) CDIR), in order to facilitate the processing of the application and to avoid errors.

Applicants may use forms of a similar structure or format, such as forms generated by computers on the basis of the information contained in the official form.

2.2.3 Applications sent by post or personal delivery

Applications can be sent to the Office by ordinary post or private delivery services to the following address:

European Union Intellectual Property Office
Avenida de Europa, 4
E--03008 Alicante
SPAIN

Applications can also be handed in personally at the reception of the Office from Monday to Friday, except on official holidays, from 08.30 to 13.30 and from 15.00 to 17.00.

The application must be signed by the applicant or its representative. The name of the signatory must be indicated and the authority of the signatory must be specified (see paragraph 6.1.3, Signature below).

⁴ <https://euipo.europa.eu/ohimportal/en/forms-and-filings>.

2.2.4 E-filing

E-filing is a recommended means of filing to the extent that the system gives guidance to the applicant, thus reducing the number of potential deficiencies and speeding up the examination procedure.

Where a communication is sent to the Office by electronic means, the indication of the sender's name will be deemed to be equivalent to the signature (see paragraph 6.1.3 below).

2.2.5 Fax

Applications can be sent by fax to the following fax number: +34 965131344.

However, filing an application by fax is not recommended because the quality of the representation of the design may deteriorate in the course of the transmission or on receipt by the Office.

Moreover, applicants must be aware of the fact that the processing of their application will be delayed by up to **one month** (see paragraph 2.7.2.3 below).

2.3 Content of the application

The application must satisfy all the mandatory requirements set out in Articles 1 ('content of the application'), 3 ('indication of products'), 4 ('representation of the design') and 6 ('fees for the application') CDR.

Additional requirements apply where the applicant selects one of the following options: a multiple application is filed (Article 2 CDR), specimens are filed (Article 5 CDR), a priority or an exhibition priority is claimed (Articles 8 and 9 CDR), or where the applicant chooses to be, or must be, represented (Article 77 CDR).

2.4 Language of the application

The application may be filed in any of the official languages of the European Union (language of filing) (Article 98(1) CDR; Article 1(1)(h) CDR)⁵.

The applicant must indicate a second language, which must be a language of the Office, that is to say, English (EN), French (FR), German (DE), Italian (IT) or Spanish (ES). The second language must be different from the language of filing.

⁵ The European Union has 24 official and working languages, including Irish. Irish became a full EU language on 01/01/2007. There is however a temporary derogation for a renewable period extending until 31/12/2016 during which 'the institutions of the European Union shall not be bound by the obligation to draft all acts in Irish and to publish them in that language in the *Official Journal of the European Union*' (see Council Regulation (EC) No 920/2005 of 13/06/2005 (OJ L 156, 18.6.2005, p. 3) and Council Regulation (EU) No 1257/2010 (OJ L 343, 29/12/2010, p. 5). Until then, it is not possible to file an application for a registered Community design in Irish. Croatian became an official language on 01/07/2013 (see paragraph 13)..

All written communications have to be drafted in the language of filing, unless the first language chosen is not one of the five working languages of the Office and the applicant agrees to receive the communication in the second language of the application. The consent to the use of the second language must be given for each individual application for a Community design. It may not be given for all existing or future files.

This language regime applies throughout the application and examination procedure until registration.

As the choice of the languages also affects the determination of the language in invalidity proceedings after the registration, applicants are advised to note that the language regime for designs is not identical to the language regime for the European Union trade mark.

2.5 Representation of the applicant

2.5.1 When is representation mandatory?

Where the applicant does not have its domicile or its principal place of business or a real and effective industrial or commercial establishment in the European Union, it must be represented by a representative in all proceedings before the Office other than in filing an application (Article 77(2) CDR, Article 10(3)(a) CDIR).

The representative has to be indicated in the application. If this requirement is not complied with, the applicant will be requested to appoint a representative within a time limit of two months. Where the applicant does not comply with the request, the application is rejected as inadmissible (Article 77(2) CDR; Article 10(3)(a) CDIR).

In examining whether an applicant has a real and effective industrial or commercial establishment in the European Union, the Office follows the guidance of the Court of Justice of 22/11/1978, C-33/78, 'Somafer SA, EU:C:1978:205, § 12 ('... the concept of branch, agency or other establishment implies a place of business which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties ...'). Proof that an applicant has a real and effective industrial or commercial establishment in the European Union may consist, inter alia, of articles of incorporation, annual reports, statements in writing, and other business documents.

2.5.2 Who may represent?

Representation of applicants before the Office may be effected only by a legal practitioner or by a professional representative who fulfills the requirements of Article 78(1) CDR.

A natural or legal person whose domicile, principal place of business, or real and effective industrial or commercial establishment is in the European Union may act before the Office through an employee. Employees of such a legal person may also represent another legal person having neither its domicile nor its principal place of business nor a real and effective industrial or commercial establishment within the European Union, provided there exist economic connections between the two legal persons (Article 77(3) CDR). The Office may request evidence in this respect.

Employees acting on behalf of natural or legal persons pursuant to Article 77(3) CDR must submit a signed authorisation for insertion in the file (Article 62(2) CDR).

2.6 Date of receipt, file number and issue of receipt

2.6.1 Applications filed through national offices (intellectual property office of a Member State or Benelux Office for Intellectual Property (BOIP))

If a Community design application is filed at the central industrial property office of a Member State or at the Benelux Office for Intellectual Property (BOIP), it will have the same effect as if it has been filed at the Office on that same day, provided that it is received at the Office within two months from the date it was filed at the national office or, as the case may be, the Benelux Office for Intellectual Property (BOIP) (Article 38(1) CDR).

If the Community design application does not reach the Office within this two-month time limit, it will be deemed to have been filed on the date that it is received by the Office (Article 38(2) CDR).

Where the Community design application is received shortly after the expiry of this two-month period, the examiner will check whether this time limit is to be extended under one of the conditions provided for at Article 58(3) CDR.

2.6.2 Applications received directly at the Office

The date of receipt is the date on which the application reaches the Office. This date may not coincide with the 'date of filing' where the requirements for such a date to be allocated are not met (see paragraph 3).

The Office is open for the receipt of applications sent by post or private delivery services from Monday to Friday, except on official holidays. An annual decision of the Executive Director of the Office specifies the days on which the Office is not open for the receipt of documents and on which ordinary post is not delivered.

Applications sent by fax or e-filing will be received on the date of successful transmission.

Where the application is sent by post or fax, the applicant will not have any confirmation of a date of receipt or file number until a first communication from an examiner is received (see below).

For electronically filed Community design applications, the system issues an immediate automatic filing receipt that appears on the screen of the computer from which the application was sent. In principle, the applicant should save or print out the automatic receipt. The Office will not send an additional receipt. Receipts for electronically filed applications already contain their provisional filing dates and the file number.

2.7 Registration or examination report

2.7.1 Registration

If the application for a Community design satisfies all requirements for registration, it will normally be registered within **ten working days**.

The registration of an application complying with all requirements may, however, be delayed where the indication of the products in which the design is intended to be incorporated, or to which it is intended to be applied, was not made by reference to the list of products included in the product indication database available on the Office's website. In such a case, the indication of the products may have to be sent for translation into the official languages of the European Union (see paragraph 6.1.4.4 below).

An application complying with all registration requirements can be registered within **two working days** if the following conditions for the accelerated procedure ('Fast Track') are met (for possible modifications of these conditions please consult the Office's website):

- the application is filed electronically (e-filing) by using the four-step form;
- both the indication of product(s) and its/their classification are made by using the product indication database system (see paragraph 6.1.4.4 below);
- priority documents, where a priority is claimed, are included with the e-filing application (not required when the earlier filing is at the Office);
- no exhibition priority is claimed;
- the representative, if any, is registered in the Office's database and indicates the respective identification number in the form;
- fees are to be debited from a current account with the Office or paid by credit card.

2.7.2 Examination report and informal communication on possible deficiencies ('preliminary examination report')

Where a deficiency has been detected in the application, the examiner will issue an examination report summing up the irregularities noted and giving a time limit for the applicant, or the appointed representative, to remedy them.

Before sending such an examination report, the examiner can send an informal communication, called 'preliminary examination report', highlighting some potential deficiencies and aiming at speeding up the examination procedure. This informal communication informs the applicant that the examination procedure is pending due to any of the following circumstances.

2.7.2.1 Priority claims and supporting documents

Where the application contains a claim of priority of one or more previous applications without submitting a certified copy thereof, or a claim of priority from an exhibition without submitting a certificate thereof, the applicant may still submit a copy within three months of the filing date (Articles 42 and 44 CDR; Articles 8(1) and 9(1) CDIR; see paragraph 6.2.1.1 below).

In such circumstances, the examiner will inform the applicant that the examination of the application will be put on hold until the missing certified copy of the previous application(s) or certificate is submitted. The examination will proceed **three months** after the filing date, unless a copy of the previous application(s) or exhibition certificate (see paragraph 6.2.1.2 below), or a declaration that the priority claim is withdrawn, is received earlier.

2.7.2.2 Priority claims made subsequent to filing

Where the applicant states in the application its intention to claim the priority of one or more previous applications or an exhibition in the application without submitting any details about them, it may still submit, within one month of the filing date, the declaration of priority, stating the date on which, and the country in or for which the previous application was made (Article 42 CDR; Article 8(2) CDIR; see paragraph 6.2.1.1 below.) or the name of the exhibition and the date of first disclosure of the product (Article 44 CDR; Article 9(2) CDIR, see paragraph 6.2.1.2 below).

In such circumstances, the examiner will inform the applicant that the examination of the application will be put on hold until the missing information is submitted. The examination will proceed **one month** after the filing date, unless a declaration of priority, or a declaration that the priority claim is withdrawn, is received earlier.

2.7.2.3 Application filed by fax

Where an application is filed by fax, the examiner will inform the applicant that the examination will proceed **one month** after the date of receipt of the fax unless a confirmation copy of the application is received earlier by post, private delivery services or personal delivery.

This course of action attempts to avoid situations in which the examination is carried out on the basis of a faxed representation of a design which does not fully disclose all of its features (such as colours) or whose quality is not optimal.

2.7.2.4 Payment of fees

All necessary fees relating to an application must be paid at the time when the application is submitted to the Office (Article 6 CDIR; see paragraph 8 below).

Lack of payment or unidentified payment

Where the application has not yet been linked with a payment of the corresponding fees, the examiner will inform the applicant that the examination will proceed as soon as the payment has been identified and linked to this specific application.

If the applicant does not respond to the Office's communication, and the payment remains unidentifiable, a deficiency letter will be sent.

Lack of funds

Where the full amount of the fees relating to the application cannot be debited from the current account due to insufficient funds, the examiner will inform the applicant that the examination will begin as soon as the current account has been credited with the missing amount.

If the applicant does not respond to the Office's communication, and the payment remains incomplete, a deficiency letter will be sent.

The above also applies to credit card payments where the transaction fails due to reasons not attributable to the Office. In such cases, the applicant will have to use another method of payment.

For more information on the payment of fees, see paragraph 8 below.

2.7.2.5 Multiple applications and requests for partial deferment

Where a multiple application contains a request for deferment in respect of *some* designs (see paragraph 6.2.5 below), the examiner will send the applicant a summary of the application containing a representation of the first view of each design to be published without delay. The applicant will be requested to confirm the correctness of this summary within one month. In the absence of any reply or contrary instruction from the applicant, the examination will proceed on the basis of the information on file.

3 Allocation of a Filing Date

The date on which a document is 'filed' is the date of receipt by the Office rather than the date on which this document was sent (Article 38(1) CDR and Article 7 CDIR).

Where the application has been filed at the central industrial property office of a Member State or at the Benelux Office for Intellectual Property (BOIP), the date of filing at that office will be deemed the date of receipt by the Office, unless the application reaches the Office more than two months after such date. In this case, the date of filing will be the date of receipt of the application by the Office (Article 38 CDR).

Pursuant to Article 36(1) CDR, the allocation of a filing date requires that the application contain at least:

- (a) a request for registration of a Community design, and
- (b) information identifying the applicant, and
- (c) a representation of the design suitable for reproduction pursuant to Article 4(1)(d) and (e) CDIR or, where applicable, a specimen (Article 10 CDIR).

Payment of fees is not a requirement for allocating a filing date. It is, however, a requirement for the registration of the application (see paragraph 8 below).

3.1 Request for registration

A request for registration is filed where the applicant has completed (at least partly) the application form provided by the Office or its own form, or made use of e-filing (see paragraph 2.2 above).

Where it is obvious that the document received from the applicant is not an application for a Community design, but an application for registration of a **European Union trade mark**, the examiner will forward this document to the competent department of the Office and the examiner will inform the applicant accordingly without delay.

3.2 Information identifying the applicant

The information identifying the applicant, for the purpose of allocating a filing date, does not have to satisfy all the requirements set out in Article 1(1)(b) CDIR (see paragraph 6.1.1 below). It is enough that information is supplied regarding the surname and forename(s) of natural persons or the corporate name of legal entities, and that an address for service be indicated or any other data communication link that allows the applicant to be contacted. If the Office has given the applicant an identification number, it will be sufficient to mention that number together with the applicant's name.

3.3 Representation of the design suitable for reproduction

3.3.1 General requirements

The representation of the design must consist of a graphic and/or photographic reproduction of the design, either in black and white or in colour (Article 4(1) CDIR).

Irrespective of the form used for filing the application (paper, e-filing, or fax), the design must be reproduced on a **neutral background** and **must not be retouched** with ink or correcting fluid.

It must be of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished and permitting it to be reduced or enlarged to a size no greater than 8 cm by 16 cm per view for entry in the Register of Community Designs and for publication in the Community Designs Bulletin (Article 4(1)(e) CDIR).

The purpose of that requirement is to allow third parties to determine with accuracy all the details of the Community design for which protection is sought.

Drawings, photographs (except slides), computer-made representations or any other graphical representations are accepted, provided they are suitable for reproduction, including on a registration certificate in paper format. On the basis of the current legislation set out in Article 36(5) CDR and Article 4 CDIR, 3D computer-animated design generating motion simulation can only be considered as an additional technical means of viewing the design and does not replace conventional static views. CD-ROMs and other data carriers are not accepted.

3.3.2 Neutral background

The background in a view is considered neutral as long as the design shown in this view is clearly distinguishable from its environment without interference from any other object, accessory or decoration, whose inclusion in the representation could cast doubt on the protection sought (decision of 25/04/2012, R 2230/2011-3 – Webcams, § 11-12).

In other words, the requirement of a neutral background neither demands a ‘neutral’ colour nor an ‘empty’ background (see also paragraph 5.2.10 below). It is instead decisive that the design stands out so clearly from the background that it remains identifiable (decision of 25/01/2012, R 284/2011-3 – ‘Tool chest’, § 13).

The Office and a number of European Union intellectual property offices have agreed on a Common Practice under the European Trade Mark and Designs Network (CP6).

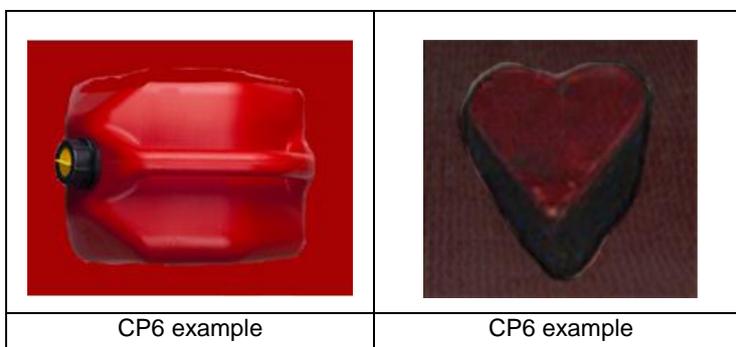
In accordance with that Common Practice (CP6), the following aspects should be taken into consideration when assessing if a background is neutral: colour, contrast and shadow. The examples given below in relation to these aspects are taken from the Common Practice (CP6), which also lists additional examples.

A single or predominant colour in a background is always acceptable if it stands out against the colours of the design.

Examples of an acceptable single or predominant background colour:

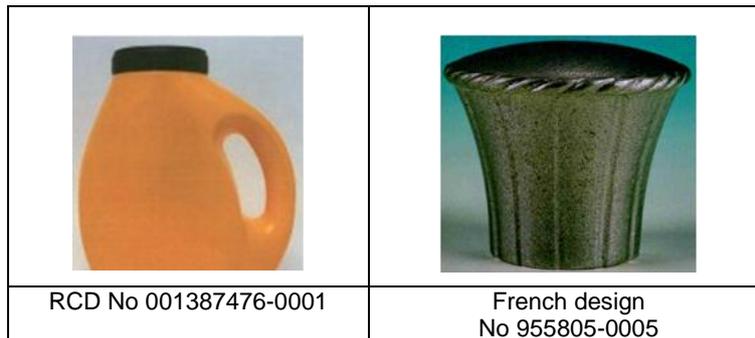


Examples of an unacceptable single or predominant background colour:



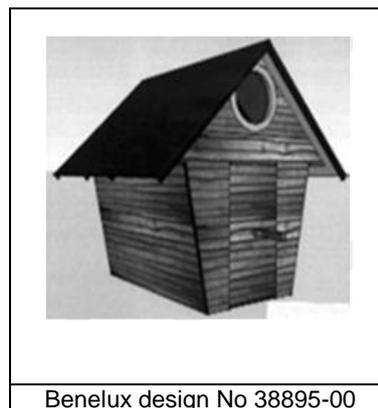
Graduating colour or more than one colour in a background is acceptable provided the design is clearly distinguishable.

