



# CARIFORUM Intellectual Property Rights and Innovation

Rebecca Santana Davies | Alicante | 21.03.2023



CARIFORUM



This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

[caripi-hub.eu](http://caripi-hub.eu)

# Design examination

## Concepts on Novelty and individual character

Alicante, Spain ( Webinar)



Funded by  
the European Union

**CARIFORUM**





EXAMINATION



RCD INVALIDITY. General principles



Article 25(1)CDR



Disclosure, exceptions.



Tests of novelty and individual carácter.  
Examples

**Questions and answers**

## How can a design qualify for registration?

- There has to be a product or part of a product
- Colours, verbal elements and sounds do not qualify as they do not constitute the appearance of a product.
- Living organisms and concepts do not qualify either, for the same reason
- Your design should respect public policy and certain morality standards

# Fees

	REGISTRATION PUBLICAION			DEFINITION OF PUBLICAION
1 <sup>st</sup> DESIGN	20EUR	+10EUR	=30EUR	40EUR*
DESIGN 2 TO 100	15EUR	0EUR	=15EUR	20EUR*
DESIGN 11 ADDITIONAL	50EUR	30EUR	=80EUR	10EUR*

# FEES

	1 <sup>st</sup> renewal	2 <sup>nd</sup> renewal	3 <sup>rd</sup> renewal	4 <sup>th</sup> renewal
Per DESIGN	90 EUR	120 EUR	150 EUR	180 EUR
<b>RENEWAL IN ADITIONAL 6 MONTHS GRACE PERIOD: + 25% OF THE BELATED RENEWAL FEE</b>				

# DEFERMENT. Request

- 30 Months from the date of filing or from the date of priority.
- The request must be submitted **together with the application.**
- Deferment fee.
- Publication fee may be paid later.

# What is examined?

- ✓ **Request** for design registration
- ✓ **Information** identifying the **applicant**
- ✓ **Representation** of the design suitable for reproduction (Art. 4(1)CDIR):
  - ✓ Good quality / Neutral background / Same design
  - ✓ **Compliance with the definition of a design**
  - ✓ **Public policy & accepted principles of morality.**



# What is NOT examined?

- ✓ **Absolute requirements** (novelty, individual character, visibility, technical function, designs of interconnections).
- ✓ **Earlier rights**
  - ✓ conflict with a prior design right
  - ✓ unauthorised use of an earlier distinctive sign in the design
  - ✓ unauthorised use of the copyright or improper use of items listed in Art. 6ter of the Paris Convention or other emblems of public interest in a Member State.
- ✓ **Whether the applicant is entitled to the design.**

