

EXAMINATION GUIDELINES COMMUNITY DESIGN

- 1) INTRODUCTION
- 2) GENERAL PRINCIPLES
- 3) RECEIPT OF APPLICATION
- 4) ALLOCATION OF A FILING DATE
- 5) GROUNDS FOR NON-REGISTRABILITY
- 6) INDICATION OF PRODUCTS
- 7) CLASSIFICATION
- 8) MULTIPLE APPLICATIONS
- 9) DESCRIPTION
- 10) PRIORITY
- 11) FORMALITIES OF THE APPLICATION
- 12) PAYMENT
- 13) WITHDRAWAL AND CORRECTIONS
- 14) REGISTRATION
- 15) DEFERMENT OF PUBLICATION
- 16) PUBLICATION

1) INTRODUCTION

1.1. Purpose of the Guidelines (Art. 107 CDR)

The purpose of these Guidelines is to explain how, in practice, the requirements of the Regulation on the Community Design¹ (CDR), the Implementing Regulation² (CDIR) and the Fees Regulation³ (CDFR) will be applied by the Office from the receipt of an application for a registered Community design up to the point of its registration and publication. The Guidelines are not intended to, and cannot, add to or subtract from the legal contents of the Regulations. The Guidelines assist the examiners to consistently apply the Regulations to the examination proceedings, but they cannot be expected to cover all possible situations. The Office and the users of the system understand that for all concerned there will be a learning process. These Guidelines will be adapted where necessary to reflect the results of that learning process.

1.2. Structure of the Guidelines

These Guidelines are structured to follow the sequence of the examination process with each section and sub-section constituting a step in the registration proceedings from the receipt of the

¹ Council Regulation (EC) No. 6/2002 of 12 December 2001 on Community Designs

² Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No. 6/2001 on Community designs

³ Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs

application up to registration and publication. The General Principles (see below) should be kept in mind throughout the whole examination process.

2) GENERAL PRINCIPLES

2.1. Unitary Character (Art. 1(3), 32(1) CDR)

The system established by the CDR is intended to grant the proprietor a uniform protection with unitary effect throughout the entire territory of the Community. The Community design can only be registered, transferred or surrendered in respect of the whole Community. Licenses, however, may be granted for a part of the Community only.

2.2. Registration (Art. 2, 72 CDR)

The registered Community design requires the creation and maintenance of a Register in which the particulars of the registrations will be entered. The Office is entrusted to carry out the task of registering a Community design and to maintain the Register. The Office has no competence with regard to unregistered Community designs.

2.3. Examiner (Art. 103 CDR)

An examiner is in charge of taking decisions on behalf of the Office concerning applications for registered Community designs.

2.4. Scope of Examination (Art. 47 CDR)

The registration proceedings do not involve substantive examination of the compliance with the requirements for protection, thereby keeping to a minimum the procedural burden for applicants. However, there are two substantive grounds for refusing an application:

- (a) where the subject-matter of the application does not correspond to the definition of a design as set forth in Art. 3(a) CDR; or
- (b) where the design is contrary to public policy or accepted principles of morality.

Where one of these two grounds is applicable, the examiner notifies the applicant accordingly in the examination report. The applicant will be given the opportunity of withdrawing or amending (see section 13) the application or of submitting his observations before the examiner takes a decision. The meanings of “design” and “public policy or accepted principles of morality” are explained in section 5 below.

2.5. User-friendliness (Recital 24th CDR)

The examiner has to bear in mind that one of the fundamental objectives of the CDR is that the registration of Community designs should present the minimum cost and difficulty to applicants, so as to make it readily available to any applicant including small and medium-sized enterprises and individual designers.

2.6. Time Limits (Art. 57 CDR)

The general rules for the calculation of time limits given in the CDR, the CDIR and the CDFR are specified in these Guidelines. If a request for extension of a time limit is made before its expiry and reasons are given by the applicant, then a further period will be allowed. Additional extensions will be granted in exceptional cases only.

2.7. Decisions (Art. 62 CDR; Art. 38 CDIR)

In all cases where an examiner takes a decision adverse to the applicant the grounds for the decision must be given. Such decision is communicated via a standard letter, containing language that will be adapted to each particular case, which refers to the relevant provisions of the Regulations and explains the reason(s) for the decision.

2.8. Appeal (Art. 55 CDR)

Applicants have a right to appeal against any decision which affects them adversely. A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal. Any written communication of such a decision will include a notice that the decision may be appealed within two months from the date of receipt of the notification of the decision. Appeals have suspending effect. Within the period in which an appeal may be lodged, examiners will not take any step which is not easily reversed (e.g. publication) but preparations for such a step should be carried out.

3) RECEIPT OF APPLICATION

3.1. Date of Receipt and File Number (Art. 35 CDR; Art. 7(1)(3) CDIR)

Applications may be filed at the Office directly, or at the central industrial property office of a Member State, for Belgium, the Netherlands and Luxembourg the Benelux Design Office being the competent central industrial property office. In each case the pages of the document making up the application are marked with the date of receipt and the file number of the application.

3.2. Issue of Receipt (Art. 7 CDIR)

The examiner issues a notification of receipt for a registered Community design. The notification will specify the file number, the representation, an identification of the design (or of the first design in case of a multiple application), the nature and the number of the documents and the date of their receipt, and the number of designs filed in case of a multiple application. Where the application does not contain any deficiency, the notification will indicate that the Community design is accepted for registration.

Where the application has been filed at the central industrial property office of a Member State including the Benelux Design Office, the date of receipt at the Office will be shown on the notification.

Where the application contains deficiencies, the examiner will identify all deficiencies in an "examination report" which will be included in the notification.

Therefore, upon service of the receipt, the applicant is notified of the receipt of the application, the deficiencies to be remedied and the missing elements to be provided in order to allow the application to proceed to registration.