Examples of an acceptable graduating colour and more than one colour in a background:

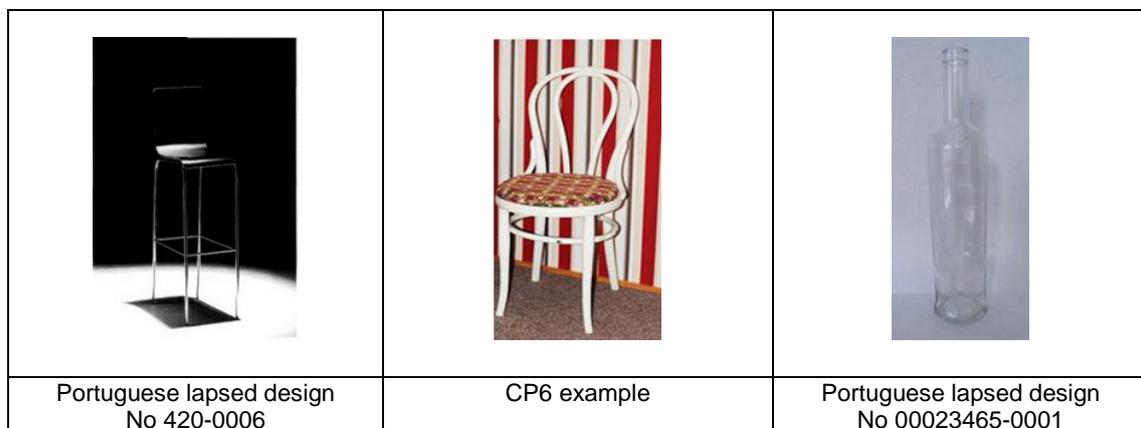


As for contrast, all features of the design should be clearly visible. The contrast is considered insufficient when the background colour and the design are similar and melt partly into each other, with the result that not all parts of the design contrast sufficiently with the background (i.e. it is not clear where the product finishes and the background starts). Sometimes, a darker background can help when the design is clear or pale and vice versa.

Example of sufficient contrast with background:



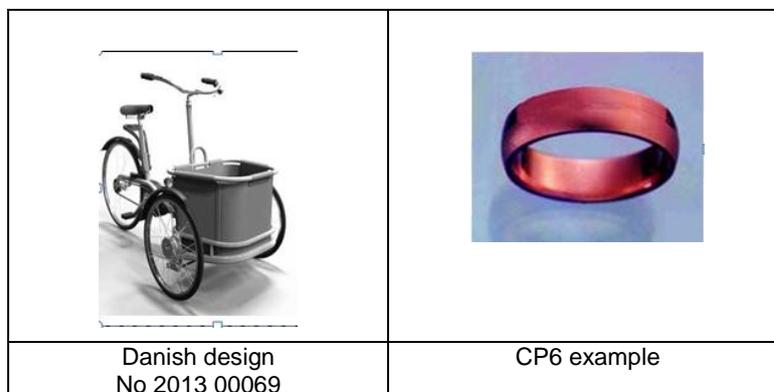
Examples of insufficient contrast with background:



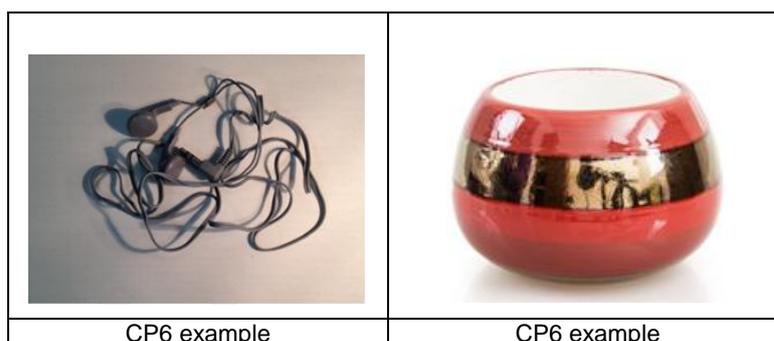
As for shadows/reflections, these are acceptable as long as all of the design features remain visible.

Shadows or reflections are unacceptable when the subject of protection of the design, in any of the submitted views, cannot be determined in an unambiguous way. This can occur when there is limited colour contrast with the design or when the shadows do not allow appreciation of all the features of the design, for example because they interfere with, or hide parts of, the design or distort the contour of the design.

Examples of acceptable shadows or reflections:



Examples of unacceptable shadows or reflections:



The views, among the seven allowed for representing a design (Article 4(2) CDIR), which) that do not have a neutral background will be objected to.

The examiner will issue a deficiency letter. The examiner will give the applicant the possibility to remedy the deficiencies within a two-month period by:

- withdrawing those views (that will not form part of the Community design); or
- submitting new views on a neutral background; or
- amending the objected views in such a way that the design will be isolated from its background. This latter option will make use of visual disclaimers (see paragraph 5.3 below).

If the applicant withdraws the deficient view(s) within the time limit set by the Office, the date of receipt of the original application will be recorded as the date of filing for the views that are not deficient.

If the deficiencies are remedied within the time limit set by the Office by submitting new views or amending the objected views, the date on which all the deficiencies are remedied will determine the date of filing (Article 10(2) CDIR).

If the deficiencies are not remedied within the time limit set by the Office, the application will not be dealt with as a Community design application. The file will be closed by a decision of the examiner and the applicant will be notified. The examiner will notify the Finance Department that a refund of any fees paid should be made to the applicant (Article 10(2) CDIR).

3.3.3 Designs retouched with ink or correcting fluid

The design must not be retouched with ink or correcting fluid (Article 4(1)(e) CDIR).

Examiners do not see the paper version of the representation, only scanned representations thereof. Therefore, it is only where the use of ink or correcting fluid leaves doubt as to whether the visible correction is or not an ornamental feature forming part of the design, that corrected representations will be objected to and refused for the purpose of allocating a filing date.

The applicant may remedy a deficiency in the same manner as described above under paragraph 3.3.2 above.

3.3.4 Quality

The requirement that the design must be of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished, for publication purposes, applies equally to all applications, irrespective of the means of filing.

Applications sent by fax and e-filing, however, raise specific issues.

3.3.4.1 Fax

Transmission by telecopy (fax) may not be appropriate for filing design applications, because the representation of the design may be distorted or blurred or otherwise damaged. Where an application is transmitted by fax, it is highly recommended that a paper confirmation copy be filed without delay, by ordinary mail, private delivery services or personal delivery.

Where an application is transmitted by fax, the examiner will in any event await a confirmation copy for a period of up to one month from the date of receipt of the fax transmission before further processing the application. Once this period has lapsed, the examiner will continue the examination on the basis of the documents on file.

Two deficiencies caused by unsatisfactory fax transmissions may arise:

- (i) the reproduction of a design as transmitted by fax is not of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished
- (ii) the application is incomplete and/or illegible.

As far as the issue of allocating a filing date is concerned, these two hypotheses must be distinguished.

The Office distinguishes an illegible transmission from one of insufficient quality as follows. Where a comparison between the initial transmission and the original reproduction allows drawing a conclusion on whether these documents relate to the representation of one and the same design, it must be considered that the initial transmission was merely of insufficient quality. Where such a comparison is not possible at all, the initial transmission was illegible.

- (i) The reproduction of a design as transmitted by fax is not of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished

The original date of filing will be retained if the applicant sends on its own motion or in reply to the Office's informal communication (see paragraph 2.7. 2 above) the original reproduction of the design within **one month** following the fax transmission, provided its quality permits all the details of the matter for which protection is sought to be clearly distinguished (Article 66(1), second paragraph, CDIR).

The confirmation copy has to consist of the same document that was used initially for the fax transmission. The examiner will reject a 'confirmation copy' that is not strictly identical to the document that was used for the fax transmission. This would be the case for instance if the applicant submitted amended views or additional views of the design(s.) in its confirmation.

In the event of any discrepancy between the original and the copy previously submitted by fax, only the submission date of the original will be taken into consideration.

If no original reproduction is received within the one-month time limit following the receipt of the fax, the Office will send a formal notification inviting the applicant to submit the original reproduction within a two-month period.

If that request is complied with in due time, the date of filing will be the date on which the Office receives the original reproduction, provided its quality permits all the details of the matter for which protection is sought to be clearly distinguished (Article 66(1) CDIR, third paragraph).

If the deficiencies are not remedied within the time limit set by the Office in its notification, the application will not be dealt with as a Community design application. The file will be closed by a decision of the examiner and the applicant will be notified. The examiner will notify the Finance Department that a refund of any fees paid should be made to the applicant (Article 10(2) CDIR).

Where the Office receives a reproduction of a design where **some of the views** are deficient due to fax transmission and where the confirmation copy is received later than one month after the date of receipt of the fax transmission, the applicant will be left with the choice of:

- having as the date of filing the date of receipt of the confirmation copy; or
- keeping the date of receipt of the fax transmission as the date of filing, but only for the non-deficient views; in such a case, the deficient views will be withdrawn.

(ii) The application is incomplete and/or illegible.

In a case where the fax was incomplete or illegible and where the missing or illegible parts concern the information identifying the applicant or the representation of the design, the Office will issue a formal notification requesting the applicant to resend the application by fax, post or personal delivery within a **two-month** time limit. If that request is complied with in due time, the date of filing will be the date on which the Office receives the complete and legible documents (Article 66(2) CDIR).

If the deficiencies are not remedied within the time limit set by the Office, the application will not be dealt with as a Community design application. The file will be closed by a decision of the examiner and the applicant will be notified. The examiner will notify the Finance Department that a refund of any fees paid should be made to the applicant (Article 10(2) CDIR).

3.3.4.2 E-filing

For e-filing, the terms and conditions determined by the Office must be adhered to (see Decision No EX-13-2 of the President of the Office, of 26/11/2013 as amended by Decision No EX-15-1 of the President of the Office of 29/01/2015 concerning electronic communication with and by the Office, referring to the requirements as published on the Office's website: <https://euipo.europa.eu/ohimportal/en/attachments>).

Low resolution attachments are likely to be objected to due to their insufficient quality for reproduction and publication purposes where the enlargement of the views to a size of 8 cm by 16 cm causes the details of the design to be blurred.

Where it is clear that the electronic filing was deficient due to technical problems attributable to the Office, with the result that one or more views do not correspond to those originally submitted by the applicant, the Office will allow the resubmission of the affected views. The original filing date via e-filing will be retained, provided that no other deficiency affecting the filing date exists.

3.3.5 Specimens

The graphic or photographic reproduction of the design can be substituted by a specimen of the design provided the following cumulative conditions are met:

- the application relates to a two-dimensional design; and
- the application contains a request for deferment (Article 36(1)(c) CDR; Article 5(1) CDIR).

In the event of a multiple application, the substitution of the representation by a specimen may apply only to some of the designs, provided these designs are two-dimensional and are subject to a request for deferment (see paragraph 6.2.5 below).

A specimen is usually a sample of a piece of material such as textile, wallpaper, lace, leather, etc.

Specimens must not exceed 26.2 cm x 17 cm in size, 50 g in weight or 3 mm in thickness. They must be capable of being stored and unfolded (Article 5(2) CDIR).

Five samples of every specimen must be filed; in the case of a multiple application, five samples of the specimen must be filed for each design (Article 5(3) CDR).

The application and the specimen(s) must be sent in a single delivery either by post or personal delivery. A date of filing will not be accorded until both the application and the specimen(s) have reached the Office.

Where the applicant submits a specimen relating to an application that does not relate to a two-dimensional design or that does not contain a request for deferment, the specimen is not admissible. In such a case, the date of filing will be determined by the date on which the Office receives a suitable graphic or photographic reproduction of the design, provided the deficiency is remedied within two months of receipt of the Office's notification (Article 10(2) CDR).

4 Examination of the Substantive Requirements

The Office carries out an examination of the substantive protection requirements, which is limited to two grounds for non-registrability.

An application will be refused if the design does not correspond to the definition provided for in Article 3(a) CDR or if is contrary to public policy or to accepted principles of morality (Article 9 CDR).

4.1 Compliance with the definition of a design

A 'design' means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation (Article 3(a) CDR).

A 'product' means any industrial or handicraft item, including, inter alia, parts intended to be assembled into a complex product, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs (Article 3(b) CDR).

Whether the product claimed is actually made or used, or can be made or used, in an industrial or handicraft manner will not be examined.

Whether a design discloses the appearance of the whole or a part of a 'product' will be examined in the light of the design itself, insofar as it makes clear the nature of the product, its intended purpose or its function, and of the indication of the products in which the design is intended to be incorporated or to which it is intended to be applied (Article 36(2) CDR).

The following examples, albeit non-exhaustive, illustrate the Office's practice.

4.1.1 Blueprints, plans for houses or other architectural plans and interior or landscape designs

Blueprints, plans for houses or other architectural plans and interior or landscape designs (e.g. gardens) will be considered 'products' for the purpose of applying Article 7(1) CDR and will be accepted only with the corresponding indication of 'printed matters' in Class 19-08 of the Locarno Classification.

An objection will be raised if the product indicated in an application for a design consisting of a blueprint of a house is 'houses' in Class 25-03 of the Locarno Classification. This is because a blueprint does not disclose the appearance of a finished product such as a house.

4.1.2 Colours per se and combinations of colours

A single colour may of course be an element of a design, but on its own it does not comply with the definition of a design because it does not constitute the 'appearance of a product'.

Combinations of colours may be accepted if it can be ascertained from the contours of the representation that they relate to a product such as, for instance, a logo or a graphic symbol in Class 32 of the Locarno Classification.

4.1.3 Icons

Designs of screen displays and icons and other kinds of visible elements of a computer program are eligible for registration (see Class 14-04 of the Locarno Classification).

4.1.4 Mere verbal elements

Mere words per se and sequences of letters (written in standard characters in black and white) do not comply with the definition of a design because they do not constitute the appearance of a product.

The use of fanciful characters and/or the inclusion of a figurative element, however, render(s) the design eligible for protection either as a logo/graphic symbol in Class 32 of the Locarno Classification, or as the ornamental representation of a part of any product to which the design will be applied.

4.1.5 Music and sounds

Music and sounds per se do not constitute the appearance of a product and, therefore, do not comply with the definition of a design.

However, the graphical representation of a musical composition, in the form of a musical string, would qualify as a design, if applied for as, for example, *other printed matter* in Class 19-08 or *graphic symbols* in Class 32 of the Locarno Classification.

4.1.6 Photographs

A photograph per se constitutes the appearance of a product and, therefore, complies with the definition of a design, irrespective of what it discloses. The indication of the product can be *writing paper, cards for correspondence and announcements* in Class 19-01, *other printed matters* or *photographs* in Class 19-08 of the Locarno Classification, or any product to which the design will be applied.

4.1.7 Living organisms

Living organisms are not 'products', that is, industrial or handicraft items. A design that discloses the appearance of plants, flowers, fruits etc. in their natural state will, in principle, be refused. Even if the shape at issue deviates from that of the common corresponding living organism, the design should be refused if nothing suggests *prima facie* that the shape is the result of a manual or industrial process (see by analogy decision of 18/02/2013, R 595/2012-3 – 'Groente en fruit, § 11).



However, no objection will be raised if it is apparent from the representation that the product does not show a living organism or if the indication of the product specifies that this product is artificial (see in particular Class 11-04 of the Locarno Classification).

4.1.8 Teaching materials

Teaching materials such as graphs, charts, maps etc. can be representations of products in Class 19-07 of the Locarno Classification.

4.1.9 Concepts

A design application is refused where the representation is of a product that is simply one example amongst many of what the applicant wishes to protect. An exclusive right cannot be granted to a 'non-specific' design that is capable of taking on a multitude of different appearances. This is the case where the subject matter of the application relates, *inter alia* to a concept, an invention or a method for obtaining a product.

4.2 Public policy and morality

4.2.1 Common principles

The concepts of public policy and morality may vary from one country to another. A restrictive measure based on public policy or morality may be based on a conception that is not necessarily shared by all Member States (judgment of 14/10/2004, C-36/02, Omega, EU:C:2004:614, § 33 and 37).

Given the unitary character of the registered Community design (Article 1(3) CDR), it is enough that a design be found contrary to public policy in at least part of the Union for this design to be refused under Article 9 CDR (see, by analogy, judgment of 20/09/2011, T-232/10, 'Coat of arms of the Soviet Union, EU:T:2011:498, § 37 and 62). This finding can be supported by the legislation and administrative practice of certain Member States.

It is not necessary that the use of the design would be illegal and prohibited. However, illegality of the use of the design under European or national legislation is a strong indication that the design should be refused under Article 9 CDR.

4.2.2 Public policy

The safeguard of public policy may be relied on to refuse a Community design application only if there is a genuine and sufficiently serious threat to a fundamental interest of society (judgment of 14/03/2000, C-54/99, 'Église de scientologie', EU:C:2000:124, § 17).

Designs that portray or promote violence or discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation will be refused on that account (Article 10 of the Treaty on the Functioning of the European Union).

4.2.3 Morality

The safeguard of morality may be relied on to refuse a Community design application if the design is perceived as sufficiently obscene or offensive from the perspective of a reasonable person of normal sensitivity and tolerance (see, by analogy, judgment of 09/03/2012, T-417/10, '¡¡Que bueno ye! Hijoputa', EU:T:2012:120, § 21).

Bad taste, as opposed to contrariety to morality, is not a ground for refusal.

4.3 Objections

Where an objection is raised by the examiner in respect of one or the other of the two above grounds for non-registrability, the applicant will be given the opportunity of withdrawing or amending the representation of the design or of submitting its observations within a two-month time limit (Article 47(2) CDR, Article 11 CDIR).

If the objection relates to the compliance with the definition of a design and if this objection can be overcome by amending the indication of the products in which the design is intended to be incorporated or to which it is intended to be applied, the examiner will propose such an amendment in the communication to the applicant.

Where the applicant opts for submitting an amended representation of the design, this representation will be admissible under the condition that 'the identity of the design is retained' (Article 11(2) CDIR).

Maintenance in an amended form will, therefore, be limited to cases in which the removed or disclaimed features are so insignificant in view of their size or importance that they are likely to pass unnoticed in the perception of the informed user.

Features can be disclaimed by making use of the visual disclaimers referred to in paragraph 5.3 below.

Where the applicant fails to overcome the grounds for non-registrability within the time limit, the Office will refuse the application. If those grounds concern only some of the designs contained in a multiple application, the Office will refuse the application only insofar as those designs are concerned (Article 11(3) CDIR).

5 Additional Requirements Regarding the Reproduction of the Design

The purpose of the graphic representation is to disclose the features of the design for which protection is sought. The graphic representation must be self-contained in order to determine with clarity and precision the subject-matter of the protection afforded by the registered Community design to its holder. This rule is dictated by the requirement of legal certainty.

In accordance with the Common Practice (CP6), use of aspect views of the design is recommended.

Aspect views are defined under the Common Practice (CP6) as showing the design from certain directions (angles), and encompass the following: perspective view, front view, top view, right side view, left side view, back view and bottom view. See the following examples (for all but a bottom view):



For the purpose of filing a design, it is sufficient to file only one aspect view. However, other (non-traditional) types of view, in particular exploded views (see paragraph 5.2.2 below) and sectional views (see paragraph 5.2.5 below), cannot be filed on their own.