# Is your design new? Where to search?

## Registered Design:

 eSearch plus  
EUIPO's Database *access*

EUIPO database

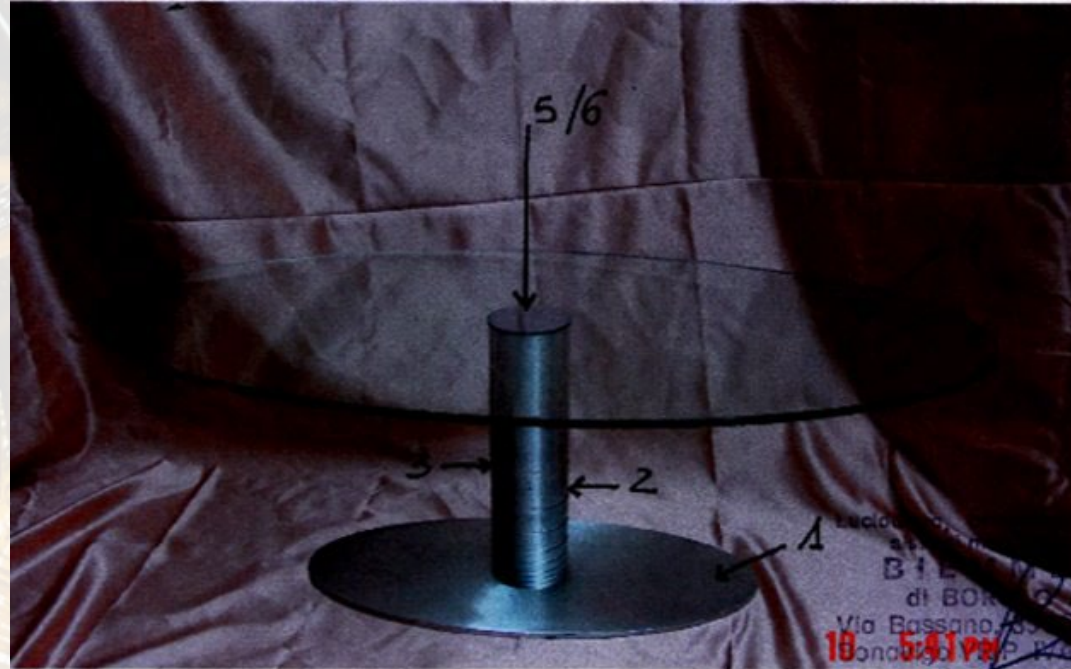
DesignView

EUIPO + national registries.

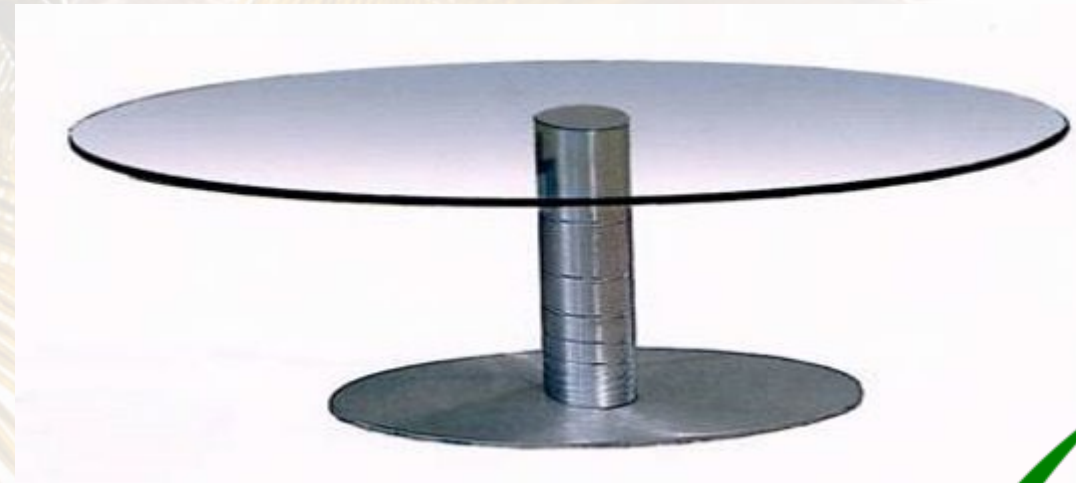
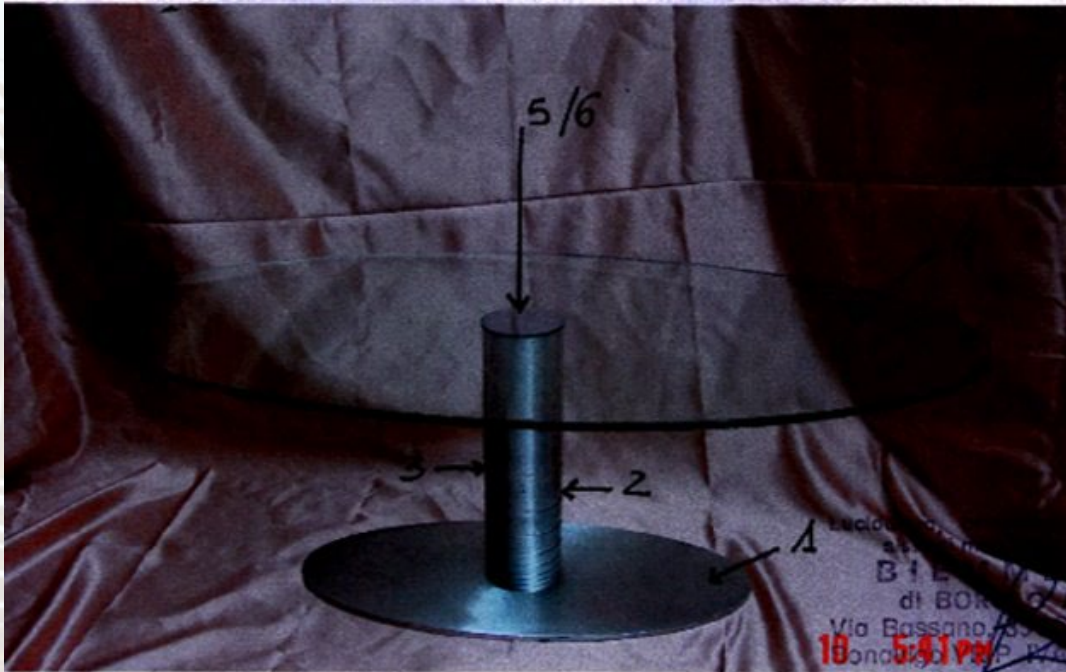
WIPO  
IP PORTAL

