



# THE PROTECTION OF DESIGN PATENTS IN EUROPE

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WORLD IP DAY, INDUSTRIAL DESIGN OFFICE AND IPR MANAGEMENT OFFICE  
DEPARTMENT OF INTELLECTUAL PROPERTY, THAILAND, APRIL 26, 2011

“DESIGNS ARE LANGUAGE  
OF COMMUNICATION OF  
OBJECTS”

“THEY COMMUNICATE THE  
AESTHETICS OF A  
PRODUCT”

FRANCIS GURRY  
DIRECTOR GENERAL WIPO

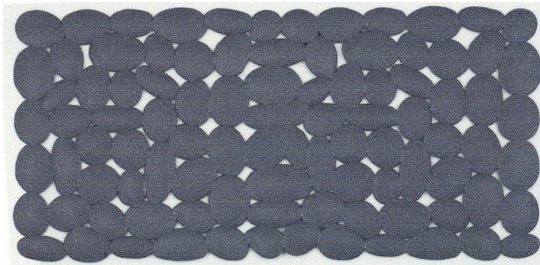
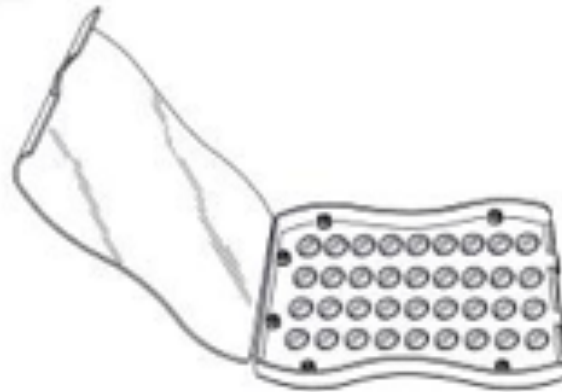


KAMIL KURKA- COFFEE MACHINE

# DESIGN PATENT VS PATENT

DESIGN  
PATENTS

A DESIGN ONLY COVERS THE APPEARANCE  
OF A PRODUCT.

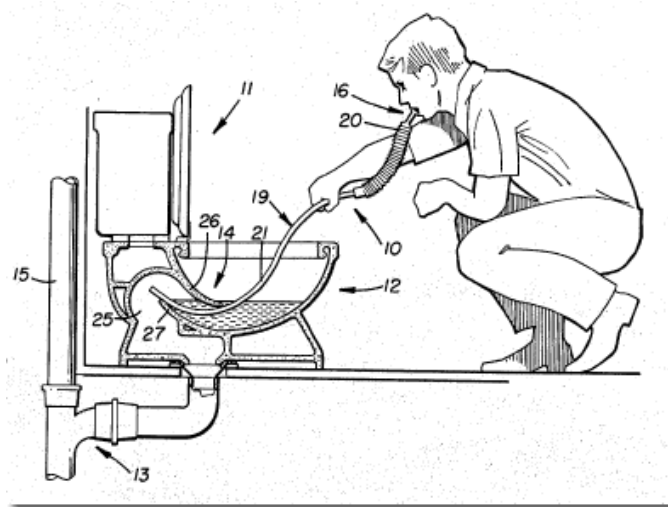


A DESIGN CANNOT PROTECT THE  
FUNCTION OF A PRODUCT.

# DESIGN PATENT VS PATENT

## PATENTS

A PATENT COVERS THE FUNCTION, OPERATION OR CONSTRUCTION OF AN INVENTION. TO BE PATENTABLE, A FUNCTION MUST BE INNOVATIVE, HAVE AN INDUSTRIAL APPLICATION AND BE DESCRIBED IN SUCH A FASHION TO PERMIT REPRODUCTION OF THE PROCESS.



# DESIGN PATENT VS MARK

MARKS

A TRADE MARK IDENTIFIES THE ORIGIN OF GOODS AND SERVICES OF ONE UNDERTAKING TO DIFFERENTIATE THEM FROM THOSE OF ITS COMPETITORS.