Applicants are reminded that the requirements concerning the format of the representation of the design may vary according to the manner in which the application was filed (paper, e-filing, use of a specimen). These requirements are set out in Articles 4 and 5 CDIR.

The following instructions supplement the requirements regarding the quality of the reproduction and the neutral background (see paragraph 3.3 above). For general quality recommendations for representations filed in the form of drawings or photographs, please consult the Common Practice (CP6).⁶

The following instructions apply to all designs, irrespective of the manner in which the application was filed.

Even where a representation of the design has been replaced by a specimen in accordance with Article 5 CDIR (see paragraph 3.3.5 above), the applicant must file a graphic or photographic reproduction of the design at the latest three months before the 30-month deferment period expires (Article 15(1)(c) CDIR; see paragraph 6.2.5.3 below).

Any deficiency found in an application and relating to one or the other of the requirements under this section will have no bearing on the granting of a filing date. However, if the deficiencies are not remedied within the time limit set by the Office in its

⁶ <https://www.tmdn.org/network/converging-practices>.

examination report, the application will be refused (Article 46(3) CDR). If the deficiencies concern only some of the designs contained in a multiple application, the Office will refuse the application only insofar as those designs are concerned (Article 11(3) CDIR).

Once a date of filing has been granted, refusal of the application does not give rise to a refund of the fees paid by an applicant (Article 13 CDIR).

5.1 Number of views

A maximum of seven different views can be filed in order to represent the design (Article 4(2) CDIR). The views may be plan, in elevation, cross-sectional, in perspective or exploded. Only one copy of each view should be filed.

For applications other than e-filings, each of the views must be numbered by the applicant in Arabic numerals by figures separated by a dot, the first being the number of the design, the second being the number of the view. For instance, the sixth view of the second design of a multiple application must be numbered: 2.6.

In cases where more than seven views are provided, the Office will disregard any of the extra views for registration and publication purposes (decision of 27/10/2009, R 571/2007-3 – Frames for cycles or motorcycles, § 13). The Office will take the views in the consecutive order in which the views are numbered by the applicant (Article 4(2) CDIR).

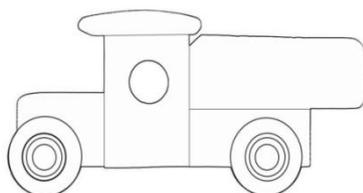
Where a reproduction comprises less than seven views and the views are not numbered, the examiner will number the views according to the sequence given in the application.

The examiner will not change the order of the views as appearing in the application, or their orientation.

5.2 Consistency of the views

The examiner will check whether the views relate to the same design, that is, to the appearance of one and the same product or of its parts.

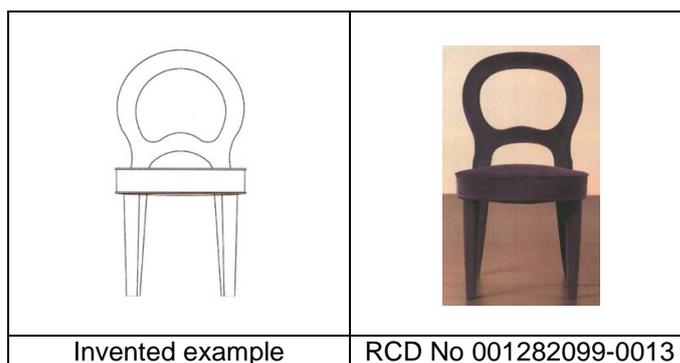
In accordance with the Common Practice (CP6), and as regards the combination of several means of visual representation, it is recommended that a design be represented using only one visual format (e.g. a drawing or a photograph). Therefore, the following combination of a drawing and a photograph depicting a vehicle toy, as shown in the Common Practice (CP6), should not be filed:



Where different visual formats are used, each must clearly relate to the same design and be consistent when comparing the features disclosed.

When the different visual formats show aspects that are inconsistent with one another, they are not considered to represent the same design. A combination of a drawing and a photograph will often reveal such inconsistencies between representations in different visual formats.

In the following example of a chair design, the seat is flat in the drawing but arched in the photograph. The backrests are also of a different shape.



Where the views are inconsistent and relate to more than one design, the applicant will be invited either to withdraw some views or to convert the application into a multiple application for different designs, and pay the corresponding fees.

To submit a correct and complete application (including representations of the design) falls within the applicant's responsibility. The Office is not entitled to remedy any deficiencies in respect of incongruent views once the Community design is registered and published (see decision of 03/12/2013, R 1332/2013-3 –Adapters, § 14 et seq.)

The consistency of the views may be particularly difficult to assess when examining applications for designs relating to alternative positions, exploded views, views magnifying part of the design, partial views, sectional views, a sequence of snapshots and sets of articles.

5.2.1 Alternative positions

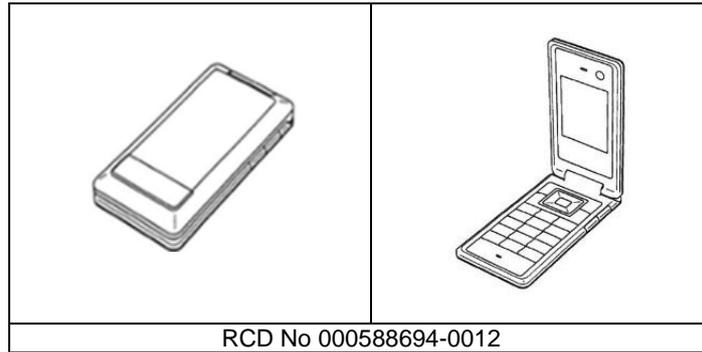
Designs with alternative positions are of an appearance that can be modified into various configurations without adding or removing any parts.

These designs have pre-defined stages of use that each correspond to an alternative position.

In accordance with the Common Practice (CP6), the views showing the different configurations of the design are acceptable provided no part is added or removed.

The alternative positions of the moveable or removable parts of a design must be shown in separate views.

The example below of an acceptable representation of a design with alternative positions is taken from the Common Practice (CP6), which also lists additional examples.



In some cases different configurations may result in different products, such as the bag that can be converted into a towel:

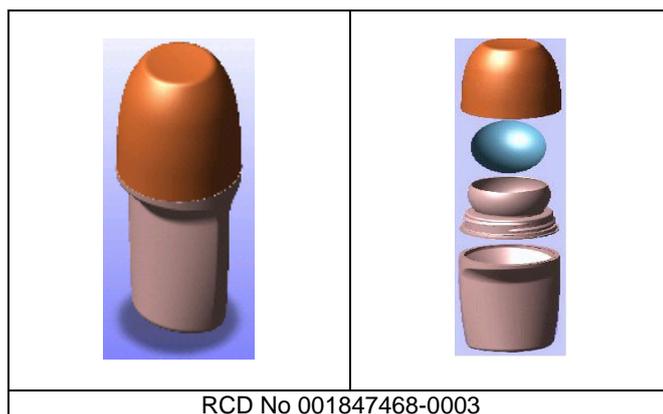


5.2.2 Exploded views

Exploded views are views where parts of a product are shown disassembled, to clarify how it fits together.

Exploded views must be combined with at least one view representing the assembled product. In these views, all the product's parts must be shown disassembled in a separate single view. The disassembled parts must be shown in close proximity and in order of assembly.

The example below of an acceptable representation of a design with an assembled and an exploded view is taken from the Common Practice (CP6), which also lists additional examples.



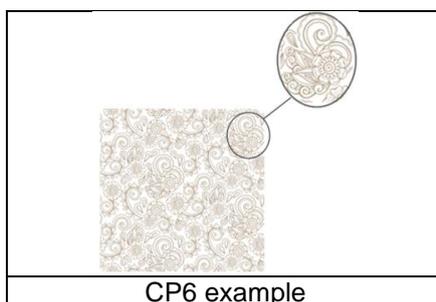
5.2.3 Views magnifying part of the design

Magnified views show one part of an overall design on an enlarged scale.

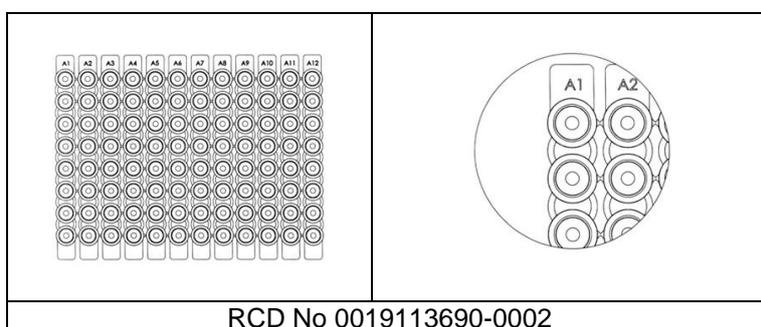
A single magnified view is acceptable provided that the magnified part is already visible in one of the other views submitted.

The view that shows the magnified part of the design must be presented in a separate single view.

Example of an unacceptable magnified view filed as one view:



Example of an acceptable magnified view filed as a separate view:



5.2.4 Partial views

A partial view is a view showing part of a product in isolation. A partial view can be magnified.

Partial views must be combined with at least one view of the assembled product (the different parts need to be connected to each other).

Example of an acceptable assembled view, filed together with partial views:



Where all the views disclose different detailed features, **without showing these features connected to each other**, the examiner will issue a deficiency letter giving the applicant two options:

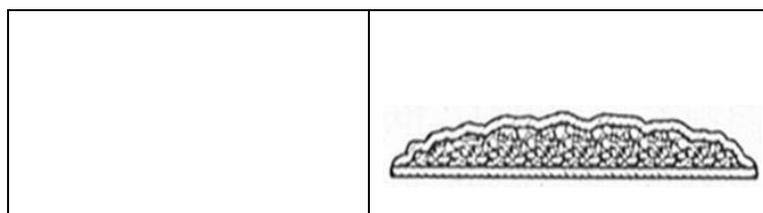
- the applicant can convert its application into a multiple application combining the separate designs for each individual detail in question and pay the corresponding fees; or
- the applicant can limit its application to just one design by withdrawing the views representing other designs.

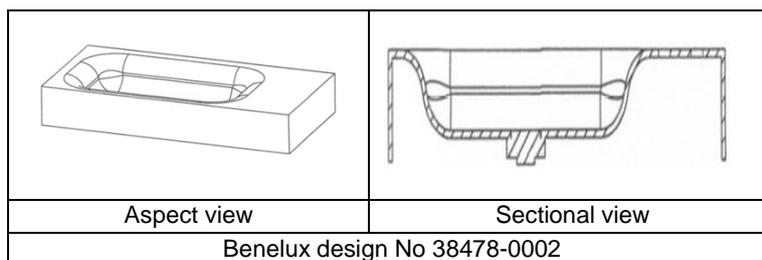
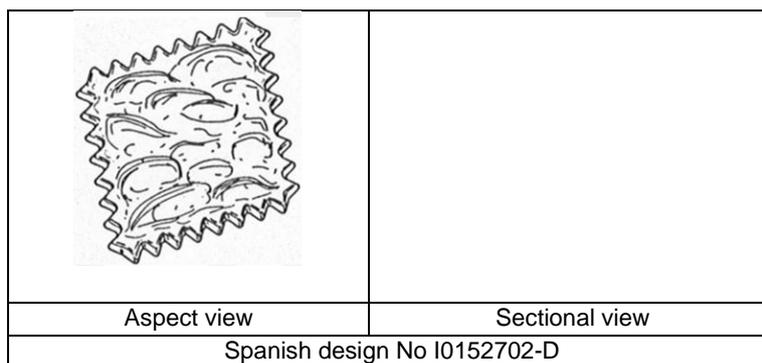
5.2.5 Sectional views

Sectional views are cutaway portions that complement aspect views by illustrating a feature or features of the product's appearance, such as contour, surface, shape or configuration.

In accordance with the Common Practice (CP6) representations with technical indications, such as axial lines or sizes (dimensions), numbers, etc., are not acceptable. The sectional view should be unambiguously a view of the same design. Sectional views should not be submitted without other traditional views, such as aspect views.

The following are examples agreed in the context of the Common Practice (CP6) of sectional views, which must be filed together with other traditional views, such as aspect views:



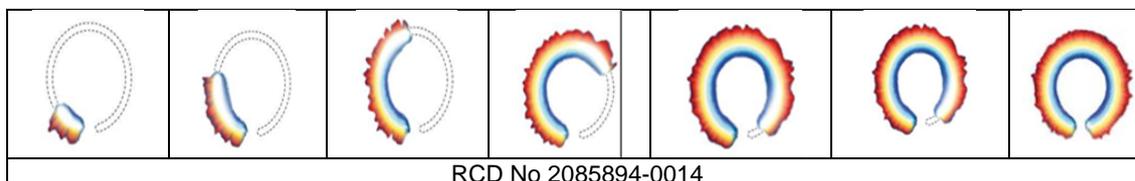


5.2.6 Sequence of snapshots (animated designs)

Snapshots are a short sequence of views used to show a single animated design at different specific moments in time, in a clearly understandable progression.

This applies to:

- an animated icon (design consisting of a sequence);



- an animated graphical user interface (design of an interface).



In accordance with the Common Practice (CP6), in principle, all views of an animated icon and graphical user interface need to be visually related, which means that they must have features in common. It is the applicant's responsibility to order the views in such a way as to give a clear perception of the movement/progression.

5.2.7 Sets of articles

A set of articles is a group of products of the same kind which that are generally regarded as belonging together and are so used. See the example below:



The difference between a complex product and a set of articles is that, in contrast to a complex product, the articles of a 'set of articles' are not mechanically connected.

A set of articles can be a 'product' in itself within the meaning of Article 3 CDR. It can be represented in a single design application if the articles making up this set are linked by **aesthetic and functional complementarity** and are, in normal circumstances, sold altogether as one single product, like a chess board and its pieces or sets of knives, forks and spoons.

It must, however, be clear from the representation that protection is sought for a design resulting from the combination of the articles making up the set, and not for each article separately.

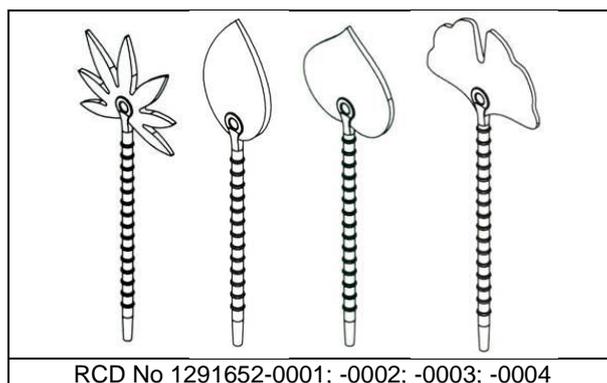
Applicants must submit, among the seven views allowed, at least one view showing the set of articles in its entirety.

Otherwise, the examiner will issue a deficiency letter giving the applicant two options:

- the applicant can convert its application into a multiple application containing the separate designs for each article in question and pay the corresponding fees; or
- the applicant can limit its application to just one design by withdrawing the views representing other designs.

5.2.8 Variations of a design

Sets of products should not be confused with variations of a design. The different embodiments of the same concept cannot be grouped in a single application because each embodiment is a design on its own, as in the example below:



Where, in an application for a single registered Community design, the views relate to more than one design, the examiner will issue a deficiency letter giving the applicant two options:

- the applicant can convert its application into a multiple application combining the separate designs and pay the corresponding fees; or
- the applicant can limit its application to just one design by withdrawing the views representing other designs.

5.2.9 Colours

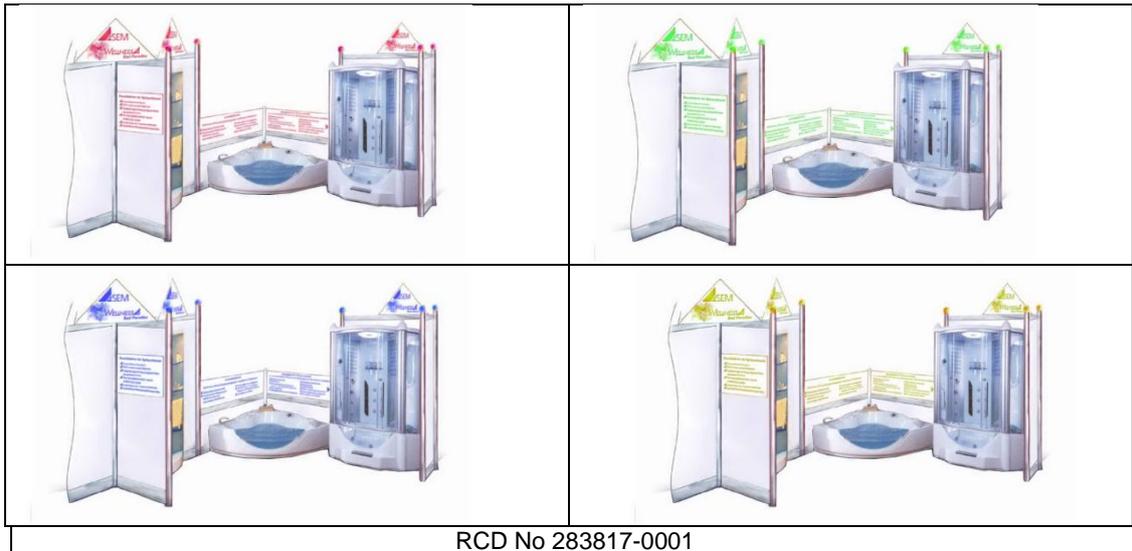
The representation of the design may be submitted **either** in black and white (monochrome) **or** in colour (Article 4(1) CDIR).

Representations combining black and white views with colour views will be objected to due to their inconsistency and the resulting legal uncertainty as to the protection sought.

The same reasoning applies where the same features of a design are represented in different colours in the various views. Such an inconsistency illustrates the fact that the application relates to more than one design (decisions of 31/03/2005, R 0965965/2004-3 – Tape measure, § 18-20; 12/11/2009, R 1583/2007-3 – Bekleidung, § 9-10).

The applicant will, therefore, be invited either to withdraw some of the colour views in order to maintain consistency between the remaining ones, or to convert the application into a multiple application, and pay the corresponding fees.

However, as an exception to the above principle, the same features of a design can be represented in different colours in the various views if the applicant submits evidence that the change of colours at different points in time, while the product is in use, is one of the relevant features of the design, as in the example below (RCD No 283817-0001, courtesy of ASEM Industrieberatung und Vermittlung):



Where the reproduction is in colour, the registration and the publication will also be in colour (Article 14(2)(c) CDIR).

