

## REGISTERED AND UNREGISTERED EUROPEAN COMMUNITY DESIGNS

The European Council Regulation (EC) 6/2002 of December 12, 2001 on Community Designs (OJ L 3, 05 .01.2002, the so-called Community Design Regulation or “CDR”) establishes a dual system of **registered Community Designs (rCD)** and **unregistered Community Designs (uCD)**. Both have a unitary character and have equal effect throughout the Community. The fact that uCDs are widely unknown in the member states of the European Community prompts a comparison of both in order to facilitate appropriate and suitable intellectual property management in the future.

It is to be pointed out that design protection can be obtained for a product by an rCD, a uCD or both. Claims can be raised from both, independent of each other. But there are significant differences in the duration, the requirements for protection and the rights conferred.

**rCD**

A design shall be protected by an rCD if registered as provided for in the Regulation, which means that a traditional **application** is to be filed with the competent Office.

The **duration** is for a period of five years as from the date of the filing of the application and can be renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing.

**Priority** of other design applications or utility model applications can be claimed within a priority term of six months from the date of filing of the first application.

**uCD**

A design shall be protected as a uCD if made available to the public in the specific manner provided for in the Regulation. It is created by the first availability of the design to the public within the Community. This requires that the design has been published, exhibited, used in trade or otherwise disclosed in such a way that, in the normal course of business, these events could reasonably have become known to the circles specialised in the sector concerned operating within the Community.

A design shall be protected by a uCD for a period of three years as from the date on which it was first made available to the public within the Community.

Due to the system of the first publication in the Community, no priority can be claimed.

**rCD**

**uCD**

There is a **grace period** of 12 months preceding the date of filing/priority for designs for which protection is claimed if the design has been made available to the public by the designer, his successor in title, or a third party as a result of information provided or action taken by the designer or his successor in title.

The uCD does not provide a grace period.

The **first possible application date** is April 1, 2003.

The new Regulation entered into force on March 6, 2001, and designs shall enjoy protection as a uCD if they have been first made available to the public within the Community on or after that date.

The Office shall **publish** the registered Community Design in the Community Design Bulletin upon registration. The publication of an rCD can be deferred for a period of 30 months from the date of filing/priority. It remains secret for this period, but shall be registered during this period if it complies with the requirements for protection.

The uCD is published at the time of the first availability to the public within the Community. The Regulation does not provide any official means for publication or searches of uCDs.

The Office intends to process the **registration** within three to four months after filing an application.

A registration is not necessary for a uCD.

The rCD shall confer on its holder the **exclusive right** to prevent any third party from using it without his consent.

A uCd shall confer on its holder the exclusive right to prevent any third party from using it without his consent only if the contested use results from copying the protected design. The contested use shall not be deemed to have resulted from copying if it results from an independent work or if the designer may be reasonably thought not to be familiar with the design made available to the public by the holder.

## Comments

The uCD is intended for those sectors of industry producing large numbers of designs for products frequently having a short market life. One example is the textile industry, in which new collections of seasonal importance are provided yearly and are often replaced in the next year by a new design.

The simple first publication within the Community is the basis for protection under a uCD. With respect to evidence problems in infringement proceedings, it is necessary to have sufficient documentation of said first publication. This is the indispensable basis for raising claims against third parties. It should be clear at least who has published what, when, where and how. The features and the overall impression of the published design will have to be proved, together with all circumstances of the publication in detail.

The definition of a first publication within the Community – i.e., what kind of publication and where – is presently not very concrete, and specific cases will probably be governed by case law in the future. To be on the safe side, it is recommended to produce a separate first publication within the territory of the Community.

As uCDs are not searchable in a reliable way via databases, there is less legal security as to whether future products might conflict with a uCD. By contrast, rCDs will be searchable, providing higher legal security for a free use of future products as well as a warning function of existing rights for third parties.

The rCD is intended for sectors of industry which are more interested in a greater legal certainty and the possibility of longer term protection for successful products. The application and registration documents provide a reliable proof of CD rights in infringement cases. The burden of proof for the holder of an rCD can be much more easily complied with than in the case of a uCD.

Claims based on an rCD are independent of the question as to whether the accused design was produced by copying or not. This considerably shortens the defence arguments of accused infringers.

It has to be noted that the 12 month grace period for rCDs only refers to the disclosure of the later applied design, and only to those disclosures which result from information provided by or action taken by the designer or his successor in title. It is not effective against publications of independent creations of third parties. Although the first publication within the Community can be the basis for a uCD, it is still recommended to file an rCD before the publication of the design.