

## European Community Designs

A Community Design registration covers all European Union countries. This provides a simple and highly cost-effective route for obtaining pan-European registered designs. A single application is filed and the resultant registration can be enforced across the European Union in a single infringement action.

### Countries and costs

The Community Design covers all of Western Europe with the exception of Switzerland and Norway and minor principalities such as Monaco and Andorra. Thus, a Community Design extends to Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

Although national design applications are also available, the cost of a Community Design application is very advantageous compared to the costs of filing and prosecuting a number of national applications. It is generally cheaper to register a Community Design than to register two or more national designs. The official filing and publication fee for an application is €350. It is possible to include multiple designs in one application, provided the products in which the designs are to be incorporated are in the same class of the Locarno Classification, and there is an additional official fee for each extra design.

### What can be registered?

A "design" is defined in the Community Design Regulation as meaning 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. The Regulation goes on to define a "product" as meaning any industrial or handicraft item, including parts of a more complex product, packaging, get-up, graphic symbols and typographic typefaces. These definitions make Community Design protection available for a wider range of designs than were previously protectable by registration under some national systems. As well as protecting the designs of three dimensional products and of patterns for which registered design protection has traditionally been obtained, it is possible to protect items such as logos, computer icons and fictional (e.g. cartoon) characters. In many cases therefore both design and trade mark registrations will be available for the same thing. It will be possible to protect the appearance of part of a product, such as the handle of a mug or the lid of a pen.

## Filing applications

We file application documents in a receiving office in London, where a filing date is given in the normal way. The applications will then be processed at the Office for Harmonization in the Internal Market (OHIM), which also deals with Community Trade Mark applications. We file applications in English, which is one of the official languages of OHIM. A second language must be designated, but no translations have to be provided.

Community Design applications are able to claim priority of earlier national filings in the previous six months.

## Examination

There are no official searches or novelty examination, but there is examination for basic formal requirements. Registration, and hence publication, of the design is expected to occur within about three months of filing. If however the applicant wishes to keep the design secret for a while, it is possible to request deferred publication, up to a maximum of 30 months from the date of filing, or, if a priority is claimed, from the priority date. This may be useful to make sure that a design is not published until after a product has been launched.

## Term of protection

The initial period of protection will be five years from the filing date, renewable for five year periods up to a total possible term of 25 years.

## Validity

It is possible to apply to OHIM for a declaration of invalidity based on a number of grounds, including the grounds that the design lacks novelty or individual character over designs which have been made available to the public. It is therefore necessary when filing design applications to consider these requirements.

Designs are deemed to lack novelty if their features differ only in immaterial details from a known design. A design is considered to have individual character if the overall impression it produces on the informed user differs from the overall impression made by a known design. The extra individual character test may require greater differences than the novelty test.

In considering what designs have been made available to the public in order to apply the novelty and individual character tests, there is an exclusion for disclosures which

could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community. The intention of the wording is to prevent prior art from very obscure sources, which the designer could not reasonably have known about, from being cited.

There is also a one year grace period in respect of disclosures by the designer. This is calculated back from the date of filing an application for a registered Community Design, or if priority is claimed, from the date of priority.

## Unregistered Community Designs

The same Community Design Regulation also establishes the availability of unregistered Community Designs. These have the same broad definition of a "design" and are also subject to the novelty and individual character requirements. The right is automatic from when the design is first made available to the public within the Community and the term of protection is three years from the publication date. This automatic protection is useful for designs of short commercial life.

For long term protection a registered Community Design will be more appropriate in view of the potential 25 year term. Moreover, the rights conferred by an unregistered Community design are restricted to the prevention of acts resulting from copying of the protected design. Therefore an independently created design which would infringe a registered Community Design would not infringe a corresponding unregistered Community Design.

Another advantage of registering a Community Design is that this will provide an official record of the rights of the design owner and a number which can be applied to products bearing the design and help to deter infringement. It is expected that enforcement will be more straightforward than for an unregistered Community Design.

## Summary

The arrival of the registered Community Design in April 2003 was a major development for design owners, providing for the first time pan-European design protection. National design registration systems continue to be available, and may often be appropriate for small enterprises, but the registered Community Design will provide a cheaper and less complex route for obtaining registration across all fifteen member states.

## Our services

We shall be pleased to provide further advice and answer any questions on the Community Design system. Our experience with the UK design system, where applications have been searched and examined for registrability, has given us considerable experience of validity issues. We are therefore well placed to ensure that our clients receive the best advice concerning protection of their own designs and the risks they face from the rights of their competitors under the new regime. We will be pleased to file Community Design applications. Where necessary we can advise on the prospects of an invalidity application and file such an application, if desired.

## Further advice

If you would like any further advice please contact us at Dehns using the details below.



### Contact Dehns

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