

COMMUNITY DESIGN REGISTRATION GUIDELINES

1. THE AIM OF THE GUIDELINES

These guidelines are intended to provide a brief overview of the Community design registration prerequisites laid down in Article 47 of Council Regulation (EC) No.6/2002 (hereinafter - "the Regulation") and thus serve only as a starting point for the initial evaluation of the permissibility of registration. The guidelines do not analyze requirements for protection of the Community design other than those referred to in Paragraph 7 of the guidelines.

2. GENERAL REMARKS

A design is a type of industrial property, which is specifically intended for protection of external appearance of goods, especially three-dimensional shapes. Like any trade mark or patented technology, a registered design may eventually become one of the company's most valuable assets, hence it is crucial to ensure its duly protection.

Community design registration applies to all of the 27 Member States of the European Union and it is relatively easy to carry out, considering that formal conditions required for the registration are usually easy to fulfill.

3. REGISTRATION PREREQUISITES

Prerequisites for registration of the Community design follow from Article 47, Paragraph 2 of the Regulation, which stipulates that the Office for Harmonization in the Internal Market (hereinafter – "OHIM") refuses the application for registration of a design, if the design:

- a) **does not correspond to the definition of a design;**
- b) **is contrary to public policy or to accepted principles of morality.¹**

Thus, in order to determine whether the design is eligible for registration, **it should be mainly established whether the object of application satisfies the definition of a design.**

It should be beared in mind that registration as a matter of fact is not conditional to the requirements for protection of a design. Namely, to whether the design applied for possesses novelty and individual character, as well as whether the design was made available to the public.

4. WHAT IS A DESIGN?

In accordance with Article 3, Paragraph (a) of the Regulation "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the product itself and/or its ornamentation.

5. WHAT IS A PRODUCT?

In accordance with Article 3, Paragraph (b) of the Regulation "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.

6. TEST FOR THE PERMISSIBILITY OF REGISTRATION

Knowing the definition of "design" and "product" prescribed by the Regulation, it is possible to clarify whether the object of the application is eligible for registration as a Community design.

¹ The condition is consistent with the provisions of the Community trade mark regulations and therefore is not further analyzed in these guildelines.

In practice, questions regarding the meaning of the “appearance of a product” rarely arise. By contrast, the crucial question often is whether or not the object, the appearance of which has been filed for the registration is regarded to be an industrial or a handicraft item and thus whether it meets the definition of the product.

In such circumstances content of the Locarno classification² often serves as a basic argument. For instance, buildings and complex structures, because these objects are included in class 25 of the Locarno Classification, could be regarded as an industrial or a handicraft item within the framework of the Regulation. In turn, there is no unequivocal answer to the question of whether paintings, drawings and images are or whether they are not industrial or handicraft items. On the one hand, these objects are art and therefore are not considered to be industrial or handicraft items, but on the other hand one cannot doubtlessly deny the fact that these objects can be seen as graphic symbols.

Particular attention should be given to the fact that, within the framework of the Regulation, computer programs, which traditionally enjoy protection as a form of copyright work, do not fall under the definition of product. This exception is based on the assumption that the appearance of a computer program is the source code and hence it cannot be protected. It should be noted however, that in accordance with usual practice, that does not necessarily exclude from protection graphics and icons (graphical user interface), reflected on the computer screen when the program is operated.

7. EXCEPTIONS

In certain circumstances a design can be formally registered, however such registration becomes meaningless, considering that according to Article 8, Paragraph 1 and Paragraph 2 of the Regulation, this design still would not be eligible for protection. Such a design is:

1) a design which subsists in features of appearance of a product which are solely dictated by its technical function;

A design will be regarded as a design which subsists in features of appearance of a product which are solely dictated by its technical function if it consists of such an appearance which was produced under the circumstances, where the designer was unable to exercise any control whatsoever over the appearance. In other words, if the designer can demonstrate that a product which performs a certain function could have different designs, then it is considered that the design is not solely dependent on the product technical features, and such design could acquire protection.

2) a design which subsists in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

The Regulation contains such an exception in order to prevent a situation where the proprietor of a design could be able to prevent competition in a market. For instance, a protected design of the external port of a laptop could allow its proprietor to control the sale of compatible devices, because then the number of the compatible devices on the market would be limited.

8. OTHER PRACTICAL ASPECTS OF REGISTRATION

Where the application relates to the appearance of a product, which consists of several components, the appearance (design) must include at least one view showing the product as a whole, otherwise the registration will be refused.

² International Classification for Industrial Designs.