3-D MARKS

POSSIBLE OVERLAP WITH 3-D MARKS ESPECIALLY SINCE DESIGN PATENTS ALLOW PRODUCT DIFFERENTIATION WHEN TECHNOLOGICAL POSSIBILITIES HAVE BEEN EXHAUSTED



# DESIGN PATENT PROTECTION IN EUROPE

- 1) NATIONAL PROTECTION  
EX: “DESSINS ET MODELES” IN FRANCE
- 2) REGIONAL PROTECTION  
REGISTERED COMMUNITY DESIGN (RCD)  
UNREGISTERED COMMUNITY DESIGN (UCD)
- 3) INTERNATIONAL PROTECTION  
THE HAGUE AGREEMENT (WIPO)

# THE REGISTERED COMMUNITY DESIGN (RCD)

## WHAT CAN BE PROTECTED (1/2)?

- THE APPEARANCE OF A PRODUCT OR PART OF A PRODUCT  
THE APPEARANCE CAN RESULT FROM THE SHAPE, LINES, CONTOURS, ORNAMENTATION, COLOURS, TEXTURE OR MATERIALS OF THE PRODUCT.  
A PRODUCT MEANS ANY INDUSTRIAL OR HANDICRAFT ITEM EXCEPT A COMPUTER PROGRAM, AND INCLUDES PARTS INTENDED TO BE ASSEMBLED INTO A COMPLEX PRODUCT, PACKAGING, “GET-UP”, GRAPHIC SYMBOLS OR TYPEFACES.
- TWO DIMENSIONAL DESIGNS (E.G. PATTERNS)
- THREE DIMENSIONAL DESIGNS
- DESIGNS COMPRISING TWO AND THREE DIMENSIONAL ELEMENTS (E.G. A MOBILE PHONE)

# THE REGISTERED COMMUNITY DESIGN (RCD)

## WHAT CAN BE PROTECTED (2/2)?

- DESIGNS FOR COMPONENTS OF COMPLEX PRODUCTS THAT ARE VISIBLE IN USE (E.G. WING MIRRORS OF A CAR)
- LOGOS, STYLISED WORD, LABELS AND THE APPEARANCE OF PACKAGING, THAT HAVE TRADITIONALLY BEEN PROTECTED BY TRADE MARKS AND/OR COPYRIGHT.

RDC ARE USEFUL SUPPLEMENT OR ALTERNATIVE TO TRADE MARK PROTECTION WHERE TRADE MARK PROTECTION MAY BE DIFFICULT TO OBTAIN OR CANNOT BE SECURED WITHOUT EXTENSIVE USE (E.G SHAPE OF GOODS/ PACKAGING).



# THE REGISTERED COMMUNITY DESIGN (RCD)

## WHAT CAN NOT BE PROTECTED (1/2)?

- FEATURES OF A DESIGN WHICH
  - (I) ARE SOLELY DICTATED BY TECHNICAL FUNCTION, OR
  - (II) MUST BE REPRODUCED EXACTLY TO ENABLE THE PRODUCT TO FIT WITH ANOTHER PRODUCT SO THAT EITHER PRODUCT CAN FULFIL ITS FUNCTION



# THE REGISTERED COMMUNITY DESIGN (RCD)

## **WHAT CAN NOT BE PROTECTED (2/2)?**

THE REPAIR OF A COMPLEX PRODUCT SO AS TO RESTORE IT TO ITS ORIGINAL APPEARANCE BY THE USE OF A COMPONENT PART DOES NOT INFRINGE A DESIGN REGISTERED FOR THE DESIGN OF THAT COMPONENT PART.



# THE REGISTERED COMMUNITY DESIGN (RCD)

## OTHER REQUIREMENTS:

### (1) NOVELTY

### (2) INDIVIDUAL CHARACTER

A DESIGN IS REGARDED AS HAVING “INDIVIDUAL CHARACTER” IF IT PRODUCES A DIFFERENT OVERALL IMPRESSION ON AN INFORMED USER TO THAT PRODUCED BY ANY PREVIOUS DESIGN.