5.2.10 Elements external to the design

Views should not include external and foreign matter in the design provided (see paragraph 3.3.2 above), except when their inclusion does not cast any doubt on the protection sought and serves only an illustrative purpose (see paragraph 3.3.2 above).

See for instance the following two RCDs, in which the inclusion of a hand in one of the views serves the purpose of illustrating how the product in which the design is incorporated will be used (albeit the way of use does not form part of the design's subject-matter of protection) or the context in which it will be used:



5.3 Use of visual disclaimers to exclude features from protection

Neither the CDR nor the CDIR provides rules for the possibility of including in the application a statement that the applicant disclaims any exclusive right to one or more features disclosed in the views.

Use of a description, within the meaning of Article 36(3)(a) CDR, is not appropriate in this regard since a description 'shall not affect the scope of protection of the design as such' according to Article 36(6) CDR. Moreover, only an indication that a description has been filed is published, not the description as such (Article 14(2)(d) CDIR).

Disclaimers must therefore be apparent from the representation of the design itself.

In accordance with the Common Practice (CP6), visual disclaimers indicate that protection is not being sought, and registration has not been granted, for certain features of the design shown in the representation. Thus, they indicate what is not intended to be protected. This can be achieved:

- by excluding with broken lines, blurring or colour shading the features of the design for which protection is not sought; or
- by including within a boundary the features of the design for which protection is sought, thus making it clear that no protection is sought for what falls outside the boundary.

Under the Common Practice (CP6), the offices agreed on the general recommendation that graphic or photographic representations showing only the claimed design are preferred. However, visual disclaimers can be used when the graphic or photographic representation of the design contains parts of the product for which no protection is sought. In these cases, the disclaimer must be clear and obvious: the claimed and disclaimed features must be clearly differentiated.

To be accepted, when the design is represented by more than one view, the visual disclaimer must be shown consistently in all the views where the disclaimer appears.

Where a disclaimer is used, broken lines are recommended. Only when broken lines cannot be used due to technical reasons (e.g. when they are used to indicate stitching on clothing or patterns; or when photographs are used), can other disclaimers be used: colour shading, boundaries and blurring.

In accordance with the Common Practice (CP6), in an application for registration of a Community design the following visual disclaimers will be allowed (see paragraphs 5.3.1 to 5.3.4 below):

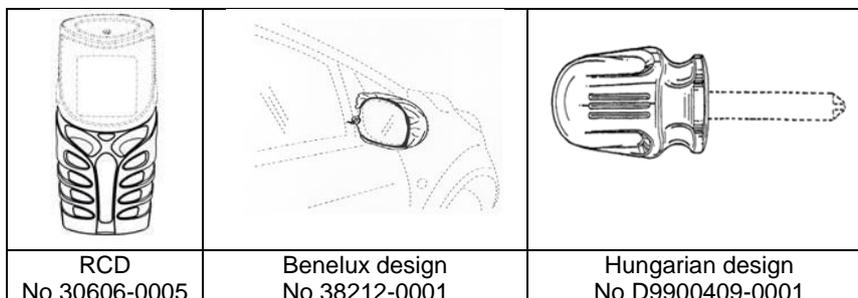
5.3.1 Broken lines

Broken lines consist of a trace made up of dots or dashes (or a combination of both) and are used to indicate that no protection is sought for the features shown using an interrupted trace.

A visual disclaimer consisting of broken lines will usually be combined with continuous lines.

To be accepted, the features for which protection is not sought should be clearly indicated with broken lines, whereas the parts for which protection is sought should be indicated with continuous lines.

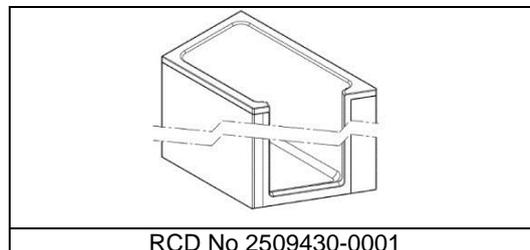
The following are examples agreed in the context of the Common Practice (CP6) for correctly applied broken lines.



In cases where broken lines are a feature of the design (such as stitching on clothing), this must be clear from the representation. In such cases, it may be helpful to file, for example, a magnified view.

In cases where broken lines are a feature of the design and a part of the design needs to be disclaimed, any of the other visual disclaimers can be used, such as colour shading, blurring or boundaries.

For ease of illustration, broken lines may also illustrate separations, indicating that the precise length of the design is not claimed (indeterminate length).



In view of the Common Practice (CP6), the Office does not recommend using broken lines to indicate portions of the design that are not visible in that particular view, that is to say, non-visible lines.

5.3.2 Blurring

Blurring is a type of visual disclaimer that consists in obscuring the features for which protection is not sought in the drawings or photographs of a design application.

Blurring may only be accepted when the features for which protection is sought are clearly distinguishable from the disclaimed (blurred) features.

The following is an example agreed in the context of the Common Practice (CP6) of correctly applied blurring.



5.3.3 Colour shading

Colour shading is a type of visual disclaimer that consists in using contrasting tones to sufficiently obscure the features for which protection is not sought in the drawings or photographs of a design application.

With colour shading, the features for which protection is sought must be clearly perceptible, whereas the disclaimed features must be represented in a different tone and so as to appear blurred or imperceptible.

The following are examples agreed in the context of the Common Practice (CP6) for correctly applied colour shading:



5.3.4 Boundaries

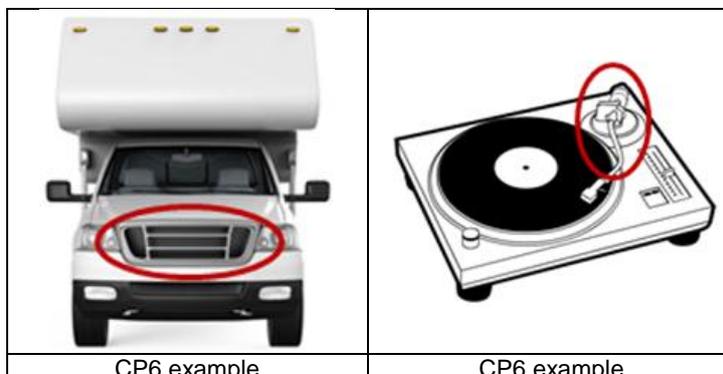
Boundaries are a type of visual disclaimer used in drawings or photographs of a design application to indicate that no protection is sought for the features not contained within the boundary.

The following are examples agreed in the context of the Common Practice (CP6) for correctly applied boundaries:



In order to be accepted, the features for which protection is sought should be clearly indicated/represented within the boundary, whereas all the features outside the boundary are considered to be disclaimed and therefore not protected.

Due to the risk of including more than just the design within the boundary, boundaries must be used carefully in drawings/photographs, for example:



5.4 Explanatory text, wording or symbols

No explanatory text, wording or symbols, other than the indication 'top' or the name or address of the applicant may be displayed in the views (Article 4(1)(c) CDIR).

Where words, letters, numbers and symbols (such as arrows) are **clearly** not part of the design, the examiner may cut them from the views using the specific IT tool available for this. If the examiner is not able to cut them out for technical reasons, the applicant will be requested to send in clean views or to withdraw the deficient ones.

Where the words, letters, numbers, etc. are part of the design (graphical symbol), the design is acceptable.

Verbal elements displayed in the representation that are part of the design will be keyed in and entered in the file. Where several verbal elements are displayed, the examiner will only take into account the most prominent one.

Indications such as 'side', 'front view', etc. will be cut for publication purposes. If the applicant considers such indications to be relevant, it may wish to include them in the 'Description' box at the time of filing. Further amendments or the addition of a description will not be allowed.

5.5 Amending and supplementing views

As a matter of principle, the representation may not be altered after the application has been filed. The submission of additional views or the withdrawal of some views will therefore not be accepted (Article 12(2) CDIR), unless expressly allowed or required by the Office.

In particular, the views initially filed may not be replaced with better-quality ones. The representations examined and published will be those that the applicant provided in its original application.

The submission of amended or additional views, where allowed, must be made by electronic communication via the Office's website (not by email) in JPEG format (see also: <https://euipo.europa.eu/ohimportal/en/attachments>), by post or fax (the latter is, however, not recommended; see paragraph 2.2.5 above).

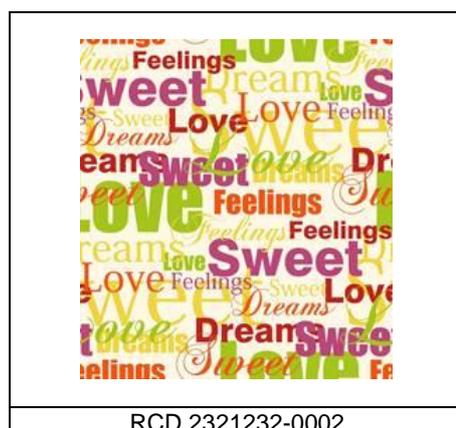
5.6 Specific requirements

5.6.1 Repeating surface patterns

Where the application concerns a design consisting of a repeating surface pattern, the representation of the design must disclose the complete pattern and a sufficient portion of the repeating surface (Article 4(3) CDIR), in order to show how this pattern is infinitely multiplied.

Where the application does not contain a description making clear that the design consists of a repeating surface pattern, the Office will assume that this is not the case and will not request a sufficient portion of the repeating surface.

If additional views represent the pattern applied to one or more specific products for illustrative purposes, the applicant must make sure that the shape of such products is not claimed as part of the design by using any method referred to under paragraph 5.3 above:



5.6.2 Typographic typefaces

Where the application concerns a design consisting of a typographic typeface, the representation of the design must consist of a string of all the letters of the alphabet, upper case and lower case, and of all the Arabic numerals, as well as of a text of five lines produced using that typeface, all in 16-pitch font (Article 4(4) CDIR).

Where the application does not include a text of five lines using the typeface concerned (Article 4(4) CDIR), the applicant will be requested to submit such a text or to accept a change in the indication of products to 'set of characters' in Locarno Class 18.03.

6 Additional Elements that an Application Must or May Contain

6.1 Mandatory requirements

In addition to the requirements for the grant of a filing date (see paragraph 3 above), the application must properly identify the applicant and, if applicable, its representative (Article 1(b) and (e) CDIR), specify the two languages of the application (Article 1(h) CDIR), contain a signature (Article 1(i) CDIR) and indicate the products in which the design is intended to be incorporated or to which it is intended to be applied (Article 1(d) CDIR).

Even after a date of filing has been granted, the examiner will issue an objection if a deficiency with regard to any of the above requirements is noted in the course of examining the Community design application (Article 10(3)(a) CDIR).

6.1.1 Identification of the applicant and its representative

Pursuant to Article 1(b) CDIR, an application will be objected to if it does not contain the following information regarding the applicant: its name, address and nationality and the State in which it is domiciled or, if the applicant is a legal entity, in which it has its seat or establishment. If the Office has given the applicant an identification number, it is sufficient to mention that number together with the applicant's name.

Where the application is filed in the name of more than one applicant, the same requirement applies to each one.

Names of natural persons must give both the family name and the given name(s). Legal entities must be indicated by their official designation. The State whose law governs such entities must also be indicated.

If the applicant does not have a representative, it is highly recommended that an indication be given of telephone numbers as well as fax numbers and details of other data-communications links, such as email.

Each applicant must, in principle, indicate only one address. Where several addresses are indicated, only the first address mentioned will be taken into account, except where the applicant designates one of the addresses as an address for service.

If there is more than one applicant, the Office will send its communications to the applicant mentioned first in the application.

If the applicant has appointed a representative, the application must indicate the name of that representative and the address of their place of business. If an appointed representative has been given an identification number by the Office, it will be sufficient to mention that number together with the representative's name.

If the representative has more than one business address or if there are two or more representatives with different business addresses, the application must indicate which address is to be used as the address for service. Where no such indication is made, the address for service will be taken to be the first address mentioned.

If there is more than one applicant, the application may appoint one representative to be the common representative for all applicants.

6.1.2 Specification of the languages

The application may be filed in any of the official languages of the European Union (language of filing) (Article 98(1) CDR; see paragraph 2.4 above). The language used in the application form does not affect the language of the application. It is the language of the content supplied by the applicant that is decisive. The language of filing will be the first language of the application.

The applicant must indicate a second language, which must be an Office language, that is, English (EN), French (FR), German (DE), Italian (IT) or Spanish (ES).

The second language must be different from the language of filing.

The two-letter ISO codes (codes set up for identifying languages by the International Organisation for Standards) may be used in the box provided in the application form.

6.1.3 Signature

The application must be signed by the applicant or its representative (Article 1(i) CDIR). Where there is more than one applicant or representative, the signature of one of them will be sufficient.

If an application is filed electronically, it is sufficient for the name and authority of the signatory to be indicated. If an application is filed by fax, a facsimile signature is considered valid.

For representatives, the signature consisting of the name of the law firm is acceptable.

6.1.4 Indication of products

6.1.4.1 General principles

Pursuant to Article 36(2) CDR, an application for a Community design must indicate the products in which the design is intended to be incorporated or to which it is intended to be applied. Pursuant also to Article 1(1)(d) CDIR and Article 3(3) CDIR, the indication of products must be worded in such a way as to indicate clearly the nature of the products and to enable each product to be classified in only one class of the Locarno Classification, preferably using the terms appearing in the list of products set out therein, or in the database of product indications (see below).

Neither the product indication nor the classification affects the scope of protection of a Community design as such (Article 36(6) CDR). Classification serves exclusively administrative purposes, in particular allowing third parties to search the registered Community designs databases (Article 3(2) CDIR).

Applicants do not themselves have to classify the products in which their design is intended to be incorporated or to which it is intended to be applied (Article 36(3)(d))

CDR). This is, however, highly recommended in order to speed up the registration procedure (see paragraph 6.2.3 below).

The considerations that follow here below only refer to single design applications. As far as multiple design applications are concerned, the 'unitary class' requirement applies (see paragraph 7.2.3 below).

6.1.4.2 The Locarno and Classification and the database of product indications

The Locarno Classification is an international classification for industrial designs. It exists in two official languages, namely French and English. Its structure and contents are adopted and amended by the Committee of Experts from the countries party to the Locarno Agreement. The Classification is administered by the World Intellectual Property Organization (WIPO). The current, tenth, edition contains 32 classes and 219 subclasses.

The Office uses the database of product indications, which is based on the Locarno Classification.

In order to speed up and simplify the registration procedure, it is highly recommended that products be indicated using the terms listed in the database of product indications.

Using the terms listed in the database of product indications obviates the need for translations and thus prevents long delays in the registration procedure. Using these product terms whenever possible will improve the transparency and searchability of the registered Community designs databases.

6.1.4.3 How to indicate products

More than one product can be indicated in the application.

When more than one product is indicated in the application, the products do not have to belong to the same class of the Locarno Classification, unless several designs are combined in a multiple application (Article 37(1) CDR; Article 2(2) CDIR; see paragraph 7.2.3 below).

Each class and subclass of the Locarno Classification and the database of product indications has a 'heading'. The class and subclass headings give a general indication of the fields to which the products belong.

In any event, the product(s) must be indicated in such a way as to allow classification in both the relevant class and subclass of the Locarno Classification (Article 1(2)(c) CDIR).

The use of terms listed in the heading of a given class of the Locarno Classification is not per se excluded, but it is not recommended. Applicants should **not** choose generic terms referred to in the heading of the relevant class (e.g. 'articles of clothing' in Class 2), but, instead, select terms listed in the heading of the subclass (e.g. 'garments' in subclass 02-02) or more specific terms from among those listed in the subclasses of the class in question (e.g. 'jackets' in subclass 02-02).

Where the product indication does not allow classification in a subclass, the examiner will determine the relevant subclass by reference to the product disclosed in the

graphical representation (see paragraph 6.2.3.1 below). For example, where an application contains as a product indication the term 'Furnishing' in Class 6 of the Locarno Classification, the examiner will assign a subclass by taking account of the design itself insofar as it makes clear the nature of the product, its intended purpose or its function. If the design discloses the appearance of a bed, the examiner will assign the subclass 06-02 to the generic indication 'Furnishing'.

The use of adjectives in product indications is not per se excluded, even if such adjectives are not part of the alphabetical list of products of the Locarno Classification or of the database of product indications (e.g. '**electric** tools for drilling' in subclass 08-01, or '**cotton** pants' in subclass 02-02). However, it may cause delays in processing the application where a translation of the adjective into all the Union languages is required.

6.1.4.4 *Ex officio* change of indication

Product terms not listed in the Locarno Classification or the database of product indications

Where an applicant uses terms that are not in the Locarno Classification or the database of product indications, the examiner will, in straightforward cases, substitute *ex officio* the wording used by the applicant with an equivalent or more general term listed in the Locarno Classification or the database of product indications. The purpose of this is to avoid having to translate terms into all the EU languages, which would result in delays in processing the application.

For instance, where an applicant chooses the term 'Running trainers' (assuming it is not listed in the Locarno Classification or the database of product indications) to indicate the products in which the design will be incorporated, the examiner will change this indication to 'Running shoes' (assuming it is listed therein).

Even though the product indication does not affect the scope of protection of a Community design as such, the examiner will refrain from replacing the terms chosen by the applicant with more specific terms.

Products and their parts; sets

Where a design represents the appearance of one part of a product, and that product as a whole is indicated in the application (e.g. an application for the design of a knife handle specifies that the products in which this design will be incorporated are 'knives' in subclass 08-03), the examiner will replace that product indication by the indication 'Product(s) X (Part of -)', provided both the part in question and the product as a whole belong to the same class of the Locarno Classification.

Where a design represents the appearance of a product as a whole, but only a part of that product is indicated in the application (e.g. an application for the design of a knife specifies that the products in which this design will be incorporated are 'knife handles'), the examiner will raise an objection and will suggest a product term for the whole product. If the applicant does not reply within the time limit, the examiner will replace *ex officio* the applicant's product indication with the suggestion made.

Where a design represents a set of products, and these products are indicated in the application (e.g. an application for the design of a set of dishes specifies that the

products in which this design will be incorporated are 'dishes' in subclass 07-01), the examiner will replace that indication by 'Product(s) X (Set of -)'.

Ornamentation

Where the design represents ornamentation for a given product, and only that product as a whole is indicated in the application, the examiner will replace that product indication by the indication 'Product(s) X (Ornamentation for -)'. The product will thus be classified under Class 32-00 of the Locarno Classification.