By means of combining the notification of receipt with the examination report the exchange of communication between the Office and the applicant (or his representative) is minimised and the registration proceedings are simplified.

4) ALLOCATION OF A FILING DATE

4.1. Minimum Requirements (Art. 36(1), 38 CDR; Art. 10(1) CDIR)

In order to allocate a filing date to an application for a registered Community design the examiner checks whether the application contains at least

- (a) a request for registration of a Community design, and
- (b) information identifying the applicant, and
- (c) a representation of the design suitable for reproduction (or a specimen in the case of a two-dimensional design for which publication is deferred).

Payment of fees is not a requirement for allocating a filing date (see section 12).

4.2. Request for Registration (Art. 36(1)(a), 38(2) CDR)

Concerning the request for registration, the requirement under section 4.1.(a) for allocating a filing date, is fulfilled where the applicant has completed (at least partly) the application form provided by the Office. However, the applicant is free to use his own form.

Where it is obvious that the documents received from the applicant are not an application for a registered Community design, but an application for registration of a Community trade mark, the examiner will forward the documents to the competent department of the Office.

4.3. Identification of the Applicant (Art. 36(1)(b) CDR)

The requirement under section 4.1.(b) for according a filing date does not mean that the information identifying the applicant has to comprise all the details set out in section 11.1. It has to be clear from that information who the applicant is, i.e. natural persons have to indicate at least their family name and given names(s); legal entities need to state their usual designation.

4.4. Representation of the Design (Art. 36(1)(c) CDR; Art. 4, 66 CDIR)

Since the representation is the means to specify the features of the design for which protection is sought, it is of utmost importance that it is clear and complete and that nothing regarding the design is left to conjecture.

Drawings, photographs (except slides), computer-made representations or any other graphical representation are accepted provided they are suitable for reproduction.

For the purpose of allocating a filing date, a representation is considered suitable for reproduction when it meets the following requirements:

- (i) where the application is filed by electronic means, the graphic or photographic reproduction of the designs must be in the data format determined by the President of the Office; the manner of identifying the different designs contained in a multiple application, or the different views, will be determined by the President of the Office;
- (ii) the design must be reproduced on a neutral background and must not be retouched with ink or correcting fluid. It must be of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished and permitting it to be reduced or enlarged to a size not more than 8 cm by 16 cm per view for entry in the Register and for direct publishing in the Community Designs Bulletin referred to in Article 73 of Regulation (EC) No 6/2002.

A background is considered neutral as long as the design is clearly discernible on it.

The Office accepts all representations of designs that meet the formal requirements of Article 4 CDIR. It is the responsibility of the applicant to ensure that the reproduction of the design is of a quality allowing all the details for which protection is sought to be clearly distinguished.

4.5. Specimen (Art. 36(1)(c) CDR; Art. 5(1)(3), 65(2) CDIR)

The graphic or photographic reproduction of the design can be substituted by a specimen of the design provided

- (1) the application relates to a two-dimensional design, and
- (2) the application contains a request for deferment.

Only if these two conditions are met, is a specimen admissible. In case of a multiple application, the substitution of the representation by a specimen may apply only to some of the designs, provided these designs are two-dimensional and they are subject to a request for deferment.

The (multiple) application and the specimen(s) have to be sent by a single mail in the form of post or personal delivery. A date of filing will not be accorded until both the application and the specimen(s) have reached the Office.

The formal conditions applying to specimens are set forth in section 11.7.

4.6. Treating Deficiencies (Art. 38(2), 46(2) CDR; Art. 10(1)(2), 66 CDIR)

4.6.1. Transmission of the application from a national or regional office to the Office

Where the applicant chooses to file his application at the central industrial property office of a Member State or the Benelux Design Office, the date of receipt of the application by the receiving office will become the date of filing, provided that the application reaches the Office within two months after the date of receipt.

If the application reaches the Office more than two months after the date of receipt, the date of filing will be deemed to be the date on which the application has been received by the Office.

4.6.2. Transmission of the application by fax.

Transmission by telecopier (fax) may not be appropriate for design applications, because the representation of the design may be distorted. Where an application is transmitted by fax nevertheless, it is highly recommended that a confirmation copy is filed without delay, either by personal or post delivery.

Where an application is transmitted by fax, the examiner will await a confirmation copy for a period of up to one month before further processing the application. After this waiting period of maximum one month the examiner will continue the examination with the documents on file.

Two deficiencies caused by unsatisfactory fax transmission may arise:

- (i) The reproduction of a design as transmitted by fax is not of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished.
- (ii) The documents received are incomplete and/or illegible.

Where a confirmation copy is received within one month from the date of receipt of the fax transmission, these two types of deficiencies (i) and (ii) have different consequences on the filing date:

- (1) In case of deficiency (i) the examiner will allocate the date of receipt of the fax transmission as the date of filing.
- (2) In case of deficiency (ii) the examiner will allocate the date of receipt of the confirmation copy as the date of filing.

The examination will proceed on the basis of the confirmation copy.

Where one of the two above-mentioned deficiencies (i) or (ii) occurs due to fax transmission, but no confirmation copy is received within one month from the date of receipt of the fax transmission, the examiner will notify the applicant of the deficiency inviting him to remedy the deficiency within a period of two months by submitting the confirmation copy by post or personal delivery. Where the applicant remedies the deficiency in due time, the date of receipt of the confirmation copy becomes the date of filing, provided that original reproduction is qualified to remedy the deficiencies. Where the applicant does not remedy the deficiency in due time, the examiner will not allocate a date of filing. Consequently, the application is not dealt with as a Community design application. All fees paid will be refunded.

The confirmation copy has to consist in the document which was used originally for the fax transmission. The examiner will reject a "confirmation copy" which is not identical to the document which was used for the fax transmission.