### (3) NOT CONTRARY TO PUBLIC ORDER

# THE REGISTERED COMMUNITY DESIGN (RCD)

## MAIN FEATURES:

- HAS A LIFE OF 5 YEARS FROM THE DATE OF FILING AND CAN BE RENEWED IN PERIODS OF FIVE YEARS UP TO A MAXIMUM OF **25 YEARS**.
- VALID IN THE EUROPEAN UNION AS A WHOLE. IT IS NOT POSSIBLE TO LIMIT THE GEOGRAPHIC SCOPE OF PROTECTION TO CERTAIN MEMBER STATES.
- GRACE PERIOD OF 12 MONTHS FOR APPLICANT
- A SUCCESS STORY: ALREADY 400,000 REGISTERED COMMUNITY DESIGNS FILED

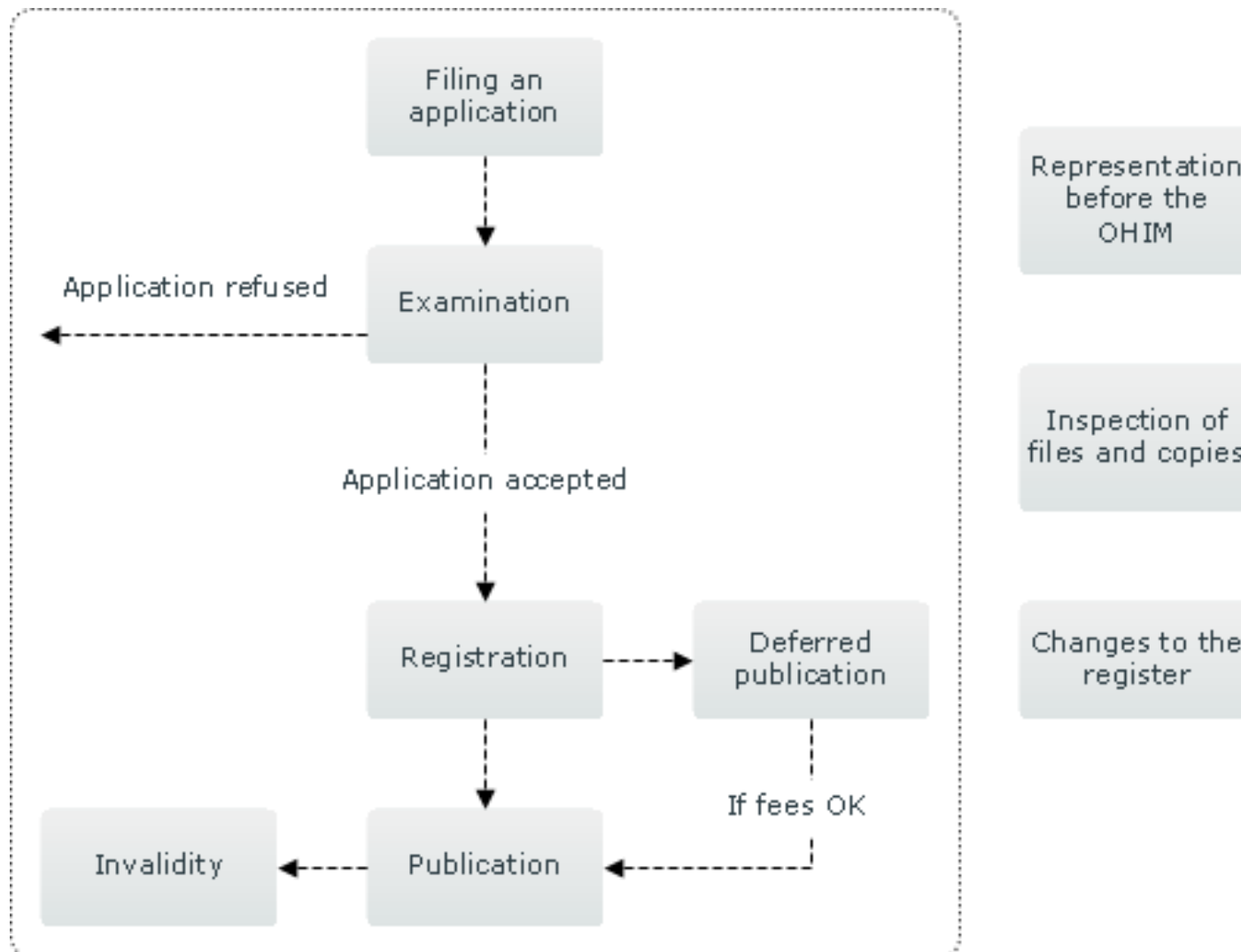
# THE REGISTERED COMMUNITY DESIGN (RCD)