Where the product indication is 'Ornamentation' and the design does not limit itself to representing this ornamentation but also discloses the product to which the ornamentation is applied, or part of that product, without its contours being disclaimed, the examiner will raise an objection and will suggest to either disclaim its contours (in which case a new filing date must be accorded) or to add the product indication for the disclosed product (in which case the original filing date may be kept but the design's subject-matter of protection remains to be determined on the basis of the representation as filed). If the applicant does not reply within the time limit set, the suggested product indication will be added *ex officio* to the applicant's product indication.

A list of products combining 'Ornamentation' with other products belonging to different classes of the Locarno Classification will give rise to an objection where several designs are combined in a multiple application (see paragraph 7.2.3 below).

The same reasoning applies to the following product indications in Class 32 of the Locarno Classification: *graphic symbols, logos and surface patterns*.

Notification of the *ex officio* change of indication

Provided there is no deficiency, the examiner will register the Community design(s) and notify the holder of the registration of the *ex officio* change of product indication.

Where the holder objects to such *ex officio* change, it can apply for correction of the corresponding entry in the Register (see paragraph 11.1 below) and request that the original terms used in the application be maintained, provided there are no issues concerning the clarity and precision of these terms or their classification (Article 20 CDIR; see decision of 05/07/2007, R 1421-2006-3 – Cash registers). In this case, however, applicants are informed that translation of the original terms into all official languages of the Union is likely to delay registration of the Community design(s).

6.1.5 Long lists of products

More than one product can be indicated in an application.

However, in order to ensure that the Community Designs Register remains searchable, where the product indication contains more than five products that do not belong to the same subclass of the Locarno Classification, the examiner will suggest that the applicant limit the number of products to a maximum of five and select products accordingly, which may also be suggested by the examiner.

If, within the time limit indicated in the examiner's communication, the applicant expresses its wish to maintain the original list of products, the examination will proceed on the basis of that list. If the applicant does not respond within the time limit or expressly agrees with the examiner's suggestion, the examination will proceed on the basis of the product indication as suggested by the examiner.

6.1.6 Objections to product indications

Where the examiner raises an objection, the applicant will be given two months to submit its observations and remedy the deficiencies noted (Article 10(3) CDIR).

The examiner may invite the applicant to specify the nature and purpose of the products in order to allow proper classification, or may suggest product terms from the database of product indications in order to assist the applicant.

If the deficiency is not remedied within the time limit, the application will be rejected (Article 10(4) CDIR).

6.1.6.1 No product indication

An objection will be raised where the application gives no indication of the products concerned (Article 36(2) CDR). However, if an indication can be found in the description or in the priority document, the examiner will record this as the product indication (decision of 21/03/2011, R 2432/2010-3 – *Kylkropp för elektronikbärare*, § 14).

6.1.6.2 Deficient product indication

As noted above, the indication of products must be worded in such a way as to indicate clearly the nature of the products and to enable each product to be classified in only one class of the Locarno Classification, or in the database of product indications, preferably using the terms appearing in the list of products set out therein (Article 3(3) CDIR). Therefore, the examiner will also object to the product indication if it does not enable each product to be classified in only one class and subclass of the Locarno classification (Article 3(3) CDIR) accordingly.

This will be the case where the indication is too vague or ambiguous to allow the nature and purpose of the products in question to be determined, for example, *merchandise, novelty items, gifts, souvenirs, home accessories, electric devices*, etc.

This will also be the case where the indication concerns a service rather than a product, for example, *sending or processing of information*.

6.1.6.3 Obvious mismatch

Since one of the main objectives of the product indication and classification is to make the Community Designs Register searchable by third parties, the examiner will raise an objection where the product indication clearly does not match the product as disclosed in the representation of the design.

6.2 Optional elements

An application may contain a number of optional elements, as listed in Article 1(1)(f) and (g) CDR and Article 1(2) CDR, that is,

- a priority or exhibition priority claim;
- a description;
- an indication of the Locarno Classification of the products contained in the application;
- the citation of the designer(s);
- a request for deferment.

6.2.1 Priority and exhibition priority

6.2.1.1 Priority

General principles

An application for a Community design may claim the priority of one or more previous applications for the same design or utility model in or for any state party to the Paris Convention or to the Agreement establishing the World Trade Organization, or in or for another state with which there is a reciprocity agreement (Article 41 CDR; Article 8 CDR). This 'Convention priority' is of six months from the date of filing of the first application.

The effect of the right of priority is that the date of priority counts as the date of filing of the application for a registered Community design for the purposes of Articles 5, 6, 7 and 22, Article 25(1)(d) and Article 50(1) CDR (Article 43 CDR).

Priority claims are subject to the following requirements:

- priority may be claimed within six months from the date of filing of the first application;
- a priority may be claimed only from the first filing of a design or a utility model in a country that is a member of the Paris Convention or the World Trade Organization (WTO), or in another state with which there is a reciprocity agreement;
- the proprietor must be the same, or a transfer document establishing the Community design applicant's right to claim the priority of a previous application originally filed by another applicant must be provided;
- the priority declaration (containing date, number and country of the first application) must be submitted not later than one month from the date of filing of the RCD application;
- the details and the certified copy of the previous application must be submitted not later than three months from the date of submission of the declaration of priority.

As a substantive requirement, the Community design must relate to the 'same design or utility model' as the one for which priority is claimed (Article 41(1) CDR). This means that the subject-matter of the previous application must be identical to that of the corresponding Community design, without the addition or suppression of any features.

A priority claim is however valid if the Community design and the previous application for a design right or a utility model differ only in immaterial details within the meaning of Article 5 CDR.

When examining an application for a Community design, the Office does not verify whether the application relates to the 'same design or utility model' as the one whose priority is claimed. Therefore, the applicant alone is responsible for ensuring that this requirement is satisfied, failing which the priority claim could be challenged at a later stage.

A priority claim will be examined for the purposes of Articles 5, 6 and 7 CDR and Article 25(1)(d) CDR by the Office during invalidity proceedings if a third party challenges the validity of such a priority claim or if the holder challenges the effects of the disclosure of a design, where this disclosure occurred within the priority period (see the Guidelines on the Examination of Design Invalidity Applications, paragraph 5.5.1.8, Disclosure within the priority period).

During the examination phase of an application for a Community design, the Office will limit itself to verifying whether the formalities relating to a priority claim are complied with (Article 45(2)(d) CDR).

Claiming priority

The applicant may claim the priority of one or more previous design or utility model applications. Thus, the priority of more than one previous application can be claimed where two or more Community designs are combined in a multiple application.

If the priority of the same previous application is claimed for all designs of a multiple application, the box 'Same priority for all designs' should be ticked in the (paper) application form.

Any filing that is equivalent to a standard national filing under the domestic law applicable to it will be recognised as giving rise to the right of priority. A standard national filing means any filing that is suitable for establishing the date on which the application was filed in the country concerned, whatever the subsequent outcome of that application (Article 41(3) CDR).

Priority may be claimed either when filing the Community design application or within a period of one month of the filing date. During this one-month period, the applicant must submit the declaration of priority and indicate the date on which and the country in which the previous application was made (Article 8(2) CDIR).

Where there is no indication of the claim in the application, the submission of priority documents within one month of the filing date will be construed as a declaration of priority.

Unless it is expressly indicated in the application that a priority claim will be made subsequently, the application will be examined without delay and, if no deficiency is found, will be registered without waiting one month for any potential declaration of priority. If a declaration of priority is validly filed after registration of the Community design application, a corresponding entry will subsequently be made in the Register.

The applicant must provide the Office with the file number(s) of the previous application(s) and a certified copy of the previous application(s) (Article 8 CDIR) within three months of either the filing date or, as the case may be, receipt of the declaration of priority by the Office.

Deficiencies

The Office will limit itself to verifying whether the formalities relating to a priority claim have been complied with (Article 45(2)(d) CDR), that is,

- whether priority was claimed within six months of filing the first application;
- whether priority was claimed when filing the application or within one month of the filing date;
- whether the details and the copy of the previous application were submitted in due time (within three months of either the filing date or, as the case may be, receipt of the declaration of priority);
- whether the previous application concerns a design or a utility model;
- whether the previous application was filed in a country that is a member of the Paris Convention or the World Trade Organization (WTO), or in another state with which there is a reciprocity agreement;
- whether the previous application was a first filing (meaning that a priority claim should be rejected if the priority application in turn claimed priority);
- whether the proprietor is the same or whether a transfer document establishes the Community design applicant's right to claim the priority of a previous application originally filed by another applicant.

Where remediable deficiencies are found, the examiner will request the applicant to remedy them within two months.

If the deficiencies are not remedied in due time or cannot be remedied, the Office will inform the applicant of the loss of the priority right and of the possibility of requesting a formal (i.e. appealable) decision on that loss (Article 46(1) and (4) CDR; Article 40(2) CDIR).

If the deficiencies that are not remedied concern only some of the designs contained in a multiple application, the right of priority will be lost in respect only of the individual designs concerned (Article 10(8) CDIR).

Whether priority is claimed within six months of filing the first application

The examiner will examine whether the date of filing allocated to the Community design is no later than six months from the filing date of the first application. Applicants should note that the date of **filing** allocated by the Office may not always correspond to the date of **receipt** of the Community design application (see paragraph 3).

In order to speed up registration proceedings, where the date of filing of the Community design application is indisputably and irremediably well beyond this six-month period, the Office will reject the priority claim without formally notifying the applicant of this deficiency.

Where the date of filing of the Community design application is only slightly beyond the six-month period, the examiner will check whether the period must be extended under one of the conditions provided for in Article 58 CDIR.

The priority right claimed must always be a previous application, which, for this very reason, cannot bear the same date as the Community design application.

Whether priority is claimed when filing the application or within one month of the filing date

The examiner will check that priority has been claimed no later than one month after the filing date of the Community design.

Whether the details of the previous application and the copy of the priority document were submitted in due time

Where priority is claimed when filing or by submitting a declaration of priority, the applicant must indicate the date on which, and the country in or for which the previous application was made (Article 1(1)(f) CDIR). Failure to do so will, however, not lead to an objection: the examiner will wait for the priority document to be submitted.

The file number and the priority document must be submitted within three months of the filing date of the Community design application or submission of the declaration of priority (Article 8 CDIR).

The priority document must consist of a certified copy of the previous application or registration, issued by the authority that received it, and be accompanied by a certificate stating the filing date of that application. The priority document may be filed in the form of an original or as an accurate photocopy. Insofar as the original document contains a representation of the design in colour, the photocopy must also be in colour (Decision No EX--03--05 of the President of the Office of 20/01/2003 concerning the formal requirements of a priority or seniority claim). Applicants claiming the priority of a U.S. patent (design) application are allowed to submit the certified copy of this application in CD-ROM format (Communication No 12/04 of the President of the Office of 20/10/2004).

Where the priority of a previous registered Community design is claimed, the applicant must indicate the number of the previous application and its date of filing. No additional information or document is required (Decision No EX--03--05 of the President of the Office of 20/01/2003 concerning the formal requirements of a priority or seniority claim).

If the language of the previous application is not one of the five Office languages, the examiner may invite the applicant to file a translation within two months (Article 42 CDR). It is not necessary for the whole document to be translated, but only that information allowing the examiner to check the nature of the right (design or utility model), the country of filing, the file number, the filing date and the applicant's name.

In order to speed up registration proceedings, where an examiner detects deficiencies in the priority claim, a deficiency letter will be issued before the time limit expires for submitting all the details of the previous application, including the file number and priority document. The time limit for remedying deficiencies will be no less than three months from the filing date or date of receipt of the declaration of priority.

Whether the previous application concerns a design or a utility model

The priority of a previous design or utility model application may be claimed, including that of a previous Community design or an international design registration.

Many national laws do not provide for the protection of utility models, for example, the laws of the United States of America. In the European Union, utility models can be registered in, inter alia, the Czech Republic, Denmark, Germany, Spain, Italy, Hungary, Austria, Poland, Portugal, Slovakia and Finland. Utility models can be also be registered in Japan.

A priority claim based on a previous **patent** application will in principle be refused. However, the priority of an international application filed under the Patent Cooperation Treaty (PCT) can be claimed, since Article 2 of the PCT defines the term 'patent' in a broad sense that covers utility models.

A priority claim can be based on a previous application filed with the United States Patent and Trademark Office (USPTO) only if the subject-matter of the previous application relates to a 'design patent', not a 'patent'.

Whether the previous application was filed in a country that is member of the Paris Convention or the World Trade Organization (WTO), or in another state with which there is a reciprocity agreement

The states and other territories listed below are not members of any of the relevant conventions, nor do they benefit from reciprocity agreements. Therefore, priority claims based on filings in the following countries and territories will be refused:

Afghanistan (AF)
Abkhazia
American Samoa (AS)
Anguilla (AI)
Aruba (AW)
Bermuda (BM)
Cayman Islands (KY)
Cook Islands (CK)
Eritrea (ER)
Ethiopia (ET)
Falkland Islands (FK)
Guernsey (Channel Islands) (GG)
Isle of Man (IM)
Jersey (Channel Islands) (JE)
Kiribati (KI)
Marshall Islands (MH)
Micronesia (Federated States of) (FM)
Montserrat (MS)
Nauru (NR)
Palau (PW)
Pitcairn (Island) (PN)
Saint Helena (SH)
Somalia (SO)
Turks and Caicos Islands (TC)
Tuvalu (TV)

Virgin Islands, British (VG)

In order to speed up registration proceedings, where the previous application was filed indisputably and irremediably in one of the above countries or territories, the Office will reject the priority claim without formally notifying the applicant of the deficiency.

Whether the previous application is a first filing

As a matter of principle, the previous application must be a first filing. The examiner will therefore check that the priority document does not refer to priority being claimed in respect of an even earlier application.

As an exception, a subsequent application for a design that was the subject of a previous first application and has been filed in or in respect of the same state, will be considered as a first application for the purpose of determining priority, provided that, at the date of filing of the subsequent application, the previous application had been withdrawn, abandoned or refused without being open to public inspection and without leaving any rights outstanding, and had not served as a basis for claiming priority. The previous application may not thereafter serve as a basis for claiming a right of priority (Article 41(4) CDR).

Whether the proprietor is the same or a transfer has occurred

Priority can be claimed by the applicant of the first application or its successor in title. In the latter case, the first application must have been transferred prior to the filing date of the Community design application, and documentation to this effect must be provided.

The right of priority as such may be transferred independently of the first application. Priority can therefore be accepted even if the owners of the Community design and the previous application are different, provided that evidence of assignment of the priority right is supplied. In this case, the execution date of the assignment must be prior to the filing date of the Community design application.

Subsidiary or associated companies of the applicant are not considered to be the same legal entity as the Community design applicant itself.

When, in reply to an objection by the examiner on a discrepancy between the identity of the applicant and that of the previous application holder, the applicant explains that this is due to a corporate name change, a document establishing this change of corporate name must be submitted within two months.

6.2.1.2 Exhibition priority

General principles

The effect of exhibition priority is that the date on which the design was displayed at an officially recognised exhibition is deemed to be the date of filing of the application for a registered Community design for the purposes of Articles 5, 6, 7 and 22, Article 25(1)(d) and Article 50(1) CDR (Article 43 CDR).

The applicant can claim exhibition priority within six months of the first display. Evidence of the display must be filed (Article 44(1) and (2) CDR).

Exhibition priority cannot extend the six-month period of 'Convention priority' (Article 44(3) CDR).

Claiming exhibition priority

Like 'Convention priority' (see paragraph 6.2.1 above), exhibition priority can be claimed either when filing a Community design application or subsequently. Where the applicant wishes to claim exhibition priority after having filed an application, the declaration of priority, indicating the name of the exhibition and the date of first display of the product, must be submitted within a period of one month of the filing date (Article 9(2) CDR).

The applicant must, within three months of the filing date or receipt of the declaration of priority, provide the Office with a certificate issued at the exhibition by the responsible authority. This certificate must state that the design was disclosed at the exhibition, specify the opening date of the exhibition and, where first public use did not coincide with the opening date of the exhibition, the date of first public use. The certificate must be accompanied by identification of the actual disclosure of the product in which the design is incorporated, duly certified by the authority (Article 9(1) and (2) CDR).

Priority can only be granted where the application for a Community design is filed within six months of first display at an exhibition recognised for this purpose, namely a world exhibition within the meaning of the Convention on International Exhibitions signed in Paris on 22/11/1928. These exhibitions are rare and Article 44 CDR does not cover display at other, national or international, exhibitions. The exhibitions can be found on the website of the Paris 'Bureau International des Expositions': <http://www.bie-paris.org/site/en/>.

Deficiencies

The Office will limit itself to verifying whether the formalities relating to an exhibition priority claim have been satisfied (Article 45(2)(d) CDR), that is,

- whether the filing date of the Community design falls within the six-month period following the first display of the product;
- whether priority was claimed when filing the application or within one month of the filing date;
- whether the application or the subsequent declaration of priority gives details of the name of the exhibition and the date of first display of the product;
- whether the exhibition was a world exhibition within the meaning of the Convention on International Exhibitions of 22/11/1928;
- whether the certificate issued at the exhibition by the responsible authority was submitted in due time;
- whether the proprietor named in this certificate is the same as the applicant.

Where remediable deficiencies are found, the examiner will request the applicant to remedy them within a time limit no shorter than the three-month time limit for submitting the certificate referred to above.

If the deficiencies are not remediable or are not remedied in due time, the Office will inform the applicant of the loss of the priority right and of the possibility of requesting a formal (i.e. appealable) decision on that loss (Article 46(1) and (4) CDR; Article 40(2) CDIR).

If the deficiency concerns only some of the designs contained in a multiple application, the right of priority will be lost in respect only of the individual designs concerned (Article 10(8) CDIR).

6.2.2 Description

The application may include a description not exceeding 100 words explaining the representation of the design or the specimen (see paragraph 3.3.5 above). The description must relate only to those features that appear in the reproductions of the design or the specimen. It may not contain statements concerning the purported novelty or individual character of the design or its technical value (Article 1(2)(a) CDIR).

The description does not affect the scope of protection of a Community design as such (Article 36(6) CDR).

The description may, however, clarify the nature or purpose of some features of the design in order to overcome a possible objection. For instance, where different views of the same design display different colours, thus raising doubts as to consistency between them (see paragraph 5.2.5 above), the description may explain that the colours of the design change when the product in which this design is incorporated is in use.

Descriptions submitted after the date of filing of the application will not be accepted.