Where the Office receives a reproduction of a design with only some of its views being deficient due to fax transmission and where the confirmation copy has been received later than one month after the date of receipt of the fax transmission, the applicant will be left with the choice of either obtaining the date of receipt of the confirmation copy as date of filing, or keep the date of receipt of the fax transmission as the date of filing, but only for the non-deficient views, while the deficient views are ignored.

4.6.3. Further deficiencies affecting the date of filing

Where the examiner finds that the requirements for allocating a filing date (see section 4.1.) are not fulfilled, he notifies the applicant and invites him to remedy the deficiency within a time limit of two months.

Where the deficiencies are remedied within the time limit, the date on which the remedy of the deficiencies are received will be the date of filing. The applicant will be notified accordingly.

Where the deficiencies are not remedied within the time limit, no date of filing will be allocated. Consequently, the application will not be dealt with as an application for a registered Community design and the fees paid will be refunded.

5) GROUNDS FOR NON-REGISTRABILITY

The examiner will refuse the application where he finds that the subject-matter of the application

- (a) does not correspond to the definition of a design as set forth in Art. 3(a) CDR; or
- (b) is contrary to public policy or to accepted principles or morality.

5.1 Definition of “design” (Article 3(a) CDR).

A “design” means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture, and/or materials of the product itself and/or ornamentation.

A “product” means any industrial or handicraft item, including packaging, get-up, graphic symbols or typographic typescales, but excluding computer programs.

Compliance with the definition of a design is subject to examination. Failure to comply with the definition constitute a ground for non-registrability.

Where the application concerns the design of a product composed of multiple components, the representation of the design must represent 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 (see section 11.4).

Where a representation comprises a set of articles, the representation will not be considered as representing a design in the meaning of Art. 3(a) CDR except where it is clear from the representation that protection is sought for a design resulting from the combination of the features of the articles. Such a combination may arise e.g. where the articles of the set are so closely related that they can be considered as forming a single product.

Whether the product claimed is actually made or used, or can be made or used, in an industrial or handicraft manner, shall not be examined.

5.2. Public Policy and Morality (Art. 9 CDR)

The examiner rejects an application if the design is contrary to public policy or accepted principles of morality. There is no legal definition of “public policy” and “morality” in the CDR. Any refusal on that ground has to be reasoned by reference to the perception of the public within the Community. By way of example, designs that contain racist messages or images are not acceptable. Poor taste manifested in a design is not a ground for non-registrability.

5.3. Treating Deficiencies (Art. 47(1)(b) CDR; Art. 11 CDIR)

Where a ground for non-registrability is found, the examiner will notify the applicant in the examination report along with other deficiencies, if any. A time limit of two months will be set for the applicant to submit his/her observations, withdraw the application or amend it by submitting an amended representation of the design, provided that the identity of the design is retained. The application will be rejected if the applicant fails to overcome the ground for non-registrability within the time limit specified.

A multiple application may be rejected in part where the ground for non-registrability only applies to certain designs of the application.

In the course of the registration procedure, amendment of the representation of the design may only result from an objection raised by the examiner regarding a ground for non-registrability, that is where the design is found not to comply with the definition given by Article 3(a) CDR, or where it is found not to comply with public policy and morality.

6) INDICATION OF PRODUCTS

6.1. Clear Indication (Art. 36(2) CDR; Art 1(1)(d), 3(3) CDIR)

The application must further contain an indication of the products in which the design is intended to be incorporated or to which it is intended to be applied. The applicant has to word the products in such a way as to indicate clearly the nature of the products and to allow each of them to be classified in only one class of the Locarno Classification.

The indication of products does not affect as such the scope of protection of a Community design.

The examiner will in straightforward cases substitute *ex officio* the wording used by the applicant in order to indicate a product with an equivalent term belonging to the Locarno Classification. Straightforward examples are synonyms American/English such as jewelry – jewellery, trunk – boot, restroom – bathroom, sidewalk – pavement, nightshifts – nightshirts, garbage – rubbish etc. However, the examiner will refrain from replacing the applicant’s wording with a more specific term.

6.2. Preferred Form (Art. 3(3) CDIR)

In order to speed up and simplify the registration procedure, it is highly recommended that applicants indicate the products by using the terms listed in the Locarno Classification or in the

EuroLocarno database, which is accessible on-line at oami.eu.int. EuroLocarno contains the list of products of the Locarno Classification supplemented by more than 2000 additional terms. EuroLocarno is available in all official languages of the Community.

6.3. Treating Deficiencies (Art. 45(2)(a), 46(1)(3) CDR; Art. 10(3)(4)(8) CDIR)

In case the application does not contain an indication of products the examiner notifies the applicant of the deficiency in the examination report and sets a time limit of two months from receipt of the notification to allow remedy of the deficiency. If the deficiency is not remedied before the time limit expires, the application is rejected.

7) CLASSIFICATION

7.1. Purpose (Art 36(6) CDR; Art. 3(2) CDIR)

The examiner has to bear in mind that the classification of products serves exclusively administrative purposes. It does not affect as such the scope of protection of a Community design.

7.2. Locarno Classification (Art. 40 CDR; Art. 3(1)(3) CDIR)

The most recent version of the Classification under the Locarno Agreement applies which at present is the seventh edition in force since January 1, 1999. The Locarno Agreement contains a List of Classes and an Alphabetical List giving a general indication of fields to which the products belong. The Alphabetical List should be consulted for the classification of each specific product.

7.3. Classification by the Applicant (Art. 36(3)(d) CDR; Art. 1(2)(c), 3 CDIR)

The applicant may submit with the application a classification of products indicating the class(es) and sub-class(es) according to the Locarno Classification.

If the applicant provides a classification, the products must be grouped according to the classes of the Locarno Classification, each group being preceded by the number of the relevant class and presented in the order of the classes and sub-classes.

The applicant's failure to submit a classification does not constitute a deficiency.

7.4. Classification by the Examiner

Where the applicant has not submitted a classification, it will be produced by the examiner.