Global Design Database

# Representation. Quality of the design



# Representation. Quality of the design



# Representation. Neutral background

The background in a view is considered neutral as long as the design shown in this view is **clearly distinguishable from its environment** without interference of any other object, accessory or decoration, whose inclusion in the representation could cast doubt on the protection sought.

(Decision of 25 April 2012, R 2230/2011-3 – Webcams, para. 11-12).

In other words, the requirement of a neutral background neither demands a 'neutral' colour nor an 'empty' background. **It is instead decisive that the design stands out so clearly from the background that it remains identifiable.** (Decision of 25 January 2012, R 284/2011-3 – Tool chest, para. 13).

Jägermeister

General Court

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=187688&pageIndex=0&dclang=en&mode=req&dir=&occ=first&part=1&cid=856363>

Court of Justice

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=203609&pageIndex=0&dclang=EN&mode=req&dir=&occ=first&part=1&cid=494293>



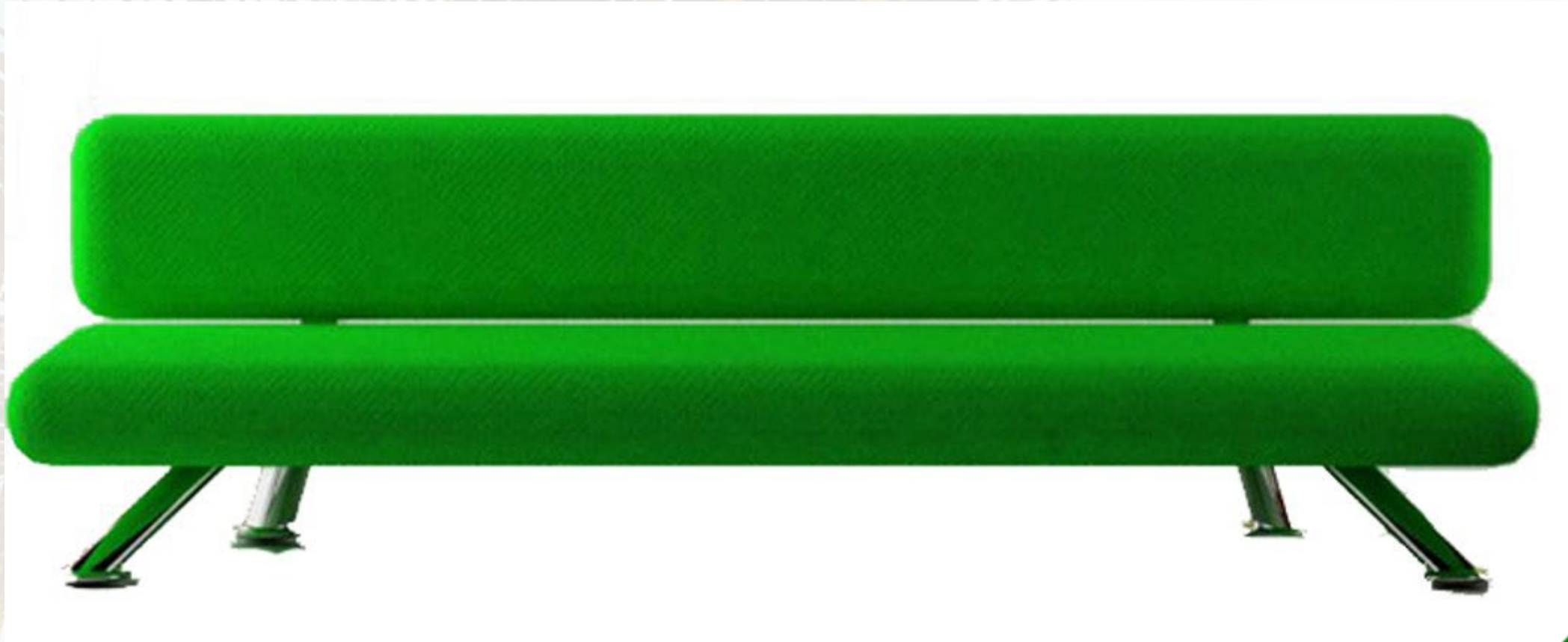
# Representation. Neutral background



# REPRESENTATION\_Neutral background



# REPRESENTATION\_Neutral background





# No filing date!

## **If all the views of the design are of bad quality or reproduced on not neutral background:**

- The applicant must replace the views with new ones / modify the views (in case of background)
- Filing date = the date when the new/modified views are received

## **If some of the views of the design are of bad quality or reproduced on not neutral background:**

- The applicant can replace the deficient views with new ones/ modify the views (in case of background)
- Filing date = the date when the new/modified views are received
- or
- Withdraw the deficient views and maintain the original date of filing but only for the correct views

## **If no response to the deficiency letter:**

Design is refused (Final Status: "Not to be dealt as a Community Design")

Fees are refunded

# No filing date!

## Convergence Project on Graphic representation of designs

The first Common Practice on designs was agreed by participating EU IP Offices in November 2015. As a result, a Common Communication has been published on the website of all implementing offices on 15 April 2016.

