

**GUIDELINES CONCERNING
PROCEEDINGS BEFORE THE OFFICE
FOR HARMONIZATION IN THE INTERNAL
MARKET (TRADE MARK AND DESIGNS)**

REGISTERED COMMUNITY DESIGN

RENEWAL

Final version: April 2008

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1. Term of protection

The term of protection of a registered Community design (RCD) is five years from the date of the filing of the application (Article 12 CDR).

The date of filing of the application is determined according to Article 38 CDR and Article 10 CDIR.

Registration may be renewed for one or more periods of five years each, up to a total term of 25 years from the date of filing (Article 12 CDR).

For example:

A design registered in 2003 may be renewed for the first time in 2008, and then further renewed in 2013 for protection for another 5 years, and then in 2018 and 2023.

2. Notification of expiry of registration

At least six months before expiry of the registration, the Office shall inform the holder and any person having a right entered in the Register, a licensee, in respect of the Community design, that the registration is approaching expiry (Article 13 para 2 CDR, Article 21 CDIR).

For example:

RCDs with a date of registration of 1 April 2003 will be eligible for their first renewal (to take place in April 2008) as from 1st November 2007.

Failure to give notification shall not involve the responsibility of the Office (Article 13(2) CDR) or affect the expiry of the registration (Article 21 CDIR).

3. Fees and other formal requirements for the request for renewal

As applications or declarations and all other communications addressed to the Office, these can all be submitted as follows (Article 65 CDIR):

- by electronic means as available on the OHIM Website
- by transmitting a signed original by fax (Article 66 CDIR).
- by submitting a signed original of the document in question to the Office; annexes to documents submitted need not be signed. For these purposes, a standard form is available at OAMI ONLINE. The use of this form is encouraged.

A single application for renewal may be submitted for two or more designs, whether or not part of the same multiple registration, upon payment of the required fees for each of the designs, provided that the holders or the representatives are the same in each case (Article 22 (8) CDIR).

3.1. Application for renewal – Content of the request for renewal

According to Article 13 CDR and Article 22 (1) CDIR, an application for renewal of registration shall contain:

3.1.1. Name of the person requesting renewal (Article 22 (1) (a) CDIR)

3.1.2. Registration number of the registered Community design (Article 22 (1) (b) CDIR)

Such number is always composed of a nine-digit root, followed by a four digit end (e.g. XXXXXXXXX-YYYY).

3.1.3. Multiple registration (Article 22 (1) (e) CDIR)

In case of a multiple registration, an indication that renewal is requested for all the designs covered by a multiple registration or, if the renewal is not requested for all such designs, an indication of those designs for which renewal is requested, should be contained.

3.2. Languages (Article 80 (2) CDIR)

The request for renewal may be filed in any of the five languages of the Office. This language becomes the language of the renewal proceedings.

3.3. Fees & Time limit

According to Article 22 (2) CDIR the fees payable pursuant to Article 13 CDR for the renewal of a registration shall consist of:

- a renewal fee, which in cases where several designs are covered by a multiple registration, shall be proportionate to the number of designs covered by the renewal;

The fee must be paid within a period of six months ending on the last day of the month in which protection ends. Failing this, the fee may be paid within a further period of six months from the day referred to in the first sentence, provided that an additional fee is paid within this further period (Article 13 (3) CDR; Article 22 (2) CDIR).

The Office will not debit a current account unless there is an express request for renewal.

The Office will debit the account of the person who has acted (design holder, representative of design holder or authorised third person).

Where the request is filed within the basic period, the Office will debit the renewal fees without surcharge.

Where the request is filed within the additional period, the Office will debit the renewal fee plus the 25% surcharge.

- where applicable, the additional fee for late payment of the renewal fee or late submission of the request for renewal, pursuant to Article 13 CDR.

The fee for the late payment of the renewal fee or the late submission of the request for renewal (Article 13 (3) CDR; Article 22 (2) (b) CDIR) is of 25 % of the renewal fee.

See also CDFR and Annexes 11 and 12 CDFR.

The renewal fee per design, included or not in a multiple registration:

- for the 1st period of renewal: EUR 90
- for the 2nd period of renewal: EUR 120
- for the 3rd period of renewal: EUR 150
- for the 4th period of renewal: EUR 180

Fees which are paid before the start of the six months period for renewal will not be taken into consideration and will be returned.

Where the design holder has a current account at the Office, the renewal fee will only be debited once a request for renewal is filed, unless other instructions are given, and the renewal fee will be debited from this account with effect on the day on which the request for renewal is made (Article 7 (d) Decision EX-96-1).

In case of belated filing of the request for renewal the debiting will take place – unless other instructions are given by the design holder – with effect on the day on which the belated request was filed and subject to the surcharge (Article 7 (d) Decision EX-96-1).

The request for renewal and the renewal fee must be submitted within a period of six months ending on the last day of the month in which protection ends (in the following referred to as “the basic period”) (Article 13 (3) CDR; Article 58 CDIR).

4. Procedure before the Office

4.1. Competence

The treatment of a request for renewal, as well as the entry of the renewal into the Register, falls within the competence of the Register Service of the TMRD.