Where the applicant has submitted a classification, but the classification being incorrect, the examiner will substitute the classification of the applicant by his classification.

If a product cannot be classified in accordance with the List of Classes or the Alphabetical List, the examiner may either request the applicant to specify the nature and purpose of the designated product, or classify the product in class 99 of the Locarno Classification (i.e. "Miscellaneous").

8) MULTIPLE APPLICATION

8.1. Unlimited Number of Designs (Art. 37(1) CDR; Art 2(1) CDIR)

The number of designs contained in a multiple application is not limited.

8.2. Unity of Class (Art. 37(1) CDR)

Except in cases of ornamentation (see below) all products indicated for each and every design in a multiple application must fall in the same class of the Locarno Classification.

8.3. Ornamentation (Art. 37(1) CDR)

Ornamentation is an additional and decorative element capable of being applied to the surface of a variety of products without affecting their contours.

In the case of a multiple application in which all designs are for ornamentation, the “unity of class” (see above) does not apply.

Whether an application concerns ornamentation or not is indicated by the applicant either by ticking the corresponding box in the form provided by the Office or by providing an equivalent information where the applicant uses his own form. The decision of the applicant is not subject to in-depth examination. However, an objection will be raised where *prima facie* the examiner has strong doubts as to whether the design is for ornamentation.

8.4. Treating Deficiencies (Art. 46(1)(3) CDR; Art. 2(2), 10(3)(4) CDIR)

Where the products indicated in a multiple application (relating to designs other than for ornamentation) do not fall in the same class, the applicant is notified accordingly in the examination report. The examiner will request the applicant to divide the multiple application either in as many applications as Locarno classes are concerned or in as many applications as designs are contained in the original multiple application. The purpose of that division is to restore the “unity of class”.

The applicant is invited to comply with the examiner’s request within the two-month time limit specified and to pay the total amount of fees for all applications resulting from the division of the multiple application.

The total amount to be paid is calculated by the examiner and is notified to the applicant in the examination report. The examiner proposes the most cost-effective option between the two available that is, dividing either in as many applications as Locarno classes are concerned or in as many applications as designs are contained in the original multiple application.

Where the applicant complies with the invitation to file (a) divisional application(s) and pays the total amount of fees, the resulting application(s) will maintain the date of filing of the multiple application initially filed. Alternatively, the applicant may withdraw his application in part by withdrawing some of the designs, or delete some of the products in order to restore the “unity of class”.

Where the applicant fails to comply with the request of the examiner in due time, the application is rejected in its entirety.

9) DESCRIPTION

9.1 Scope (Art. 36(3)(a) CDR; Art. 1(2)(a) CDIR)

The application may include a description not exceeding 100 words explaining the representation of the design or the specimen. Descriptions submitted after the date of filing will not be accepted.

The description does not affect as such the scope of protection of a Community design.

9.2. Contents (Art. 36(3)(a) CDR; Art. 1(2)(a) CDIR)

The description shall not contain any reference to features that do not appear in the representation of the design or in the specimen.

The description shall not contain any statement as to the purported novelty or individual character of the design or its technical value.

9.3. Registry (Art. 69(2)(o) CDIR)

The description will be taken on file. It will not be entered in the Register or published in full text. However, the Register will comprise an indication that a description was filed.

10) PRIORITY

10.1. Previous Application(s) (Art. 41, 42 CDR; Art. 8 CDIR)

Priority may be claimed on the basis of a previous (first) application of a design or utility model (but not on the basis of a patent application) filed in or for a State which is party to the Paris Convention or a member of the WTO. Priority can only be claimed where the application for a Community design is filed within six months from the date of filing of the first application(s).

More than one priority may be claimed, in particular in the case of a multiple application where the designs contained in that multiple application were previously filed separately in or for any of the foregoing States.

Priority may be claimed either simultaneously with the filing of the application, or within one month subsequent to the date of filing.

Where priority is claimed in the application, the applicant must indicate the file number of the previous application(s) and file a copy thereof or a copy of the appropriate priority or the registration certificate issued by the competent office, within three months from the date of filing of the Community design application.

Where priority is claimed subsequently to the filing of the application, the declaration of priority must be submitted within a period of one month from the filing date. The declaration of priority

must indicate the date on which and the country in which the previous application(s) was/were made.

A copy of the previous application(s), containing among other details the application number, must reach the Office within three months from receipt of the declaration of priority.

Original documents or certified copies are not necessary. Accurate photocopies of such documents are sufficient.

Where the previous application is not in one of the five languages of the Office, the examiner may require a translation in any of the five languages within two months. However, the examiner will not request such translation if the document is issued in any of the official languages of the Community.

In order to avoid the loss of right to priority, it is highly recommended that the priority is claimed in the application. Moreover, claiming a priority in the application at the time of filing will shorten the registration and publication proceedings.

Applications received between 1 January and 31 March 2003 will have their priority calculated from 1 April 2003. Thus, no priority claim can be based on an application filed prior to 1 October 2002.

10.2. Exhibition Priority (Art. 44 CDR; Art. 9 CDIR)

Where an exhibition priority has been claimed in the application, the applicant must, together with the application or at the latest within three months from the date of filing, submit a certificate issued at the exhibition by the authority responsible for the protection of industrial property. This certificate must declare that the design was incorporated or applied to the product and disclosed at the exhibition, and must state the opening date of the exhibition and, where the first disclosure of the product did not coincide with the opening date of the exhibition, the date of such first disclosure of the product. The certificate must be accompanied by an identification of the actual disclosure of the product, duly certified by the competent authority.

Where the applicant wishes to claim an exhibition priority subsequently to the filing of the application, the declaration of priority, indicating the name of the exhibition and the date of first disclosure of the product in which the design was incorporated or applied, must be submitted within one month from the filing date. The above mentioned certificate must be submitted to the Office within three months from receipt of the declaration of priority.