The Register will include a mention that a description has been filed, but the description as such will not be published. The description, however, will remain part of the administrative file of the application and will be open to public inspection by third parties under the conditions set out in Article 74 CDR and Articles 74 and 75 CDIR.

6.2.3 Indication of the Locarno Classification

6.2.3.1 General principles

The applicant may itself identify the classification, in accordance with the Locarno Classification, of the products indicated in the application (see paragraph 6.1.4 above).

If the applicant provides a classification, the products must be grouped in accordance with the classes of the Locarno Classification, each group being preceded by the number of the relevant class, and presented in the order of the classes and subclasses (Article 3 CDIR).

Since classification is optional, no objection will be raised if the applicant does not submit a classification or does not group or sort the products as required, provided that no objection is raised with regard to the indication of products (paragraph 4.6 above). If no such objection is raised, the examiner will classify the products *ex officio* according to the Locarno Classification.

Where the applicant has indicated only the main class and no subclass, the examiner will assign the subclass that appears suitable in view of the design shown in the representation. For instance, where a design application indicates *packaging* in Class 9 of the Locarno Classification, and the design represents a bottle, the examiner will assign subclass 09-01 (the heading of which is *Bottles, flasks, pots, carboys, demijohns, and containers with dynamic dispensing means*).

Where the applicant has given the wrong classification, the examiner will assign the correct one *ex officio*.

Products that combine different elements so as to perform more than one function may be classified in as many classes and subclasses as the number of purposes served. For instance, the product indication *Refrigerating boxes with radios and CD players* will be classified under Classes 14-01 (*Equipment for the recording or reproduction of sounds or pictures*), 14-03 (*Communications equipment, wireless remote controls and radio amplifiers*) and 15-07 (*Refrigeration machinery and apparatus*) of the Locarno Classification.

6.2.3.2 Multiple applications and the requirement of 'unity of class'

If the same product indication applies to all designs contained in a multiple application, the relevant box 'Same indication of product for all designs' should be ticked in the (paper) application form and the field 'Indication of product' left blank for the subsequent designs.

Where several designs other than ornamentation are combined in a multiple application, the application will be divided if the products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno Classification (Article 37(1) CDR; Article 2(2) CDIR; see paragraph 7.2.3 below).

6.2.4 Citation of the designer(s)

The application may include:

- (a) a citation of the designer(s), or
- (b) a collective designation for a team of designers, or
- (c) an indication that the designer(s) or team of designers has/have waived the right to be cited (Article 18 CDR; Article 1(2)(d) CDIR).

The citation, the waiver and an indication regarding the designer(s) are merely optional and are not subject to examination.

If the designer or the team of designers is the same for all designs applied for in a multiple application, this should be indicated by ticking the box 'Same designer for all designs' in the (paper) application form.

Since the right to be cited as the designer is not limited in time, the designer's name can also be entered into the Register after registration of the design (Article 69(2)(j) CDIR).

6.2.5 Request for deferment

6.2.5.1 General principles

The applicant for a registered Community design may, when filing the application, request that its publication be deferred for **30 months** from the date of filing or, if a priority is claimed, from the date of priority (Article 50(1) CDR).

Where no deficiency is found, the Community design will be registered. The information published in Part A.2 of the Community Designs Bulletin consists of the file number, date of filing, date of entry in the Register, registration number, name and address of the holder and name and business address of the representative (if applicable). No other particulars such as the representation of the design or the indication of products are published (Article 14(3) CDIR).

Nevertheless, third parties may inspect the entire file if they have obtained the applicant's prior approval or if they can establish a legitimate interest (Article 74(1) and (2) CDR).

In particular, there is a legitimate interest where an interested person submits evidence that the holder of the registered Community design whose publication is deferred has taken steps with a view to invoking the right against them.

No registration certificate will be made available as long as the publication of a design is deferred. The holder of the design registration subject to deferment may, however, request a certified or uncertified extract of the registration, containing the representation of the design or other particulars identifying its appearance (Article 73(b) CDIR), for the purpose of invoking its rights against third parties (Article 50(6) CDR).

The procedure described in this section does **not** apply to international registrations designating the European Union (see paragraph 12 below).

6.2.5.2 Request for deferment

Deferment of publication must be requested in the application (Article 50(1) CDR). Subsequent requests will not be accepted, even if received on the same day.

Applicants should be aware that designs can be registered and accepted for publication within two working days and even sometimes on the day that the application is received (see paragraph 2.7.1 above). If, by mistake, an application does not contain a request for deferment, the application should be withdrawn in order to prevent publication. Given the speed of the registration and publication processes, this should be done **immediately** after filing. The applicant should also contact an examiner on the day of the withdrawal.

A request for deferment of publication may concern only some of the designs of a multiple application. In this case, the designs to be deferred must be clearly identified by ticking the box 'Request for deferment of publication' on the (paper) form or the box 'Publication to be deferred' (e-filing) for each individual design.

The applicant must pay a fee for deferment of publication along with the registration fee (see paragraph 8 below). Payment of the publication fee is optional at the filing stage.

6.2.5.3 Request for publication

When applying, or at the latest **three months before the 30-month period expires** (that is, on the last day of the 27th month following the filing date or priority date, as the case may be), the applicant must comply with what are known as the ‘publication request requirements’ (Article 15 CDIR), by:

- paying the publication fee for the design(s) to be deferred (see paragraph 8);
- in cases where a representation of the design has been replaced by a specimen in accordance with Article 5 CDIR (see paragraph 3.3.5 above), filing a representation of the design in accordance with Article 4 CDIR (see paragraph 5 above);
- in the case of a multiple registration, clearly indicating which of the designs among those identified for deferment are to be published or surrendered, or for which designs deferment is to be continued, as the case may be.

Where the Community design holder notifies the Office, **any time before the 27 months have expired**, of its wish to have the design(s) published (‘request for anticipated publication’), it must specify whether publication should take place as soon as technically possible (Article 16(1) CDIR) or when the 30-month deferment period expires. Where there is no specific request from the applicant, the designs will be published when the deferment period expires.

If the holder, despite a previous request for publication, decides that the design should not be published after all, it must submit a written request for surrender well before the design is due to be published. Any publication fees already paid will not be refunded.

6.2.5.4 Observation of time limits

Community design holders should be aware that the Office will not issue reminders regarding the expiry of the 27-month period before which the publication request requirements must be complied with. It is therefore the responsibility of the applicant (or, as the case may be, its representative) to make sure that the time limits are observed.

Particular attention must be paid where a priority date was claimed either at the time of or after filing, since this priority date will determine the time limits applicable to deferment. Moreover, the time limits applicable to deferment may differ for each of the designs of a multiple registration, if different priority dates are claimed for each individual design.

Where the time limit for complying with ‘the publication request requirements’ is not met, thus resulting in a loss of rights, the Community design holder may file a request for *restitutio in integrum* (Article 67 CDR; see also the Guidelines, Part A, General Rules, Section 8, *Restitutio in Integrum*).

6.2.5.5 Deficiencies

Deficiencies at the examination stage

If the information contained in the application is contradictory (e.g. the deferment fee has been paid, but the applicant has not ticked the box ‘Request for deferment of

publication') or inconsistent (e.g. the amount of the deferment fees paid for a multiple application does not correspond to the number of designs to be deferred), the examiner will issue a deficiency letter asking the applicant to confirm that deferment is requested and, where applicable, for which specific design(s) of a multiple application, and/or to pay the corresponding fees.

Deficiencies relating to the 'publication request requirements'

If, once the 27-month period following the filing date or priority date of the Community design registration has expired, the holder has failed to comply with the 'publication request requirements', the examiner will issue a deficiency letter giving two months for the deficiencies to be remedied (Article 15(2) CDIR).

Where a deficiency concerns the payment of publication fees, the applicant will be requested to pay the correct amount plus fees for late payment (that is, EUR 30 for a design and, in the case of a multiple application, 25 % of the fees for publication for each additional design; Article 15(4) CDIR; Articles 8 and 10 of the Annex to the CDFR).

Applicants should be aware that the time limit set by the examiner cannot be extended beyond the 30-month period of deferment (Article 15(2) CDIR).

If deficiencies are not remedied within the set time limit, the registered Community design(s) to be deferred will be deemed from the outset not to have had the effects specified in the CDR (Article 15(3)(a) CDIR).

The examiner will notify the holder accordingly, after the 30-month period of deferment has expired.

In the case of a 'request for anticipated publication' (see paragraph 6.2.5.3 above), failure to comply with the publication request requirements will result in the request being deemed not to have been filed (Article 15(3)(b) CDIR). The publication fee will be refunded if it has already been paid. Where there are still more than 3 months before the 27-month period expires, the holder may, however, submit another request for publication.

Where the deficiency concerns a payment that is insufficient to cover the publication fees for all the designs that are to be deferred in a multiple application, including any fees for late payment, the designs not covered by the amount paid will be deemed from the outset not to have had the effects specified in the CDR. Unless the holder made it clear which designs were to be covered by the amount paid, the examiner will take the designs in consecutive numerical order (Article 15(4) CDIR).

Publication after deferment

Where there are no deficiencies or deficiencies have been overcome in due time, the registration will be published in Part A.1 of the Community Designs Bulletin.

The holder may request that only some of the designs of a multiple application are published.

Mention will be made in the publication of the fact that deferment was originally applied for and, where applicable, that a specimen was initially filed (Article 16 CDIR).

7 Multiple Applications

7.1 General principles

A multiple application is a request for the registration of more than one design within the same application. Each of the designs contained in a multiple application or registration is examined and dealt with separately. In particular, each design may, separately, be enforced, be licensed, be the subject of a right *in rem*, a levy of execution or insolvency proceedings, be surrendered, renewed or assigned, be the subject of deferred publication or be declared invalid (Article 37(4) CDR).

Multiple applications are subject to specific registration and publication fees, which decrease in proportion to the number of designs (see paragraph 8 below).

7.2 Formal requirements applying to multiple applications

7.2.1 General requirements

All the designs in a multiple application must have the same owner(s) and the same representative(s) (if any).

The number of designs contained in a multiple application is unlimited. The designs need not be related to one another or be otherwise similar in terms of appearance, nature or purpose.

The number of designs should not be confused with the ‘number of views’ that represent the designs (see paragraph 5.1 above).

Applicants must number the designs contained in a multiple application consecutively, using Arabic numerals (Article 2(4) CDIR).

A suitable representation of each design contained in a multiple application must be provided (see paragraph 5 above) and an indication given of the product in which the design is intended to be incorporated or to be applied (Article 2(3) CDIR, see paragraph 6.1.4 above).

7.2.2 Separate examination

Each of the designs contained in a multiple application is examined separately. If a deficiency concerning some of the designs contained in a multiple application is not remedied within the time limit set by the Office, the application will be refused only insofar as those designs are concerned (Article 10(8) CDIR).

The decisions on the registration or refusal of the designs contained in a multiple application will all be taken at the same time.

Even if some of the designs in a multiple application already comply with both the substantive and formal requirements, they will not be registered until any deficiencies

affecting other designs have been remedied or the designs in question have been refused by the decision of an examiner.

7.2.3 The 'unity of class' requirement

7.2.3.1 Principle

As a rule, all the product(s) indicated for the designs contained in a multiple application must be classified in only one of the 32 Locarno classes.

As an exception, the indication *Ornamentation* or *Product(s) X (Ornamentation for -)* in Class 32-00 can be combined with indications of products belonging to another Locarno class.

7.2.3.2 Products other than ornamentation

The products indicated for each design in a multiple application may differ from those indicated for others.

However, except in cases of *ornamentation* (see paragraph 7.2.3.3 below), any products that are indicated for each and every design of a multiple application must belong to the same class of the Locarno Classification (Article 37(1) CDR; Article 2(2) CDIR). This 'unity of class' requirement is considered to be complied with even if the products belong to different subclasses of the same class of the Locarno Classification.

For instance, a multiple application is acceptable if it contains one design with the product indication *Motor vehicles* (Class 12, subclass 08) and one design with the product indication *Vehicle interiors* (Class 12, subclass 16), or if both designs indicate both these terms. This is an example of two designs in different subclasses but in the same class, namely Class 12 of the Locarno Classification.

An objection would, however, be raised if, in the above example, the products indicated were *Motor vehicles* (Class 12, subclass 08) and *Lights for vehicles*, since the second term belongs to Class 26, subclass 06 of the Locarno Classification. The examiner would then require the multiple application to be divided, as explained under paragraph 7.2.3.4 below.

A multiple application cannot be divided unless there is a deficiency affecting the 'unity of class' requirement (Article 37(4) CDR).

7.2.3.3 Ornamentation

Ornamentation is a decorative element capable of being applied to the surface of a variety of products without affecting their contours. It can be a two-dimensional pattern or a three-dimensional moulding or carving, in which the design stands out from a flat surface.

Although ornamentation is, in itself, a product within the meaning of the Locarno Classification (Class 32), its primary purpose is to constitute one of the features of other products.

A multiple application can therefore combine designs for ornamentation with designs for products such as those to which this ornamentation will be applied, provided that all the products belong to the same class of the Locarno Classification.

For some designs, the indication *Ornamentation* or *Product(s) X (Ornamentation for)* in Class 32 of the Locarno Classification is neutral and therefore ignored for the purpose of examining whether the product indication for the remaining designs meets the 'unity of class' requirement.

The same reasoning applies to the following product indications in Class 32 of the Locarno Classification: *Graphic symbols, logos and surface patterns*.

For example, a multiple application is acceptable if it combines designs for *Ornamentation* or *China (Ornamentation for)* in Class 32 with designs representing pieces of a tea set for *China* in Class 7, subclass 01. In turn, if *Linen (Table -)* were indicated as a product for one of these designs, an objection would be raised as this product belongs in Class 6, subclass 13 of the Locarno Classification, that is, a different class.

Where the applicant has indicated the product as *Ornamentation* or *Product(s) X (Ornamentation for)*, the examiner will prima facie examine whether it is really for ornamentation by looking at the design in question. Where the examiner agrees that it is for ornamentation, the product will be classified in Class 32.

Where the examiner does not agree that the design is for ornamentation, a deficiency letter must be sent on the grounds of an obvious mismatch between the products indicated and the design (see paragraph 6.1.6.3 above).

Where the representation of the design is not limited to ornamentation itself but also discloses the product to which such ornamentation is applied, without the contours of this product being disclaimed, this specific product must be added to the list of products and the classification must be amended accordingly (see paragraph 6.1.4.4 above).

This may lead to an objection where a multiple application combines a number of such designs applied to products that belong to different classes of the Locarno Classification.

7.2.3.4 Deficiencies

For example, let us assume that three designs representing cars are combined in one multiple application, and the product indication for each design is *Motor cars* (subclass 12-08) and *Scale models* (subclass 21-01).

The examiner will issue an objection and request the applicant to:

- delete some of the product indications so that the remaining products can be classified in only one Locarno class; or
- divide the application into two multiple applications for each of the Locarno classes concerned, and pay the corresponding additional fees; or
- divide the application into three single applications for each design concerned, and pay the corresponding additional fees.

In some cases, it will not be possible to delete product indications, for example where a given product must be classified in two or more classes on account of the plurality of purposes it serves (see paragraph 6.2.3.1 above).

The applicant will be invited to comply with the examiner's request within two months and pay the total amount of fees for all applications resulting from the division of the multiple application or to delete some products in order to meet the 'unity of class' requirement.

The total amount to be paid is calculated by the examiner and notified to the applicant in the examination report. The examiner proposes the most cost-effective option between dividing the multiple application into as many applications as Locarno classes concerned or as many applications as designs concerned.

Where the applicant does not remedy the deficiencies in due time, the multiple application is refused **in its entirety**.

8 Payment of Fees

8.1 General principles

Community design applications are subject to various fees, which the applicant must pay **at the time of filing** (Article 6(1) CDIR), including the registration fee and the publication fee or, where the application includes a request for deferment of the publication, the deferment fee.

In the case of multiple applications, additional registration, publication or deferment fees must be paid for each additional design. If payment was not made when filing the application, late payment fees must also be paid.

In the case of deferment, applicants can, when filing, choose to pay not only the registration and deferment fee, but also the publication fee.

For the fee payable with respect to an international application designating the European Union see paragraph 12.1.2.3 below.

8.2 Currency and amounts

Fees must be paid in euros. Payments made in other currencies are not accepted.

The fees for filing an application are as follows:

Registration fees

Single design or first design in a multiple application	€230
2nd to 10th design in a multiple application	€115 per design
11th+ design in a multiple application	€50 per design

Publication fees

Single design or first design to be published in a multiple application	€120
2nd to 10th design to be published in a multiple application	€60 per design
11th+ design to be published in a multiple application	€30 per design

Deferment fees (where deferment of publication is requested)

Single design or first design with deferment of publication in a multiple application	€40
2nd to 10th design with deferment of publication in a multiple application	€20 per design
11th+ design with deferment of publication in a multiple application	€10 per design

Example of fees due for the filing of a multiple application where the publication of only some designs is to be deferred

Design number	Deferment	Registration fee	Publication fee	Deferment fee
xxxxxxx-0001	Yes	€230	-	€40
xxxxxxx-0002	Yes	€115	-	€20
xxxxxxx-0003	No	€115	€120	-
xxxxxxx-0004	No	€115	€60	-
xxxxxxx-0005	No	€115	€60	-

If, after registration, publication is requested for design xxxxxxx-0001, this will in effect be the fourth design to be published and the publication fee will be EUR 60.

8.3 Means of payment, details of the payment and refund

The means of payment, the details to accompany the payment and the conditions for a refund of fees paid are explained in the Guidelines, Part A, General Rules, Section 3, Payment of Fees, Costs and Charges.

Fees are refunded when the application is withdrawn or refused without a filing date having been granted (application 'not dealt with as a Community design application').

The Office also refunds amounts paid that are insufficient to cover the registration and publication (or deferment) fees for the design or at least one design of a multiple application.

9 Withdrawals and Corrections**9.1 Introduction**

The applicant may at any time during the examination withdraw an application for a registered Community design or, in the case of a multiple application, withdraw some of

the designs contained in the multiple application. Corrections are allowed only in some specific situations.

Any correction or change to the Register and/or publication, that is after the design has been registered by the examiner, must be dealt with in accordance with paragraph 11 below.

9.2 Withdrawal of the application

Prior to registration the applicant may at any time withdraw an application for a Community design or, in the case of a multiple application, withdraw some of the designs contained in the multiple application (Article 12(1) CDIR). The examiner will send confirmation of the withdrawal.