4.2. Items to be examined

The examination of the request for renewal is limited to formalities and relates to the following points:

4.2.1. Observance of time limits

In the case of a multiple registration, where the fees paid are insufficient to cover all the designs for which renewal is requested, a determination of expiry of registration (as described in Article 22 (5) para 1 CDIR) shall be made only after the Office has established which designs the amount paid is intended to cover (Article 22 (5) para 2 CDIR).

In the absence of other criteria for determining which designs are intended to be covered, the Office shall take the designs in the numerical order in which they are represented in accordance with Article 2 (4) CDIR (according to which the applicant shall number the designs contained in the multiple application consecutively, using Arabic numerals) (Article 22 (5) paras 2, 3 CDIR).

a. Before expiry of basic period

Where the request for renewal is filed and the renewal fee paid within the basic period, the Office shall record the renewal, provided that the other conditions laid down in the CDR and CDIR are fulfilled (see para 5.2.2 below) (Article 13 CDR; Article 22 CDIR).

Where, until expiry of the basic period, no request has been filed but the renewal fee has been paid, this shall be deemed to constitute a request for renewal.

b. Before expiry of additional period

The Office shall invite the applicant to submit a request for renewal and pay, where applicable, the additional fee for late submission of the request for renewal (Articles 13 (3), 22 (3), (4) CDIR).

Where a request has been submitted within the basic period, but the renewal fee has not been paid or has not been paid in full the Office shall invite the person requesting renewal to pay the renewal fee or the remaining part thereof and the additional fee for late payment (Article 13 (3) CDR; Article 22 (4) CDIR).

c. After expiry of additional period

Where a request for renewal has not been submitted or is submitted only after expiry of the additional period, the Office shall determine that the registration has expired and shall issue a notification on loss of rights to the holder (Articles 22 (5), 40 CDIR).

Where the fees are not paid or are paid only after expiry of the additional period, the Office shall determine that the registration has expired and shall issue a notification on loss of rights to the holder (Articles 22 (5), 40 CDIR).

Where the fee amounts to less than the basic fee and the fee for late payment/late submission of the request for renewal, the Office shall determine that the registration has expired and shall issue a notification on loss of rights to the holder (Articles 22 (5), 40 CDIR).

Where the Office determines that the registration of some of the designs registered within a multiple registration has expired it shall issue a notification on loss of rights in respect of those designs to the holder (Articles 22 (5), 40 CDIR).

d. Fee refund

Where the renewal fees have been paid but the registration is not renewed, those fees shall be refunded (Article 22 (7) CDIR) (i.e. if a request has not been introduced, or has been introduced only after the expiry of the additional period, or where the fee has been paid only after the expiry of the additional period, or where the fee paid amounts to less than the basic fee and the fee for late payment/late submission of the request for renewal, or where certain other deficiencies (cf para 5.2.2 below) have not been remedied)).

4.2.2. Compliance with the formal requirements of the Implementing Regulation

Where the request for renewal does not comply with formal requirements, namely where the name of the person requesting renewal has not been indicated, where the registration number has not been indicated, where it has not been properly signed or, in case of multiple registrations it has not been indicated whether all the designs covered by a multiple registration or if the renewal is not requested for all such designs, for which renewal is requested, the Office will invite the renewal applicant to remedy the deficiencies within a time limit of two months (Article 22 (1), (4) & (5) CDIR).

In the case of multiple registrations, the Office will consider the request to be made for the renewal of all designs of the multiple registration unless other expressly indication by the applicant for renewal.

Where these deficiencies are not remedied before the expiry of the time limit, the Office shall determine that the registration has expired and shall notify the holder accordingly (Article 22 (5) para 1 CDIR).

The Office shall determine that the registration has expired with regard to all designs for which the renewal fees have not been paid or have not been paid in full (Article 22 (5), Article 2 (4) CDIR).

Renewal by electronic means can only be carried out successfully in compliance with the requirements of the Implementing Regulation. The process of electronic renewal automatically checks and validates these requirements.

4.3. Items not to be examined

No examination will be carried out on renewal in respect of the registrability of the design or as to the correct classification of the design. Nor will a registration be reclassified that has been registered in accordance with an edition of the Locarno Classification which is no longer in force at the point in time of renewal. Such a reclassification will not even be available on request of the proprietor (cf Communication No 03/04 of the President of the Office of 1st of March 2004 concerning the 8th edition of the Locarno Classification).

5. Entries in the Register

Where the request for renewal complies with all the requirements, the renewal shall be registered (Article 13 (4) CDR).

The Office shall notify the registered Community design holder of the renewal of the design and its entry in the Register and the date from which renewal takes effect (Article 69 (3) (m), (5) CDIR).

Where the Office has determined pursuant to Article 22 (5) CDIR that the registration has expired and when this becomes final, the Office shall cancel the registered design from the Register (Article 22 (6) CDIR). The Office shall inform the Community design holder of the expiry of the registration and its cancellation from the Register (Article 40 CDIR).

6. Date of effect of renewal or expiry

Renewal shall take effect from the day following the date on which the existing registration expires (Article 13 (4) CDR).

See also Article 56 CDIR for Calculation of time limits.

Where the RCD has expired and is cancelled from the Register, the cancellation shall take effect from the day following the day on which the existing registration expired (Article 22 (6) CDIR).