Priority can be granted only where the application for a registered Community design is filed within six months from the date of the first exhibition of the design.

An exhibition priority is only available for international exhibitions as officially recognised under the Convention on Industrial Exhibitions of 22 November 1928 e.g. world exhibitions.

10.3. Treating Deficiencies (Art. 40, 46(4) CDR; Art. 10(7) CDIR)

Where a priority is claimed, the examiner checks whether:

- (a) the file number of the earlier application is indicated;

- (b) the filing date of the application for a registered Community design falls within the period of six months of the claimed priority date;
- (c) the previous application(s) has/have been filed in or for a State on the Paris Convention list or the WTO list;
- (d) the time limit to file a declaration of priority is complied with.

Upon receipt of the documents establishing the right to priority, the examiner checks whether the time limits to submit the documents establishing the right to priority are complied with.

The examiner will examine whether *prima facie* the subject-matter of the priority application and the present application are the same. He will raise an objection only where a clear discrepancy is found.

Where a deficiency has been found, the examiner will invite the applicant to remedy the deficiencies within a time limit of two months. If the deficiencies are not remedied before the time limit expires, or if deficiencies are not remediable, the right of priority will be lost.

Where the examiner finds that the applicant has lost a right to claim a priority, he notifies the applicant accordingly.

11) FORMALITIES OF THE APPLICATION

11.1. Details of the applicant (Art. 1(1)(b), 10(1)(b)(3)4 CDIR)

(Mandatory) The applicant must state his name, address, nationality and the State in which he is domiciled or has his seat or establishment. Names of natural persons must be indicated by the person's family name and given name(s). In addition to their names, companies, firms and other legal entities must indicate their form of incorporation, which may be abbreviated (e.g. PLC, S.A.), and indicate the law of the State governing them. Where the Office has allocated the applicant an identification number (ID number), the indication of the ID number together with the name of the applicant is sufficient.

(Recommended form) The names of legal entities should be given in full and only their form of incorporation may be abbreviated. The address should contain, if possible, the street, street number, city or county, postal code and country. The applicant should indicate only one address, but if there are several, the first one mentioned will be recorded by the examiner as the address for service, unless the applicant specifically designates another one as an address for service. The telephone numbers as well as fax numbers and details of other data communication links, such as electronic mail, may be given by the applicant. However, non-compliance with the recommended form does not constitute a deficiency.

11.2. Legal Representative (Art. 45(2), 46(3), 62, 77, 78 CDR; Art. 1(1)(e), 10(3)(4) CDIR)

Natural or legal persons not having either their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community must appoint a representative to act for them in all proceedings except the filing of an application for a Community design. If an application is made in these circumstances and a representative has not been appointed the applicant will be requested in the examination report to do so. A time limit of two months will

be given. If the applicant does not appoint a representative in due time, the application will be refused.

A representative may be:

- (a) an employee of a legal person having a place of business in the Community and having economic connections with the applicant, or
- (b) a legal practitioner qualified in one of the Member States, having a place of business in the Community and being entitled to act as a representative in trade mark matters in the State in which he is qualified, or
- (c) a professional representative who appears on the list maintained by the Office under Article 89(1)(b) CTMR, or
- (d) a person whose name is entered on the special list of representatives for design matters.

The filing of an authorisation is not required, except where an employee is appointed as representative.

Natural or legal persons having their domicile or their principal place of business or a real and effective industrial or commercial establishment in the Community do not have to appoint a representative.

Where a representative is appointed his/her name and business address must comply with the requirements as for the applicant's address in section 11.1. If there is more than one representative with different business addresses, the application should indicate which address should be used as an address for service. Where no such indication is given, the examiner will record the first mentioned address as the address for service. Where an ID number has been assigned to an applicant, a representative or an association of representatives it will be sufficient to indicate the respective name and ID number. Applicants and their representatives who have been granted an ID number in Community Trade Mark matters may use this ID number for Community design matters.

11.3. Citation of Designer(s) (Art. 18, 36(3)(e), 45(2)(a), 46(3) CDR; Art. 1(2)(d) CDIR)

The application may include a citation of the designer(s) or of the team of designers or a statement signed by the applicant to the effect that the designer(s) or team of designers has/have waived the right to be cited. The citation and the waiver or the absence of any indication regarding the designer(s) are not subject to examination.

11.4. Format of the Representation of the Design (Art. 45(2), 46(3) CDR; Art. 4(1) CDIR)

The representation of the design must consist of a graphic or photographic reproduction of a single design in black and white or in colour. It must fulfil the following requirements:

- (a) except where the application is filed by electronic means, the representation must be filed on separate sheets of paper or reproduced on the page provided in the form made available by the Office;
- (b) in case of separate sheets of paper, the design must be reproduced on white and opaque paper either pasted or printed directly on it. Only one copy must be filed and the sheets of paper must not be folded or stapled;
- (c) the size of the separate sheet must be DIN A4 size (29.7 cm high, 21 cm wide) and the space used for the reproduction must not be larger than 26.2 cm x 17 cm. A margin of at least 2.5 cm must be left on the left-hand side; the sheets of paper must also indicate on the top the number of views and, in case of a multiple application, the consecutive number of

the design; they must not contain any explanatory text, wording or symbols other than those referred to in section 11.4.5. or the indication «top » or the name or address of the applicant;

- (d) where the application is filed by electronic means, the graphic or photographic reproduction of the designs must be in the data format (*determined by the President of the Office*); the manner of identifying the different designs contained in a multiple application, or the different views, must be (*determined by the President of the Office*);
- (e) the design must be reproduced on a neutral background and must not be retouched with ink or correcting fluid. It must be of a quality permitting all the details of the matter for which protection is sought to be clearly distinguished and permitting it to be reduced or enlarged to a size not more than 8 cm by 16 cm per view for entry in the Register and for direct publishing in the Community Designs Bulletin.