**The objective of this project is to define a common practice for the graphic representation of a design which safeguards both the principle of legal certainty and the objective of having a flexible system of design registration available for users. The following four topics will be part of the scope (Disclaimers, Type of Views and a benchmark exercise on Format of Views).**



EXAMINATION



RCD INVALIDITY. General principles



Article 25(1)CDR



Disclosure, exceptions.



Tests of novelty and individual carácter.  
Examples

**Questions and answers**

# Declaration of invalidity of Registered Community Designs

available after the Community design registration  
substantive check of validity of the right

- ✓ absolute grounds
- ✓ relative grounds
- ✓ entitlement to the RCD

# Article 25 CDR

## 1. A Community design may be declared invalid only if:

- a) it does not correspond to the **definition of design** under Article 3(a);
- b) it does not fulfil the **requirements of Articles 4 to 9**;
- c) by virtue of a court decision, **the right holder is not entitled** to the Community design under Article 14;
- d) it is in **conflict with a prior design** which has been made available to the public after the date of filing of the application;
- e) it is in **conflict with an earlier distinctive sign**;
- f) if it constitutes an **unauthorised use of a work protected** under the **copyright law** of a Member State;
- g) if it constitutes an **improper use** of any of the **items listed in Article 6ter** of the "Paris Convention"

# Article 25 CDR in conjunction with Articles 4-9 CDR

- Lack of novelty and individual character (Art. 4(1), 5, 6, 7 CDR);
- Non-visible component parts of complex products (Art. 4(2)(3) CDR);
- Technical function (Art. 8(1) CDR);
- Interconnections ('must fit') (Art. 8(2) CDR);
- Against public policy and morality (Art. 9 CDR).

# Article 25 CDR

1. A Community design may be declared invalid only in the following cases:  
[...]  
b) if it does not fulfil the requirements of **Articles 4 to 9**

## **Art. 4 CDR - Requirements for protection**

A design shall be protected by a Community design to the extent that it is new and has individual character [...]

