

COMMUNITY DESIGN REGISTRATION

A design proprietor can obtain a **single** Community Design Registration for a design throughout the fifteen European Union countries (“EU”) by filing a single application, due to harmonisation of European Community laws, writes Dr Rosanna Cooper. There are two forms of Community Designs: unregistered and registered designs. This article gives an overview of the Community Design system (the “System”).

The meaning of “design”

As the definition of a design has been broadened, protection can be sought for the appearance of functional designs including the whole or parts of products, packaging, get-up, graphic symbols and typographical typefaces. The design can result from features of lines, contours, colours, shapes, textures and/or materials of the product itself or its ornamentation. This includes logos and other devices.

Community Registered Design

For a design to be afforded protection, it must be **new** and have **an individual character**. A design is new if no identical design or the designs whose features differ in immaterial details have been disclosed to the public anywhere in the world (the prior art), before the date of filing the application or the date from which priority is claimed. However, if a **designer** himself, at least 12 months before filing an application (or claiming priority) markets, promotes or exhibits his designs to gauge levels of interests this would not amount to disclosure.

To meet the requirements of individual character the design must produce on the informed user, a different overall impression from prior designs. This may be a retail customer. The degree of freedom of a designer in creating a design is taken into account in determining whether a design has individual character. Where minor differences separate the design from the prior art then the scope of protection is limited, the public should be able to ascertain that a design is different from others that already exist. Registration of a Community Design will initially last for 5 years, and extendible by 5 years, up to a maximum of 25 years.

Community Unregistered Design

Unregistered designs must meet the same criteria i.e. they must be new and have an individual character. However, the protection applies from the date of disclosure of the design in the EU through to marketing or sales. Such designs will be protected for 3 years.

Infringement

The design registration is a monopoly right that confers on a proprietor the exclusive right to use the design and prevent an unauthorised person from making, offering, putting on the market, importing, exporting or using a product in which the design is incorporated anywhere in the EU. A registered design holder will be protected against deliberate copying and the independent development of similar designs. An unregistered design holder will only be protected against copying. Infringement actions will be heard before a Community Design Court.

Application

An application has to be made to the Office for the Harmonisation in the Internal Market (“OHIM”) or The UK patent Office. On making an application, the proprietor has to include the products into which the designs would be incorporated. OHIM’s examination of the application is not detailed and the application is published and then registered. A third party may on registration of a design seek to make the registration invalid. It should be noted that if the registration is held invalid it would be for the whole of the EU.

Advantages

The main advantages of the System are:

- The one-year grace period;
- Keeping applications secret for up to 30 months by deferring publication of the application. This will give proprietors time to secure a filing date before launching a new design.
- Costs savings when compared to filing several applications in each Member State;
- The right to file multiple designs in a single application - cost savings; and

- The right to licence the design for the whole or part of the EU.

Inventors should take advantage of this intellectual property protection although there is likely to be some overlap between trade mark and Community Designs protection.

© RT Coopers Solicitors, 2004

Dr Rosanna Cooper is the principal RT Coopers, a commercial law firm focusing on inventors and start-ups.

RT Coopers Solicitors; Office 5; Telfords Yard; 6/8 The Highway; London E1W 2BS; Tel: 020 7488 2985; Fax: 020 7488 2102; E-mail: enquiry@rtcoopers.com; Website: www.rtcoopers.com