The Office will accept colour representations. Where the reproduction is in colour, the registration and the publication will also be in colour.

It is the applicant's interest and responsibility to submit a suitable representation including a sufficient number of views to specify all the features of the design for which protection is sought. The examiner will not check whether the design might have other features which are not shown in the views as submitted.

The representation may include up to seven different views of the design. The views may be plain, elevation, section, or perspective views.

Detail views of portions of the design on an enlarged scale may be used as well.

The alternate positions of a design, or of a feature of the design, must be shown in separate views.

Each of the views must be numbered by the applicant in arabic numerals by figures separated by a dot, the first being the number of the design, the second being the number of the view. For instance, the 6th view of the second design of a multiple application must be numbered: 2.6.

Where more than seven views are provided, the examiner will disregard for registration and publication all the extra views. The examiner takes the views in the consecutive order in which they are numbered by the applicant without need to notify him beforehand.

The examiner will check whether the views relate *prima facie* to the same design.

The representation of a design should be limited to the features for which protection is sought. However, the representations may comprise other elements that help to identify the features of a design for which protection is sought. In an application for registration of a Community design the following identifiers will be allowed:

1. Dotted lines may be used in a view either to indicate the elements for which no protection is sought or to indicate portions of the design which are not visible in that particular view, i.e. non-visible lines. Therefore, dotted lines identify elements which are not part of the view in which they are used.
2. Boundaries may be used to surround features of the design for which protection is sought.
3. Colouring may be used on a black and white drawing to highlight the features of the design for which protection is sought only.

Where the design concerns ornamentation, a product to which it is applied may be identified by dotted lines or the ornamentation may be surrounded by boundaries.

It is the applicant's responsibility to use the dotted lines, boundaries and colouring in such a way to make clear for which features protection is sought and for which not, since the examiner will not conduct any examination other than verifying the suitability of the reproduction for publication.

Once the application has been filed with the Office, the submission of additional views will not be accepted.

11.5. Repetitive Patterns (Art. 4(3) CDIR)

Where the registration of a design consisting in a repeating surface pattern is applied for, the representation of the design must show the complete pattern and a sufficient portion of the repeating surface.

11.6. Typographic Typefaces (Art. 4(4) CDIR)

Where registration for a design consisting of a typographic typeface is applied for, the representation of the design must consist of a representation of a string of all the letters of the alphabet, upper case and lower case as applicable, and of all the Arabic numerals, as well as of a text of five lines produced with the typographic typescale, all being in the size pitch 16. If the string of letters of the alphabet is limited to uppercase letters, the typeface will be considered to consist of uppercase letters only.

11.7. Specimen (Art. 5 CDIR)

Where a specimen is submitted, the specimen must be pasted on a sheet of paper and must not be larger than 26,2 cm x 17 cm when unfolded, must weigh not more than 50 grams and their thickness must not exceed 3 mm. The specimen must be capable of storage, without folding, alongside documents of the size set out in section 11.4.(c).

Five copies of the specimen must be filed. In case of a multiple application, five copies of the specimen must be filed for each design.

11.8. Second Language (Art. 98 CDR; Art. 1(1)(h) CDIR)

The application may be filed in any of the official languages of the Community (language of filing).

The applicant must indicate a second language which must be a language of the Office, that is Spanish (ES), German (DE), English (EN), French (FR) and Italian (IT). The second language must be different from the language of filing.

In the course of the examination proceedings, the language used in the written communications of the Office will be the language of filing. However, where the language of filing is not one of the five languages of the Office, the Office may send written communications to the applicant in the second language.

11.9. Signature (Art. 65 CDR; Art. 1(1)(i) CDIR)

The application has to be signed by the applicant or his representative. The name of the signatory must be indicated and the authority of the signatory must be specified.

11.10. Treating Deficiencies (Art. 45(2), 46(3) CDR; Art. 10(3)(4) CDIR)

If there is any deficiency regarding one of the above requirements, the examiner notifies the applicant accordingly in the examination report. The applicant is given a time limit of two months within which to remedy the deficiency.

If the deficiency is not remedied in due time, the application is refused by a decision of the examiner.

Any deficiency applying to any of the above requirements not remedied and affecting only some of the designs of a multiple application, results in the partial rejection of the multiple application in so far as the designs affected by the deficiency are concerned.

12) PAYMENT

12.1. Fees (Art. 2 to 9 and Annex CDFR; Art. 10(2)(6) CDIR)

Fees must be paid in Euro. Payments made in other currencies will not be accepted.

The fees related to the filing of an application with no deferment are:

Registration fee		
first design		230 €
from 2 nd to 10 th design		115 €
from 11 th onwards		50 €
Publication fee		
first design		120 €
from 2 nd to 10 th design		60 €
from 11 th onwards		30 €

The registration fee and publication fee must be paid at the same time, together with the filing of the application (see section 12.3. for deficiencies regarding late payment).

Where the application includes a request for deferment, the deferment fee will replace the publication fee. The related fee is:

Deferment fee		
first design		40 €
from 2 nd to 10 th design		20 €
from 11 th onwards		10 €

In a multiple application the applicant may request deferment of publication for only some of the designs.

At the end of the deferment period or earlier on if anticipated publication is requested by the applicant, the publication fee must be paid for the design, or for those designs in a multiple application which the applicant has identified as being subject to publication (see section 15 for deferment).

12.2. How can fees be paid?

The preferred method of payment is via current account. Where the applicant holds a current account with the Office, all fees will automatically be debited with effect on the date on which they are due, so as to avoid any loss of rights, surcharges or fees for late payment.

It is possible to open a current account with the Office from which all fees payable by the holder of the current account will be debited automatically unless instruction is given in writing not to debit a particular fee.

Other methods of payment are by cheque or by bank transfer to the account of the Office, in cash or by credit card at the premises of the Office.