# Article 25 CDR in conjunction with Article 5 CDR

## Article 5 CDR – Novelty

A design shall be considered to be new if no identical design has been made available to the public:

**a)in the case of an unregistered Community design**, before the date on which the design for which protection is claimed has first been made available to the public;

**b)in the case of a registered Community design**, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.



# Article 25 CDR in conjunction with Article 6 CDR

## Article 6 CDR - Individual character

A design shall be considered to have individual character if the **overall impression** it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available to the public:

**a)in the case of an unregistered Community design**, before the date on which the design for which protection is claimed has first been made available to the public;

**b)in the case of a registered Community design**, before the date of filing the application for registration or, if a priority is claimed, the date of priority.

## MATTERS WHICH ARE EXCLUDED FROM THE NOVELTY AND INDIVIDUAL CHARACTER TESTS

- ✓ **Invisible features of parts of complex products** (Article 4(2) CDR)
- ✓ **Features solely dictated by technical function** (Article 8(1) CDR)
- ✓ **Features of interconnections** (Article 8(2) CDR)
- ✓ Features **not discernible** (or clearly discernible) from the registration (Recital 11 DD and decision of 10/03/2008, R 0586/2007-3, Barbecues, § 23 26)
- ✓ **Features** for which the protection is not sought and they are **disclaimed** in the RCD representation (judgment of 14/06/2011, T 68/10, 'Watches', § 59 64)

# General principles

## DISCLOSURE PRELIMINARY STEP

- ✓ 1° step: the invalidity applicant must prove the **event of disclosure** (Art. 7(1) CDR)
- ✓ 2° step: the **holder** of the contested Community design **can claim an exception** to disclosure (Art. 7(1 - second half), (2) and (3)CDR)

# Establishing the event of disclosure

## The Prior Invoked Design

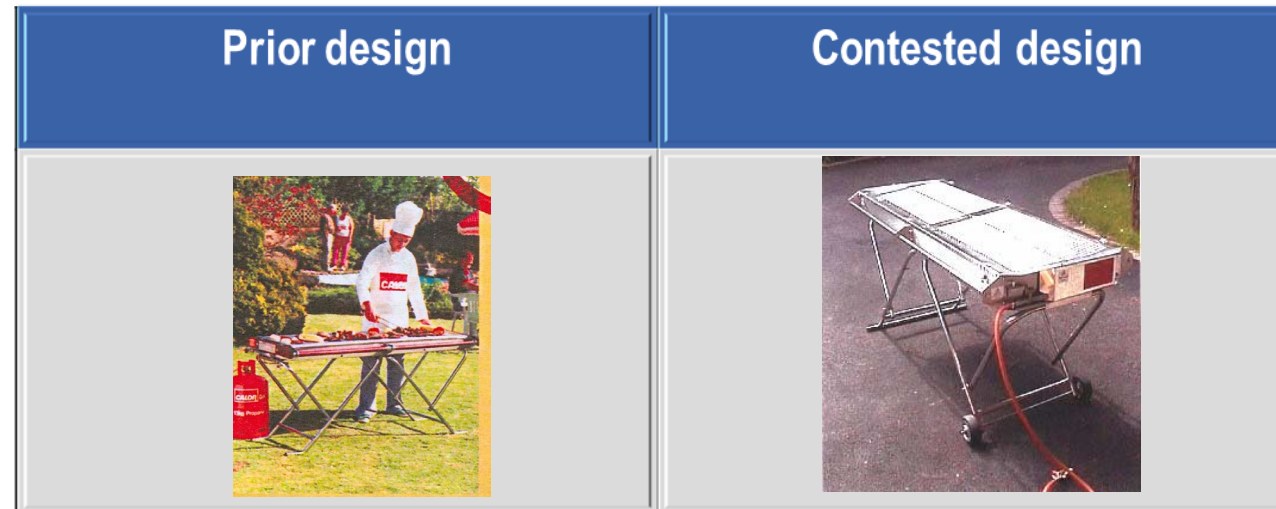
It is immaterial whether or not an earlier 'design' within the meaning of Article 3(a) CDR enjoys or enjoyed legal protection (as a design, a trade mark, copyright work, patent, utility model or otherwise) (21/05/2015, T-22/13 & T-23/13, UMBRELLAS, EU:T:2015:310, § 24).