- SINGLE LEGAL SYSTEM APPLIES
- SIMPLE REGISTRATION PROCEDURE BEFORE OHIM:
  - A SINGLE APPLICATION
  - A SINGLE LANGUAGE OF FILING
  - A SINGLE ADMINISTRATIVE CENTRE
  - A SINGLE FILE TO BE MANAGED
  - A SINGLE PAYMENT
- THE POSSIBILITY TO FILE MULTIPLE APPLICATIONS (I.E. TO INCLUDE SEVERAL DESIGNS IN ONE APPLICATION, SUCH AS A WHOLE RANGE OF SIMILAR PRODUCTS)
- THE POSSIBILITY TO KEEP THE DESIGN CONFIDENTIAL FOR UP TO 30 MONTHS (“DEFERMENT OF PUBLICATION”)

# THE REGISTERED COMMUNITY DESIGN (RCD)

- HIGH LEVEL OF PROTECTION: HOLDERS HAVE EXCLUSIVE RIGHTS TO USE THE DESIGN CONCERNED AND TO PREVENT ANY THIRD PARTY FROM USING IT WITHIN THE E.U.
- PROTECTION AGAINST BOTH DELIBERATE COPYING AND THE INDEPENDENT DEVELOPMENT OF A SIMILAR DESIGN.
- PROTECT THE DESIGNER FOR ANY DESIGN "WHICH DOES NOT PRODUCE ON THE INFORMED USER A DIFFERENT OVERALL IMPRESSION."
- RIGHTS COVER THE MAKING, OFFERING, MARKETING, IMPORTING, EXPORTING OR USE OF A PRODUCT IN WHICH THE DESIGN IS INCORPORATED OR TO WHICH IT IS APPLIED, OR HOLDING STOCK OF SUCH PRODUCT FOR THOSE PURPOSES.

# THE REGISTERED COMMUNITY DESIGN (RCD)



# TEXTS

- COUNCIL REGULATION (EC) N° 6/2002 OF 12 DECEMBER 2001 ON COMMUNITY DESIGNS
- DIRECTIVE 98/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 OCTOBER 1998 ON THE LEGAL PROTECTION OF DESIGNS
- COMMISSION REGULATION (EC) N°2245/2002 OF 21 OCTOBER 2002 IMPLEMENTING COUNCIL REGULATION (EC) No 6/2002 ON COMMUNITY DESIGNS
- COMMISSION REGULATION (EC) N° 2246/2002 OF 16 DECEMBER 2002 ON THE FEES PAYABLE TO THE OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (TRADE MARKS AND DESIGNS) IN RESPECT OF THE REGISTRATION OF COMMUNITY DESIGNS



# IMPORTANT PROVISIONS

## **REPRESENTATION OF THE DESIGN** (Art. 36(1)(c) CDR; Art. 4, 66 CDIR)

- CLEAR
- COMPLETE
- NOTHING REGARDING THE DESIGN SHALL BE LEFT TO CONJECTURE
- DRAWINGS, PHOTOGRAPHS (EXCEPT SLIDES), COMPUTER-MADE REPRESENTATIONS OR ANY OTHER GRAPHICAL REPRESENTATION ARE ACCEPTED PROVIDED THEY ARE SUITABLE FOR REPRODUCTION
- NEUTRAL BACKGROUND

# IMPORTANT PROVISIONS

## REPRESENTATION OF THE DESIGN

WHERE THE APPLICATION CONCERNS THE DESIGN OF A PRODUCT COMPOSED OF **MULTIPLE COMPONENTS**, THE REPRESENTATION OF THE DESIGN MUST INCLUDE AT LEAST ONE VIEW SHOWING THE PRODUCT AS A WHOLE, I.E. ALL COMPONENTS ASSEMBLED, OTHERWISE THE REPRESENTATION IS CONSIDERED AS COMPRISING MULTIPLE DESIGNS.