In case of payment through transfer to a bank account held by the Office or through remittance of a cheque, the date on which the amount of the payment is actually entered in a bank account held by the Office or the date on which the cheque is received by the Office will be considered to be the date of payment.

The period for payment will be considered to have been observed if the person who made the payment observed the following requirements:

- a) in a Member State, within the period within which the payment should have been made:
 - (i) effected the payment through a banking establishment, or
 - (ii) duly gave an order to a banking establishment to transfer the amount of the payment; or
 - (iii) dispatched at a post office or otherwise a letter bearing the address of the Office and containing a cheque within the meaning of Article 5(1)(b) CDFR, provided that the cheque is honoured;
- and
- b) paid a surcharge of 10 % on the relevant fee or fees, but not exceeding 200 EUR; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than 10 days before the expiry of the period for payment.

Given that bank transfers always take some time especially from one Member State to the other, such method of payment should not be favoured because it could be to the detriment of the applicant in case effective transfer is lately entered in the bank account held by the Office. This means that where an order is made for a bank transfer the same day the application is filed, it is unlikely that effective payment would be received on time in the Office's bank account. As a consequence, the applicant is likely to be liable for the payment of a 10% surcharge.

12.3. Deficiencies regarding payments (Art. 10(2)(6) CDIR)

No deficiencies regarding payments will arise where the payments are made in full amount via current account. Therefore, the following only relates to method of payments other than current account.

Where the payment of fees has reached the Office at the time of the examination of the related application, the payment will be deemed to have been made in due time.

Where the Examiner notes that the fees payable together with the application (i.e., the registration fee, the publication fee or in case of a request for deferment the deferment fee, plus any additional registration, publication or deferment fees in the case of a multiple application) have not yet arrived at the Office, he will invite the applicant to pay these fees within two months, together with the fees for late payment under point 7 to 10 of the Annex to the Fees Regulation. The sending of this notification will trigger the obligation to pay the fees for late payment. This applies if the fees have not been paid at all, or not been paid in full.

It is therefore of utmost importance for applicants to ensure that payments made by bank transfer are credited on the bank account of the Office at the same day on which the application for a Community design is received. Applicants are discouraged from delaying payment of the fees since this will necessarily lead to the obligation to pay the surcharge.

The exact amount of fees to be paid, including fees for late payment and/or additional fees, will be specified in the examination report.

The applicant must effect the payment of the full amount of the fees including the fees for late payment within this time limit through any of the means of payment identified in section 11.2. Since the date of effective payment will be deemed the date on which the amount of the payment is actually entered in a bank account held by the Office or the date on which the cheque is received by the Office, the applicant must ensure that the Office's bank account is credited or that the cheque is received and met before the expiry of the time limit specified in the examination report.

If full payment, including where applicable fees for late payment, has not been made within the time limit specified in the examination report, the application is rejected.

As regards multiple applications, the examiner rejects the application only as regards the additional designs which are not covered by the amount paid.

Unless the applicant himself has made it clear which of the designs are to be disregarded, the examiner will take the designs in their numerical order.

Every payment must contain sufficient information in order that the identity of the person making the payment and the purpose of such payment can be immediately established.

In particular, the letter accompanying the payment must contain information as to the name of the person making the payment, the specification of the fee for which payment is made (registration fee, publication fee, publication fee, deferment fee) and, where appropriate, the applicant's reference.

Fees will not be refunded if a filing date has been granted, except where the amount of fees paid by the applicant is insufficient to cover the fees relating to registration and publication (or deferment as the case may be) for the design, or for at least one design of a multiple application.

13) WITHDRAWAL AND CORRECTIONS

13.1. Withdrawal (Art. 12(1) CDIR)

The applicant may at any time withdraw an application for a registered Community design or, in the case of a multiple application, withdraw some of the designs contained in the multiple application.

13.2. Corrections (Art. 12(2)(3) CDIR)

Upon request by the applicant, only the name and address of the applicant or the representative, errors of wording or of copying, or obvious mistakes may be corrected. A correction changing the representation of the design is not permissible.

An application for correction of the application must contain:

- (a) the file number of the application;
- (b) the name and the address of the applicant in accordance with section 11.1;
- (c) where the applicant has appointed a representative, the name and the business address of the representative in accordance with section 11.2.;
- (d) the indication of the element of the application to be corrected and that element in its corrected version.

A single application may be made for the correction of the same element in two or more applications of the same applicant.

13.3. Treating Deficiencies (Art. 12(4) CDIR)

Where an application for correction does not meet the requirements, the examiner invites the applicant to remedy the deficiency within a time limit of two months. If the deficiency is not remedied in due time, the examiner rejects the application for correction.

14) REGISTRATION

14.1. Check List (Art. 69 CDIR)

The examiner must ensure that the following details, where applicable, are present at the end of the examination:

- (a) the date of filing the application;
- (b) the file number of the application and the file number of each individual design included in a multiple application;
- (c) the date of the publication of the registration;
- (d) the name, the address and the nationality of the applicant and the State in which he is domiciled or has his seat or establishment;

- (e) the name and business address of the representative, other than an employee acting as representative according to the first sentence of Article 77 (3) CDR; where there is more than one representative, only the name and business address of the first named representative, followed by the words «et al », will be recorded; where an association of representatives is appointed, only the name and address of the association will be recorded;
- (f) the representation of the design ;
- (g) an indication of the products by their names, preceded by the numbers of and grouped according to the classes and sub-classes of the Locarno Classification;
- (h) particulars of claims of priority pursuant to Article 42 CDR;
- (i) particulars of claims of exhibition priority pursuant to Article 44 CDR;
- (j) the language in which the application was filed and the second language which the applicant has indicated in his application, pursuant to Article 98(2) CDR;
- (k) the date of registration of the design in the Register and the registration number;
- (l) a mention of any request for deferment of publication pursuant to Article 50(3) CDR, specifying the date of expiry of the period of deferment;
- (m) a mention that a specimen was filed pursuant to Article 5(a) CDIR;
- (n) a mention that a description was filed pursuant to Article 1(2)(a) CDIR .