# Establishing the event of disclosure

## The Prior Invoked Design

The invoked earlier design should be identified and reproduced precisely and in its entirety (21/09/2017, C-361/15 P & C-405/15 P, Shower drains, EU:C:2017:720, § 65).

10/03/2008, R 586/2007 3, Barbecues



# Establishing the event of disclosure

## The Prior Invoked Design

The invoked earlier design **should be identified and reproduced precisely** and in its entirety (21/09/2017, C-361/15 P & C-405/15 P, Shower drains, EU:C:2017:720, § 65).

10/03/2008, R 586/2007 3, Barbecues

IS IT REPRODUCED PRECISELY ?



# Establishing the event of disclosure

## Article. 7 CDR – Disclosure

For the purpose of applying Articles 5 and 6, a design shall be deemed to have been made available to the public if it has been:

- ✓ published following registration;
- ✓ exhibited;
- ✓ used in trade;
- ✓ or otherwise disclosed

**before** the date referred to in **Articles 5(1)(a) and 6(1)(a)** or in Articles 5(1)(b) and 6(1)(b), as the case may be, **except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community.**

# Establishing the event of disclosure

## ✓ Official Publications

The date of publication can also be identified by the reference to the relevant **INID code**

(19) 中华人民共和国国家知识产权局

(12) 外观设计专利

(10) 授权公告号 CN 303840018 S  
(45) 授权公告日 2016.09.07

(21) 申请号 201630236362.0  
(22) 申请日 2016.06.12  
(73) 专利权人 浙江瑞祺智能科技有限公司  
地址 318014 浙江省台州市椒江区三甲街道十期三期D-06-07地块  
(72) 设计人 张小龙  
(51) Int. Cl. (10) C12  
12-11

图片或照片 7 幅 俯视图

(54) 使用外观设计的产品名称  
电动车(哈雷款)

立体图

CN 303840018 S

Annex 7

(12) United States Patent  
Chandler

(10) Patent No.: US 6,459,023 B1  
(45) Date of Patent: Oct. 1, 2002

(54) MOUNTING BOARD FOR GUITAR EFFECTS  
(76) Inventor: John Chandler, 3588 Refuge Trail, Thompson Station, TN (US) 37179  
(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 97 days.  
(21) Appl. No.: 09/655,680  
(22) Filed: Sep. 7, 2000  
(60) Provisional application No. 60/132,569, filed on Sep. 7, 1999.  
(51) Int. Cl. G10C 3/02  
(52) U.S. Cl. 84/177, 84/179, 84/180, 84/184, 185, 186.1, 187, 190, 192  
(56) References Cited  
U.S. PATENT DOCUMENTS  
3,033,888 A 3/1969 Conon  
D Claims, 5 Drawing Sheets

(10) Patent No.: US 6,459,023 B1  
(45) Date of Patent: Oct. 1, 2002



# Establishing the event of disclosure

## ✓ **Exhibitions**

### Non necessarily in the EU

Exhibiting a design at a trade fair exhibition anywhere in the world generally constitutes an event of disclosure (14/03/2018, T 651/16, Footwear, EU:T:2018:137, § 67).

**Evidence:** any document able to prove that the design has been exhibited in the fair (a list of participants, a plan that contains stands, pictures of the event...)

# Establishing the event of disclosure

## ✓ **Use in trade**

Disclosure of a design can be the result of use in trade even where there is no proof that the products in which the earlier design is incorporated have actually been produced or put on the market (21/05/2015, T 22/13 & T 22/13, UMBRELLAS, ECLI:EU:T:2015:310, § 36). It may be sufficient that the products were offered for sale in catalogues (22/10/2007, R 1401/2006 3, ORNAMENTACIÓN, § 25), imported from a country outside the European Union (14/06/2011, T 68/10, Watches, EU:T:2011:269, § 31-32) or were the object of an act of purchase between two European operators (09/03/2012, T 450/08, Phials, EU:T:2012:117, § 30-45).