Requests for withdrawal must be submitted in writing and include:

- the file number of the application for a registered Community design or, where the request for withdrawal is submitted before an application number has been allocated, any information enabling the application to be identified, such as the reference number of the applicant/representative and/or the provisional file number referred to in the automatic receipt for applications filed via the e--filing system;
- in the case of a multiple application, an indication of the design(s) that the applicant wants to withdraw if only some are to be withdrawn; and
- the name and address of the applicant and/or, if applicable, the name and address of the representative.

The 'date of withdrawal' is the date on which the Office receives the request for withdrawal.

Fees will not be refunded if a filing date has been granted, except where the amount of fees paid by the applicant is insufficient to cover the fees relating to registration and publication (or deferment as the case may be) for the design, or for at least one design of a multiple application.

Requests for withdrawal received by the Office on or after the date of registration of the design will be dealt with as requests for surrender.

Requests for withdrawal received by the Office on the filing date of the design application will be accepted even if the design is registered that same day.

9.3 Corrections to the application

9.3.1 Elements subject to correction

Only the name and address of the applicant or the representative, errors of wording or of copying, or obvious mistakes may be corrected, at the request of the applicant (Article 12(2) CDIR).

Apart from the name and address of the applicant or representative, the following elements may be corrected at the applicant's request if they contain errors of wording or of copying or obvious mistakes:

- the date of filing, where the application was filed with the central industrial property office of a Member State or, in Benelux countries, with the Benelux Office for Intellectual Property (BOIP), upon notification by the office concerned that an error regarding the date of receipt has been made;
- the name of the designer or team of designers;
- the second language;
- an indication of the product(s);
- the Locarno Classification of the product(s) contained in the application;
- the country, date and number of the prior application where Convention priority is claimed;
- the name, place and date of the first exhibition of the design where exhibition priority is claimed;
- the description.

9.3.2 Elements that cannot be corrected

As a matter of principle, the representation of the design(s) cannot be altered after the application has been filed (Article 12(2) CDIR). The submission of additional views or the withdrawal of any views at a later stage will not be accepted, unless expressly required or proposed by the Office (see paragraphs 5.2 and 5.5 above).

Where a request for correction amends the representation of the design(s), the applicant will be informed that its request is not acceptable. The applicant must decide whether it wishes to continue the registration process or to file a fresh application for which it will have to pay the applicable fees.

9.3.3 Procedure for requesting correction

A request for correction of the application must contain:

- a) the file number of the application;
- b) the name and address of the applicant;
- c) where the applicant has appointed a representative, the name and business address of the representative;
- d) an indication of the element of the application to be corrected and the corrected version of that.

A single request may be made for correction of the same element in two or more applications belonging to the same applicant.

If all the requirements are met, the examiner will send confirmation of the correction.

For corrections and amendments see paragraph 11 below.

9.3.4 Deficiencies

Where a request for correction does not meet the above requirements and the deficiency found can be remedied, the examiner will invite the applicant to remedy the

deficiency within two months. If the deficiency is not remedied in due time, the examiner will refuse the request for correction.

Requests for correction that would have the effect of amending the representation of the design(s) will be refused irremediably.

Descriptions submitted after the date of filing of the application are not accepted (see paragraph 6.2.2 above). Requests for correction that involve submitting a description after the date of filing of the application will therefore be refused.

10 Registration, Publication and Certificates

10.1 Registration

Once examination of grounds for non-registrability and formalities is completed, the examiner must ensure that all the particulars referred to in Article 14 CDIR have been provided (particulars that are mandatory for the applicant and that must be indicated in the application are in bold type):

- (a) the filing date of the application;
- (b) the file number of the application and of each individual design included in a multiple application;
- (c) the date of publication of the registration;
- (d) **the name, address and nationality of the applicant and the state in which it is domiciled or has its seat or establishment;**
- (e) **the name and business address of the representative**, other than an employee acting as representative in accordance with the first sentence of Article 77(3) CDR; where there is more than one representative, only the name and business address of the first-named representative, followed by the words 'etal.', will be recorded; where an association of representatives is appointed, only the name and address of the association will be recorded;
- (f) **the representation of the design;**
- (g) **an indication of the product(s)** by name, preceded by the number(s) of and grouped according to the class(es) and subclass(es) of the Locarno Classification;
- (h) particulars of priority claims pursuant to Article 42 CDR;
- (i) particulars of exhibition priority claims pursuant to Article 44 CDR;
- (j) the citation of the designer or team of designers or a statement that the designer or team of designers has waived the right to be cited;
- (k) **the language in which the application was filed and the second language** indicated by the applicant pursuant to Article 98(2) CDR;
- (l) the date of registration of the design in the Register and the registration number;
- (m) a mention of any request for deferment of publication pursuant to Article 50(3) CDR, specifying the date of expiry of the period of deferment;
- (n) a mention that a specimen has been filed pursuant to Article 5 CDIR;
- (o) a mention that a description was filed pursuant to Article 1(2)(a) CDIR;
- (p) a mention that the representation of the design contains a verbal element.

Once all the particulars in the checklist are on file, the examiner will check whether all the applicable fees have been paid.

Where no deficiency is found, the application is registered.

10.2 Publication

All registered Community designs are published in the Community Designs Bulletin, which is published in electronic format only, on the Office's website.

However, international registrations designating the European Union are published by WIPO (Hague Express Bulletin) (see paragraph 12 below).

Unless an application contains a request for deferment of publication, publication will take place immediately after registration; publication is daily.

Where an application contains a request for deferment of publication, publication is made in Part A.2 of the Bulletin and is limited to the following particulars: the design number, filing date, registration date and the names of the applicant and the representative, if any.

Where an application contains a request for deferment of publication for only some of the designs of a multiple application, only the designs for which deferment has not been requested are published in full.

10.3 Registration certificate

A registration certificate is issued after the registered Community design has been published in full (i.e. publication in Part A.1).

However, the Office does not issue registration certificates for international registrations designating the European Union (see paragraph 12 below).

Since 15/11/2010, registration certificates have been issued only as online e-certificates. Holders of Community design registrations are invited to download the certificate from the day after publication, using the 'eSearch plus' tool on the Office's website. No paper copy of the certificate of registration will be issued. However, certified or uncertified copies of the registration certificate may be requested.

The certificate contains all the particulars entered in the Community Designs Register at the date of registration. No new certificate is issued following changes made in the Register after the date of registration. However, an extract from the Register, which reflects the current administrative status of the design(s), may be requested.

A corrected certificate is issued after publication of a relative error detected in a design registration (Part A.3.2) or after publication of a relative error detected in a recordal (Part B.1.2). A relative error is an error attributable to the Office that modifies the scope of the registration.

11 Corrections and Changes in the Register and in the Publication of Community Design Registrations

11.1 Corrections

11.1.1 General principles

Only the name and address of the applicant, errors of wording or of copying, or obvious mistakes may be corrected, at the request of the applicant and provided that such correction does not change the representation of the design (Article 12(2) CDIR) (decision of 03/12/2013, R 1332/2013-3 - Adapters, § 14 et seq.). There is no fee for such requests.

Where the registration of a design or the publication of the registration contains a mistake or error attributable to the Office, the Office will correct the error or mistake of its own motion or at the request of the holder (Article 20 CDIR). There is no fee for such requests.

A request for correction of mistakes made by the Office can only refer to the contents of the publication of the registration (Articles 49, 73 and 99 CDR and Articles 14 and 70 CDIR) and the entries in the Register (Articles 48, 72 and 99 CDR and Articles 13 and 69 CDIR).

Unless the Office itself made an error when publishing the representation of the design(s) (e.g. by distorting or truncating the representation), the holder will not be allowed to request the correction of its Community design if this has the effect of altering the representation (Article 12(2) CDIR) (decision of 03/12/2013, R 1332/2013-3 'Adapters', para. – Adapters, § 14 et seq.).

Corrections will be made as soon as the mistake is detected, including, where necessary, years after the original entry in the Register.

11.1.2 The request for correction

According to Articles 12 and 19 CDIR, requests for the correction of mistakes and errors in the Register and in the publication of the registration must contain:

- a) the registration number of the registered Community design;
- b) the name and address of the holder as registered in the Register or the name of the holder and the identification number assigned to the holder by the Office;
- c) where the holder has appointed a representative, the name and business address of the representative or the name of the representative and the identification number assigned to the representative by the Office; and
- d) an indication of the entry in the Register and/or of the content of the publication of the registration to be corrected and the corrected version of the element in question.

A single request may be made for the correction of errors and mistakes in respect of two or more registrations belonging to the same holder (Article 19(4) CDIR and Article 20 CDIR).

If the requirements for such corrections are not fulfilled, the Office will inform the applicant of the deficiency. If the deficiency is not remedied within the two months

specified by the Office, the request for correction will be refused (Article 19(5) CDIR and Article 20 CDIR).

Requests for the correction of mistakes or errors that are not entries in the Register and/or that do not concern the contents of the publication of registrations will be refused. Accordingly, requests for correction of the description explaining the representation of the design or the specimen will be refused.

Errors in the translation of the product indication into the official EU languages are considered attributable to the Office and will be corrected because the translations are considered as entries in the Register and as part of the contents of the publication of the registration, despite the fact that the translations are done not by the Office but by the Translation Centre for the Bodies of the European Union (Communication No 4/05 of the President of the Office of 14/06/2005 concerning the correction of mistakes and errors in the Register and in the publication of the registration of Community designs).

In cases of doubt, the text in the Office language in which the application for a registered Community design was filed will be authentic (Article 99(3) CDR). If the application was filed in an official EU language other than one of the Office languages, the text in the second language indicated by the applicant will be authentic.

11.1.3 Publication of corrections

The holder will be notified of any changes in the Register (Article 69(5) CDIR).

Corrections will be published by the Office in Part A.3 of the Community Designs Bulletin and entered in the Register together with the date on which they were recorded (Article 20 CDIR and Article 69(3)(e) CDIR).

Where the mistake or error is attributable to the Office, the Office will, after publication of the mistake or error, issue the holder with a certificate of registration containing the entries in the Register (Article 69(2) CDIR) and a statement to the effect that those entries have been recorded in the Register (Article 17 CDIR).

In cases where the mistake or error is the holder's, a certificate of registration reflecting the corrected mistake or error will be issued only where no certificate has previously been issued. In any event, holders can always request the Office to issue an extract of the Register (in certified or simple form) to reflect the current status of their design(s).

11.2 Changes in the Register

11.2.1 Introduction

This paragraph describes the changes in the Community Designs Register, as follows:

- surrender of a Community design with or without deferment, in particular partial surrender;
- changes in the name and address of the applicant and/or of the representative, where applicable, of which the Office was notified before registration of the Community design (i.e., before issue of the notification of registration);

- changes in the name and address of the holder and/or of the representative, where applicable, for a Community design with deferred publication that has not been published yet;
- recordal of transfers;
- recordal of licences.

11.2.2 Surrender of the registered Community design

11.2.2.1 General principles

A Community design may be surrendered by the holder at any time after registration. A surrender must be declared to the Office in writing (Article 51 CDR).

However, a request for renunciation of an international design designating the European Union must be filed with, and recorded by, the International Bureau (see Article 16 of the Geneva Act and paragraph 12.2.2.5 below).

Surrender can also be declared for only some of the designs contained in a multiple registration (Article 27(1)(d) CDIR).

The effect of a declaration of surrender begins on the date on which the surrender is entered in the Community Designs Register, without any retroactive effect (Article 51(1) CDR). However, if a Community design for which publication has been deferred is surrendered, it will be deemed from the outset not to have had the effects specified in the CDR (Article 51(2) CDR).

A registered Community design may be partially surrendered provided that its amended form complies with the requirements for protection and the identity of the design is retained (Article 51(3) CDR). Partial surrender will therefore be limited to cases in which the features removed or disclaimed do not contribute to the novelty or individual character of a Community design, in particular:

- where the Community design is incorporated in a product that constitutes a component part of a complex product, and the removed or disclaimed features are invisible during normal use of this complex product (Article 4(2) CDR); or
- where the removed or disclaimed features are dictated by a function or by interconnection purposes (Article 8(1) and (2) CDR); or
- where the removed or disclaimed features are so insignificant in view of their size or importance that they are likely to go unnoticed by the informed user.

The surrender will be entered in the Register only with the agreement of the proprietor of a right entered in the Register (Article 51(4) CDR). Persons having a registered right include the holders of a registered licence, the proprietors of a registered right *in rem*, the creditors of a registered levy of execution or the authority competent for the registered bankruptcy or similar procedures.

In the case of licences registered in the Community Design Register, the surrender of a Community design is entered in the Register only upon receipt of evidence that the right holder has informed licensee(s) of the surrender accordingly. The surrender is entered in the Register three months after the date on which the Office obtains proof that the holder has informed licensee(s) of the surrender accordingly or earlier if proof is obtained of the licensee's/licensees' consent to the surrender (Article 51(4) CDR; Article 27(2) CDIR).

Where a claim relating to the entitlement to a registered Community design has been brought before a court pursuant to Article 15 CDR, the surrender is entered in the Register only with the agreement of the claimant (Article 27(3) CDR).

11.2.2.2 Formal requirements for a declaration of surrender

A declaration of surrender must contain the particulars referred to in Article 27(1) CDR:

- a) registration number of the registered Community design;
- b) name and address of the holder;
- c) name and address of the representative, where appointed;
- d) indication of the designs for which the surrender is declared in the case of multiple registrations;
- e) representation of the amended design in accordance with Article 4 CDR in the case of partial surrender.

In the case of a partial surrender, the holder must submit a representation of the Community design as amended (Article 27(1)(e) CDR).

If a declaration of surrender does not contain all the particulars listed above and does not fulfil all the above requirements, depending on the situation, the Office will notify the holder of the deficiencies and request that they be remedied within the prescribed time limit. Where the deficiencies are not remedied within the time limit, the surrender will not be entered in the Register and the Community design holder will be informed thereof in writing (Article 27(4) CDR).

11.2.3 Changes in the name and address of the applicant/holder and/or its representative

The Community design holder may request recordal of the change of name or address in the Register by submitting a written request to the Office. Recordals of changes of name and/or address are free of charge.

The request for recordal of a change of name or address in respect of an international design designating the European Union must be filed with the International Bureau (see Article 16 of the Geneva Act).

For the differences between a change of name and a transfer, see the Guidelines for Examination, Part E, Register Operations, Section 3, EUTMs as objects of property, Chapter 1, Transfer.

A single request may be made for a change of name or address in respect of two or more registrations belonging to the same holder.

A request for a change of name or address by a Community design holder must contain:

- a) the registration number of the Community design;
- b) the holder's name and address as recorded in the Register or the holder's identification number;
- c) an indication of the holder's name and address as changed;
- d) the name and address of the representative, where appointed.

If the above requirements are not fulfilled, the Office will send a deficiency letter. If the deficiency is not remedied within the specified time limit, the Office will refuse the request (Article 19(5) CDIR).

Changes of name and address for Community design applicants in connection with applications for Community designs are not entered in the Register but must be recorded in the files kept by the Office concerning Community design applications (Article 19(7) CDIR).

Changes in the holders of Community design registrations are published in Part B.2.2 of the Community Designs Bulletin, while transfers of rights are published in Part B.2.1. Changes in the representatives are published in Part B.9 of the Community Designs Bulletin.

11.2.4 Transfers

11.2.4.1 Introduction

A Community design registration may be transferred by the holder, and transfers are recorded upon request in the Register. However, the request for recording a transfer in respect of an international design designating the European Union must be filed with the International Bureau (see Article 16 of the Geneva Act).

The legal provisions contained in the CDR, CDIR and CDFR in respect of transfers correspond to the provisions in the EUTMR and EUTMIR respectively (see the Guidelines for Examination, Part E, Register Operations, Section 3, EUTMs as objects of property, Chapter 1, Transfer).

The legal principles and procedure for the recordal of trade mark transfers apply *mutatis mutandis* to Community designs with the following particularities.

11.2.4.2 Rights of prior use in respect of a registered Community design

The right of prior use in respect of a registered Community design cannot be transferred except, where the third person, who claimed said right before the filing or priority date of the application for a registered Community design, is a business, along with that part of the business in the course of which the act was done or the preparations were made (Article 22(4) CDR).

11.2.4.3 Fees

The fee of EUR 200 for the recordal of a transfer applies per design, with an upper limit of EUR 1 000 if multiple requests are submitted in the same application (points 16 and 17 of the Annex to the CDFR).

11.2.5 Licences

11.2.5.1 General principles

Community design registrations may be licensed by the holder and the licences recorded upon request in the Register. The provisions of the CDR and CDIR dealing with Community design licences (Articles 27, 32 and 33, and Article 51(4) CDR; Articles 24 and 25, and Article 27(2) CDIR) are almost identical to those in the EUTMR and EUTMIR (see the Guidelines for Examination, Part E, Register Operations, Section 3, EUTMs as objects of property, Chapter 2, Licences).

The legal principles and procedure for the recordal of licences in respect of European Union trade marks apply *mutatis mutandis* to Community designs (Article 24(1) CDIR) with the following particularities.

11.2.5.2 Registered Community designs

There is no use requirement in Community design law. Therefore, the issue of whether use by a licensee is use with the consent of the right holder does not arise.

The CDR and CDIR require an indication of the products in which the design is intended to be incorporated or applied to (see paragraph 6.1.4 above.). The recordal of a partial licence for only some of the products in which the design is intended to be incorporated or applied to is not possible.

Any limitations of the scope of the licence will therefore be disregarded by the Office, and the licence will be registered as if there were no such limitations.

11.2.5.3 Multiple applications for registered Community designs

An application for a registered Community design may take the form of a multiple application combining several designs (Article 37 CDR).

Each design contained in a multiple application may be licensed independently of the others (Article 24(1) CDIR).

11.2.5.4 Fees

The fee of EUR 200 for the recordal, transfer or cancellation of a licence applies per design, not per application, with a ceiling of EUR 1 000 if multiple requests are submitted in the same application (points 18 and 19 of the Annex to the CDFR).

Example 1: From a multiple application for ten designs, six designs are licensed to the same licensee. The fee for registering the licences is EUR 1 000, provided that

- all six licences are included in a single registration request, or
- all the relevant requests are submitted on the same day.

The request may indicate that, for three of these six designs, the licence is an exclusive one, without this having any impact on the fees to be paid.

Example 2: From a multiple application for ten designs, five designs are licensed to the same licensee. A licence is also granted for another design not contained in that multiple application. The fee is EUR 1 000, provided that:

- all six licences are included in a single registration request, or that all the relevant requests are submitted on the same day, and
- the holder of the Community design and the licensee are the same in all six cases.