When all the items in the check list are provided, the examiner checks whether the fees have been paid.

14.2. Entry in the Register

The examiner will take the decision that a design can be registered and will enter the date of entry into the Register. The applicant will be informed accordingly.

15) DEFERMENT OF PUBLICATION

15.1. Request for deferment of publication (Art. 50 CDR; Art. 15, 16 CDIR)

Deferment of publication may only be requested in the application. Later requests will be disregarded.

The request for deferment of publication may concern only some of the designs of a multiple application.

15.2. Effects of deferment of publication (Art. 50 CDR)

Deferment of publication is for a period of 30 months from the date of filing or, where applicable, from the priority date. Requests for a shorter period of deferment are not accepted as such and will be considered as being requests for deferment of 30 months.

Once the design is registered, publication may be requested by the holder at any time prior to the expiry of the 30-months period.

As long as publication is deferred, the information available to third parties and regarding the registration is limited. The accessible information regards the name of the holder, the name of the

representative (if any), the date of filing and registration, and the file number of the application. Neither the representation of the design nor the indication of products will be published.

Nevertheless, third parties wishing to inspect the entire file may request so if they have obtained the applicant's approval beforehand, or if they can establish a legitimate interest (Art. 74(1)(2) CDR).

The holder of the design registration subject to deferment may obtain a certified or uncertified extract of the registration containing the representation of the design or any other particulars identifying its appearance (Art. 73(b) CDIR).

15.3. Request for publication (Art. 15 CDIR)

At the latest 3 months before the 30-month deferment period expires (i.e. at the latest 27 months after the date of filing or, where applicable, the date of priority), the applicant must file a request for publication and, together with the request, complete the following formalities:

- (a) pay the publication fee as well as the additional publication fees in case of a multiple application,
- (b) file a representation of the design(s) if a specimen or specimens was (were) initially filed,
- (c) in the case of a multiple application, give a clear indication as to which of the designs will be published or surrendered, or, if the period of deferment has not yet expired, for which deferment is to be continued.

The examiner will not issue reminders to the applicant or his representative to signal the end of the deferment period. It is the responsibility of the applicant or his representative to observe this time limit. Particular attention must be given to cases where a date of priority was claimed in the application or subsequently to the application, since this priority date will determine the time limits applicable to deferment. It should all the more be so where different priority dates were claimed in respect of different designs of a multiple registration. In such case, different time limits applicable to deferment may co-exist for the designs of the same multiple registration.

In case the holder requests publication before the expiry of the 30-month deferment period, he may specify a date for publication to take place. In this case, the requirements under section 15.3.(a) to (c) hereinabove must be fulfilled at the latest 3 months before the requested date of publication. If no date of publication is specified in the anticipated request for such a publication, the requirements for publication must be fulfilled together with the request. Publication will take place as soon as technically feasible.

15.4. Deficiencies (Art. 15 CDIR)

Where the Office did not receive a request for publication before the 30-month deferment period expires, the registered Community design will be deemed from the outset not to have had the effects specified in the CDR.

The examiner notifies the holder accordingly, after the expiry of the period of deferment.

Where the request for publication contains deficiencies regarding any of the above requirements, the examiner notifies the holder accordingly at the latest 2 months before the expiration of the period of deferment, and sets a 2-month time limit for the applicant to remedy the deficiencies noted. The time limit set by the examiner will in no case expire after the period of deferment of 30

months. No extension of time may be granted where the extended time limit would expire after the period of deferment of 30 months.

Where the request for publication contains deficiencies regarding the above requirements under section 15.3.(a), the examiner notifies the applicant accordingly and sets a time limit as specified hereinabove.

Where, within the applicable time limit, the holder fails to comply with the request for payment of the full amount of fees, including where applicable late payment fees, the examiner will notify the holder that the registered Community design has from the outset not had the effects specified in the CDR.

The same consequence applies whether or not the request was for an anticipated publication.

Where the deficiency concerns a payment which is insufficient to cover all fees under section 15.3.(a), as well as late payment fees, in respect of a *multiple* application, all the additional designs not covered by the amount paid will be deemed from the outset not to have had the effects specified in the CDR.

Unless the holder made it clear which designs are to be covered by the amount paid (which is normally the case where the holder complied with the requirement under section 15.3.(c)), the examiner will take the designs in consecutive numerical order.

In the case of a request for anticipated publication that is, a request for publication filed prior to the 27th month of the deferment period, the failure to comply with the formalities under section 15.3 will result in the rejection of the request. The request will be deemed not to have been filed.

The holder may nevertheless submit another request for publication at the latest 3 months before the 30-month deferment period expires.

Where the holder has no possibility to reiterate his application for publication at the latest 3 months before the 30-month deferment period expires, the registered Community design will be deemed from the outset not to have had the effects specified in the CDR.

The unpublished elements of the registration will be removed from the register and the file will be withdrawn from inspection.

15.5. Publication after deferment (Art. 16, 17 CDIR)

Where deficiencies have been overcome, or where there was no deficiency, the registration is published. Publication may concern part of the designs of a multiple application, upon the holder's request. The publication includes a mention that deferment was applied for as well as a mention that a specimen was initially filed, where applicable.

16) PUBLICATION (Art. 49 CDR; Art. 14 CDIR)

Unless an application contains a request for deferment of publication, publication takes place immediately after registration.

Where an application contains a request for deferment of publication for part of the designs of a multiple application, publication is limited to those designs which are not concerned by deferment.

17) CERTIFICATE (Art. 17 CDIR)

A registration certificate is issued after publication of the registered Community design.