A REPRESENTATION COMPRISING MULTIPLE DESIGNS CONSTITUTES A DEFICIENCY IN THE FORMAT OF THE REPRESENTATION.

## IMPORTANT PROVISIONS

### **UNLIMITED NUMBER OF DESIGNS** (Art. 37(1) CDR; Art 2(1) CDIR)

NOTE: IF IN THE SAME CLASS OF THE LOCARNO DESIGN CLASSIFICATION

### **REQUEST FOR DEFERMENT OF PUBLICATION** (30-MONTHS)

(ART. 50 CDR; ART. 15, 16 CDIR)

NOTE: DEFERMENT OF PUBLICATION MAY ONLY BE REQUESTED IN THE APPLICATION.

### **PUBLICATION** (ART. 49 CDR; ART. 14 CDIR)

UNLESS AN APPLICATION CONTAINS A REQUEST FOR DEFERMENT OF PUBLICATION, PUBLICATION TAKES PLACE IMMEDIATELY AFTER REGISTRATION.

## COSTS

THE FEES RELATED TO THE FILING OF AN APPLICATION WITH NO DEFERMENT ARE:

### REGISTRATION FEE

FIRST DESIGN	230 €
FROM 2ND TO 10 <sup>TH</sup> DESIGN	115 €
FROM 11TH ONWARDS	50 €

### PUBLICATION FEE

FIRST DESIGN	120 €
FROM 2ND TO 10 <sup>TH</sup> DESIGN	60 €
FROM 11TH ONWARDS	30 €

# UNREGISTERED COMMUNITY DESIGN (UCD)

- RCDs AND UCDs HAVE TO MEET THE SAME CONDITIONS TO BE PROTECTED.
- THREE YEARS FROM THE DATE ON WHICH THE DESIGN WAS FIRST **MADE AVAILABLE TO THE PUBLIC** WITHIN THE TERRITORY OF THE EUROPEAN UNION. DISCLOSURE WILL NOT BE TAKEN INTO ACCOUNT IF THE DESIGN, AFTER DISCLOSURE, IS NOT KNOWN **"IN THE NORMAL COURSE OF BUSINESS TO THE CIRCLES SPECIALISED IN THE SECTOR CONCERNED OPERATING WITHIN THE COMMUNITY"**.
- THE DATE OF DISCLOSURE MUST BE CERTAIN.
- AN UCD ONLY CONFERS ON ITS HOLDER A RIGHT TO PREVENT **COPYING**.

# THE HAGUE AGREEMENT

- THE HAGUE AGREEMENT COMPRISES TWO DIFFERENT “ACTS”, THE HAGUE (1960) ACT AND THE GENEVA (1999) ACT. BOTH ACTS CONSIST OF A DIFFERENT SET OF LEGAL PROVISIONS. INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS MAY ONLY BECOME PARTY TO THE GENEVA ACT. THE GENEVA ACT BECAME FULLY OPERATIONAL ON 1 APRIL 2004.
- THE EUROPEAN UNION (EU) ACCEDED TO THE GENEVA ACT ON 24 SEPTEMBER 2007, AND THE ACT ENTERED INTO FORCE WITH RESPECT TO THE EU ON 1 JANUARY 2008.
- 37 MEMBER STATES

# THE HAGUE SYSTEM

## ACCESSION OF THE EU TO THE GENEVA ACT

- APPLICANTS CAN FILE INTERNATIONAL APPLICATIONS THROUGH NATIONALITY OF A MEMBER STATE OF THE EU OR HAVING A DOMICILE, REAL AND EFFECTIVE COMMERCIAL OR INDUSTRIAL ESTABLISHMENT, OR HABITUAL RESIDENCE, IN THE TERRITORY OF A MEMBER STATE OF THE EU
- ANOTHER CONSEQUENCE IS THAT THE EU MAY BE DESIGNATED IN AN INTERNATIONAL REGISTRATION. IF OHIM DOES NOT ISSUE A REFUSAL IN RESPECT OF SUCH AN INTERNATIONAL REGISTRATION, IT WILL HAVE THE SAME EFFECTS IN THE TERRITORY OF THE EU AS A COMMUNITY DESIGN.

# ananda

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