12 International Registrations

This part of the Guidelines deals with the particularities of examining international registrations designating the European Union that result from applications filed with the International Bureau of the World Intellectual Property Organisation (hereinafter referred to as ‘international registrations’ and ‘the International Bureau’) under the Geneva Act of 02/07/1999 of the Hague Agreement concerning the international registration of industrial designs.

12.1 General overview of the Hague System

12.1.1 The Hague Agreement and the Geneva Act

The Hague Agreement is an international registration system that makes it possible to obtain protection for designs in a number of States and/or intergovernmental organisations, such as the European Union or the African Intellectual Property Organization, by means of a **single** international application filed with the International Bureau. Under the Hague Agreement, a single international application replaces a whole series of applications which, otherwise, would have had to be filed with different national intellectual property offices or intergovernmental organisations.

The Hague Agreement consists of three separate international treaties: the London (1934) Act, the application of which has been frozen since 01/01/2010, the Hague (1960) Act and the Geneva (1999) Act. Each Act has a different set of legal provisions, which are independent of one another.

International registrations designating the European Union are governed by the Geneva Act.

Unlike the Madrid ‘Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks’, neither the Geneva Act nor the CDR provides for procedures for converting or transforming an international registration into Community or national designs or into designations of Member States party to the Hague System, or for replacing Community or national designs by an international registration designating the contracting party in question.

12.1.2 Procedure for filing international applications

12.1.2.1 Particularities

Another difference with the Madrid System is that the Geneva Act does neither allow nor require an international registration to be based on a previously filed Community or

national design. The Office can only be a 'designated office', not an 'office of origin'. International applications must therefore be filed directly with the International Bureau (Article 106b CDR).

The Geneva Act and the Common Regulations under the 1999 Act and the 1960 Act of the Hague Agreement ('CR') contain specific rules, which may differ from those applicable to 'direct filings' of Community designs, that is, applications filed directly with the Office or via the central industrial property office of a Member State or, in Benelux countries, the Benelux Office for Intellectual Property (BOIP) (see paragraph 2.2.1 above). These specific rules relate, in particular, to entitlement to file an international application, the contents of an international application, fees, deferment of publication, the number of designs that may be included in a multiple application (up to 100), representation before the International Bureau and the use of languages (an international application must be in English, French, or Spanish).

12.1.2.2 Deferment of publication

An international application may contain a request that publication of the design, or of **all** the designs contained in a multiple application, be deferred. The Geneva Act does not allow deferment of publication to be requested for only some of the designs contained in a multiple application (Article 11 of the Geneva Act).

The period of deferment of publication for an international application designating the European Union is 30 months from the filing date or, where priority is claimed, the priority date. The application will be published at the end of this 30-month period, unless the holder submits a request for earlier publication to the International Bureau (Article 11 of the Geneva Act).

The procedure described in paragraph 6.2.5 above does **not** apply as the Office is not responsible for publishing international registrations designating the European Union.

12.1.2.3 Fees

Three types of fees⁷ must be paid for an international application designating the European Union, namely:

- a basic fee
- a publication fee
- an individual designation fee, that is, EUR 62 per design, converted into Swiss francs (Article 106c CDR; Article 1a to the Annex of the CDFR; Rule 28 CR).

12.1.3 Examination carried out by the International Bureau

When it receives an international application, the International Bureau checks that it complies with the prescribed **formal** requirements, such as those relating to the quality of the reproductions of the design(s) and the payment of the required fees. The applicant is informed of any deficiency, which must be corrected within the prescribed

⁷ See www.wipo.int/hague/en/fees.

time limit of three months, failing which the international application is considered to be abandoned.

Where an international application complies with the prescribed formal requirements, the International Bureau records it in the International Register and (unless deferment of publication has been requested) publishes the corresponding registration in the 'International Designs Bulletin'. Publication takes place electronically on the website of the World Intellectual Property Organization ('WIPO') and contains all relevant data concerning the international registration, including a reproduction of the design(s).

The International Bureau notifies the international registration to all designated offices, which then have the option of refusing protection on substantive grounds.

12.2 The role of the Office as designated office

It will be explained below how international registrations are dealt with by the Office from notification by the International Bureau through to the final decision to accept or refuse the designation of the European Union.

The main steps before the Office as designated office are:

- receipt of the international registration designating the European Union;
- examination of the grounds for non-registrability.

12.2.1 Receipt of the international registration designating the European Union

Communications between the Office and the International Bureau are by electronic means (Article 47(3) CDIR).

12.2.2 Grounds for non-registrability

Once the international registration designating the European Union has been notified to the Office by the International Bureau, the rules laid down under Title XIa CDR and Article 11a CDIR (Examination of grounds for refusal) apply (Article 106a(1) CDR).

12.2.2.1 Compliance with the definition of a design, public policy and morality

An international registration may not be refused on the grounds of non-compliance with **formal** requirements, since such requirements are to be considered as already satisfied following examination by the International Bureau.

The Office limits its examination to the two grounds for non-registrability (Article 11a CDIR). An international application will be refused if a design does not correspond to the definition in Article 3(a) CDR or if it is contrary to public policy or accepted principles of morality (Article 9 CDR) (see paragraph 4 above).

The examination of grounds for non-registrability for international registrations will be carried out as if the design(s) had been applied for directly with the Office. The time limits and other general procedural aspects governing said examination are the same

as those that apply in the case of design applications filed directly at the Office (see Introduction, paragraph 1.2.3, and paragraph 4.3 above).

12.2.2.2 Time limits

The Office must inform the International Bureau of any refusal of protection within **six months** of publication of the international registration on the WIPO website (Article 11a(1) CDIR).

A preliminary refusal must be reasoned and state the grounds on which refusal is based, and the holder of the international registration must be given an opportunity to be heard (Article 106e(1) and (2) CDR).

Thus, within two months of the date of receipt of the notification of provisional refusal by the international registration holder, the latter will be given the opportunity to renounce the international registration, in the EU (for all the designs in the registration), to limit the international registration to one or some of the designs for the European Union or to submit observations (Article 11a(2) CDIR).

The International Bureau will forward the notification of provisional refusal to the holder (or to its representative before WIPO if applicable). The holder must reply direct to the Office or, if applicable, through his representative (see paragraph 12.2.2.4 below).

For time-limit extensions, see Introduction, paragraph 1.2.3 above.

12.2.2.3 Languages

An international application must be filed in English, French or Spanish (Rule 6(1) CR). The recording and publication of the international registration will indicate the language in which the international application was received by the International Bureau (Rule 6(2) CR). In practice, this language can be identified from the product indication (INID code 54): the first language used in the product indication is the language in which the international application was received by the International Bureau. The indications given in the other two languages are translations provided by the International Bureau (Rule 6(2) CR).

The language in which the international application was received by the International Bureau will be the first language of the EU designation and will therefore become the language of the examination proceedings (Article 98(1) and (3) CDR).

In all communications with the International Bureau, the Office will therefore use the language in which the international registration was filed.

If the holder wishes to use a different Office language, it must supply a translation into the language in which the international registration was filed, within one month of the date of submission of the original document (Article 98(3) CDR; Article 81(1) CDIR). If no translation is received within this time limit, the original document is deemed not to have been received by the Office.

12.2.2.4 Professional representation

The holder may, if representation is mandatory under Article 77(2) CDR (see paragraph 2.5 above), be requested to appoint, within two months, a professional representative before the Office in accordance with Article 78(1) CDR (Article 11a(3) CDIR).

If the holder fails to appoint a representative within the specified time limit, the Office will refuse protection of the international registration (Article 11a(4) CDIR).

12.2.2.5 Renunciation and limitation

Where the holder renounces the entire international registration in the EU or limits it to one or some of the designs for the European Union, it must inform the International Bureau by way of recording procedure in accordance with Article 16(1)(iv) and (v) of the Geneva Act. The holder can inform the Office by submitting a corresponding statement (Article 11a(6) CDIR).

12.2.2.6 Grant of protection

Where the Office finds no grounds for refusing protection or where a preliminary refusal is withdrawn, the Office must inform the International Bureau accordingly without delay.

12.2.2.7 Refusal

Where the holder does not renounce the international registration in the EU, does not limit it to one or some of the designs or does not submit observations that satisfy the Office within the specified time limit or does not withdraw the application, the Office will confirm its decision refusing protection for the international registration. If the refusal concerns only some of the designs contained in a multiple international registration, the Office will refuse the latter only insofar as those designs are concerned (Article 11(3) CDIR).

There is no legal provision in the CDR or CDIR allowing an applicant to request an amendment of the design in order to overcome an objection concerning an international registration. However, an applicant may renounce the designation of the European Union by addressing WIPO directly, who will then notify the Office.

The holder of the international registration has the same remedies available to it as it would have had if it had filed the design(s) in question directly with the Office. The ensuing procedure takes place solely at Office level. An appeal against a decision to refuse protection must be submitted by the holder to the Boards of Appeal, within the time limit and in accordance with the conditions set out in Articles 55 to 60 CDR and Articles 34 to 37 CDIR (Article 11a(5) CDIR). The International Bureau is not involved in this procedure at all.

Once the decision to refuse or accept the international registration is final, a final notification will be sent to the International Bureau, indicating whether the design(s) has/have been finally refused or accepted.

Where the final refusal relates to only some of the designs contained in a multiple application, the notification to the International Bureau will indicate which designs have been refused and which accepted.

12.3 Effects of international registrations

If no refusal is notified by the Office within six months of the publication of the international registration on the WIPO website, or if a notice of preliminary refusal is withdrawn, the international registration will, from the date of registration granted by the International Bureau, as referred to in Article 10(2) of the Geneva Act (Article 106a(2) CDR), have the same effect as if it had been applied for with, and registered by, the Office.

International registrations can be subject to invalidity proceedings under the same conditions and procedural rules as 'direct filings' of Community designs (Article 106f CDR; see the Guidelines on the Examination of Design Invalidation Applications). An application for a declaration of invalidity must be filed at the Office. Since the language of filing of an international registration designating the European Union is necessarily an Office language, an application for a declaration of invalidity against such an international registration must be filed in this language. (see paragraph 12.2.2.3 above).

The Office will notify the holder or their representative directly of any request for a declaration of invalidity. The holder must reply directly to the Office or, if applicable, through a representative who is on the Office's list in accordance with Article 78 CDR (see paragraph 2.5 above).

Where the Office declares the effects of an international registration invalid in the territory of the European Union, it must inform the International Bureau of its decision as soon as the latter becomes final (Article 106f(2) CDR; Article 71(3) CDIR).

The particularities of the procedures governing the renewal of international registrations and records of changes of name, transfers, renunciation or limitation of certain designs, of registration for any or all of the designated contracting parties, or limitation of the registration to certain designs are dealt with by the International Bureau of WIPO (see the Guidelines Concerning Proceedings before the Office on Renewal of Registered Community Designs, paragraph 9, and at paragraph 11.2. of these Guidelines; Articles 16 and 17 of the Geneva Act; Article 22a CDIR).

13 Enlargement and the Registered Community Design

This section discusses the rules relating to the accession of new Member States to the European Union and the consequences thereof for applicants for, and holders of, registered Community designs.

Ten new Member States joined the European Union on 01/05/2004 (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia), two on 01/01/2007 (Bulgaria and Romania) and one on 01/07/2013 (Croatia), bringing the number of Member States up to 28.

Article 110a CDR contains provisions relating to enlargement as regards registered Community designs. These provisions were inserted in the CDR when the EU was

enlarged in 2004 and remain applicable for successive enlargements. The only modification to the text of the CDR is the addition of the names of the new Member States.

As far as registrability and validity of Community designs are concerned, the effects of the enlargement of the European Union on registered Community design rights are the following.

13.1 The automatic extension of the Community design to the territories of the new Member States

Pursuant to Article 110a(1) CDR, the effects of all Community design rights filed before 01/05/2004, 01/01/2007 or 01/07/2013 extend automatically to the territories of the Member States that acceded on those dates (Article 110a(1) CDR).

Extension is automatic in the sense that it does not have to undergo any administrative formality and does not give rise to any extra fees. Moreover, it cannot be opposed by the Community design holder or any third party.

13.2 Other practical consequences

13.2.1 Filing with national offices

As from the enlargement date, a Community design application may also be filed through the industrial property office of a new Member State.

13.2.2 Professional representation

As from the accession date, applicants (as well as other parties to proceedings before the Office) who have their seat or domicile in a new Member State no longer need to be represented by a professional representative. As from the accession date, professional representatives from a new Member State may be entered on the list of professional representatives maintained by the Office pursuant to Article 78 CDR and may then represent third parties before the Office.

13.2.3 First and second language

Since 01/01/2004 there have been nine new official EU languages, namely Czech, Estonian, Hungarian, Latvian, Lithuanian, Maltese, Polish, Slovak and Slovenian. A further two languages (Bulgarian and Romanian) were added on 01/01/2007⁸ and a further one (Croatian) on 01/07/2013.

These languages may be used as the first language only for Community design applications filed on or after the accession date concerned.

⁸ For Irish, see paragraph 2.4.

13.2.4 Translation

Community design applications with a filing date prior to the accession date, or existing Community design registrations, will neither be translated into, nor republished in the language of the new Member State(s). Community design applications filed after the accession date will be translated and published in all official EU languages.

13.3 Examination of grounds for non-registrability

The Office limits its examination of the substantive protection requirements to only two grounds for non-registrability (Article 47(1) CDR). An application will be refused if the design does not correspond to the definition provided for at Article 3(a) CDR or if it is contrary to public policy or to accepted principles of morality (Article 9 CDR) (see paragraph 4 above).

An application for a registered Community design cannot be refused on the basis of any of the grounds for non-registrability listed in Article 47(1) CDR if these grounds become applicable merely because of the accession of a new Member State (Article 110a(2) CDR).

Whether a Community design is in conformity with Article 3 CDR or complies with public order and accepted principles of morality is normally assessed without reference to any particular national or linguistic context.

However, where a Community design contains an offensive word element in a language which, as a result of the accession of a new Member State, becomes an official language of the European Union after the date of filing, the ground of for non-registrability provided for under Article 9 CDR does not apply.

13.4 Immunity against cancellation actions based on grounds of invalidity which become applicable merely because of the accession of a new Member State

13.4.1 General principles

Community designs filed or registered before 01/05/2004, 01/01/2007 or 01/07/2013 will not be cancelled on the basis of grounds for invalidity that exist in one of the Member States acceding to the European Union on those dates if the ground for invalidity only became opposable as from the accession date in question (Article 110a(3) CDR). This is an expression of the need to respect acquired rights.

Not all grounds of invalidity set out in Article 25(1) CDR may become 'applicable merely because of the accession of a new Member State'.

13.4.1.1 Grounds of invalidity that are applicable independently of the enlargement of the EU

The accession of a new Member State has no effect on the applicability of the following four grounds for invalidity. Article 110a(3) CDR therefore does not offer any protection against their application to Community designs filed before 01/05/2004, 01/01/2007 or 01/07/2013 respectively.

Non-visibility and functionality

The non-visibility of a Community design applied to a part of a complex product and the restrictions applying to features of a design that are solely dictated by technical function or the requirements of interconnection, are grounds of invalidity that must be evaluated on the basis of the design itself and not of a factual situation that exists in any given Member State (Article 25(1)(b) CDR read in combination with Articles 4 and 8 CDR).

Novelty and individual character

Under normal circumstances, lack of novelty or individual character of a Community design will not be affected by enlargement of the EU (Article 25(1)(b) CDR read in combination with Articles 5 and 6 CDR).

The disclosure of a design prior to the filing or priority date of a Community design can destroy the latter's novelty or individual character, even if such disclosure took place in a country before the date of its accession to the EU. The sole requirement is that such disclosure could 'reasonably have become known in the normal course of business in the circles specialised in the sector concerned operating in the Community' (Article 7(1) CDR).

Entitlement to the Community design

The fact that the holder is not entitled to the Community design as a result of a court decision is another ground for invalidity that is not affected by enlargement (Article 25(1)(c) CDR). Article 14 CDR does not impose any nationality requirement for the person claiming to be entitled to the Community design, nor does it require that the court decision originates from a court located in a Member State.

Improper use of one or more of the elements listed in Article 6ter of the Paris Convention

The invalidity ground of improper use of one or more of the elements listed in Article 6ter of the Paris Convention is not affected by enlargement of the EU either. There is no requirement for the sign of which use is prohibited to come from a Member State (Article 25(1)(g) CDR).

13.4.1.2 Grounds of invalidity resulting from enlargement of the EU

A Community design filed before 30/04/2004, 31/12/2006 or 30/06/2013 respectively cannot be invalidated on the basis of the four grounds of invalidity referred to below where any of these grounds becomes opposable as a result of the accession of a new Member State on those dates (Article 110a(3) CDR).

Conflict with a prior design right protected in a new Member State (Article 25(1)(d) CDR)

A Community design filed before the date of accession of a Member State cannot be invalidated on the basis of a conflict with an earlier design that has enjoyed protection in the new Member State since a date prior to the filing or priority date of the Community design but that was disclosed to the public at a later date.

Use of an earlier distinctive sign (Article 25(1)(e) CDR)

A Community design filed before the date of accession of a Member State cannot be invalidated on account of the use of a distinctive sign that has enjoyed protection in the new Member State since a date prior to the filing or priority date of the Community design.

Unauthorised use of a work protected under the copyright law of a Member State (Article 25(1)(f) CDR)

A Community design filed before the date of accession of a Member State cannot be invalidated on account of the non-authorized use of a work that has been protected by the copyright law of the new Member State since a date prior to the filing or priority date of the Community design.

Improper use of signs, emblems, coats of arms, other than those covered by Article 6ter of the Paris Convention (Article 25(1)(g) CDR)

A Community design filed before the date of accession of a Member State cannot be invalidated on account of the improper use of signs, emblems or coats of arms, other than those covered by Article 6ter of the Paris Convention, which are of particular public interest for the new Member State.

Public policy and morality

A Community design filed before the date of accession of a new Member State cannot be invalidated on account that it is contrary to public policy or morality in the territory of that new Member State.

13.4.2 Effects of a priority claim

Community designs with a filing date on or after 01/05/2004, 01/01/2007 or 01/07/2013 respectively may be invalidated on the basis of the four grounds mentioned above.

This applies even if the priority date of the Community design in question precedes the relevant accession date. The priority right does not protect the Community design holder against any change in the law that is applicable to the validity of its design.