**Evidence:** catalogues (also extracts), invoices ...

# Establishing the event of disclosure

**Internet**

CP10 Common Practice – Criteria for assessing disclosure of designs on the internet

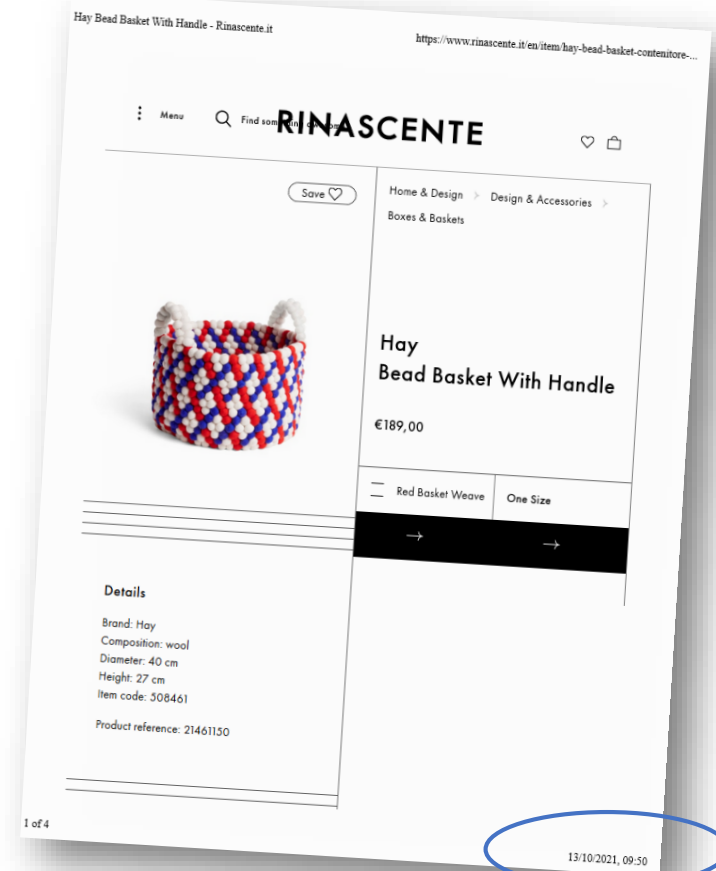
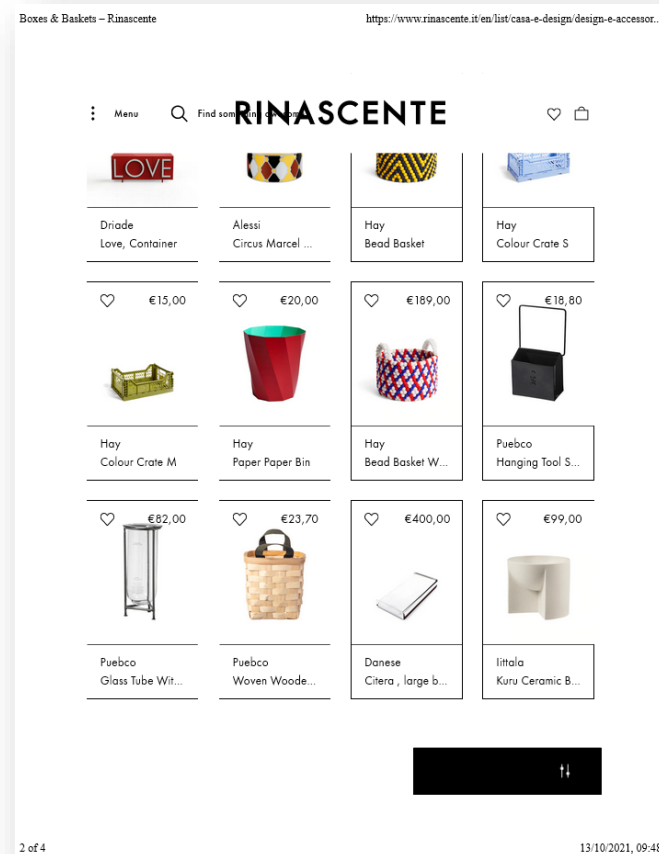
**Evidence:**

**PRINTOUTS**  
**SCREENSHOTS**  
**Images**  
**videos**  
**...Links?**

# Establishing the event of disclosure

## Websites/Apps/Emails

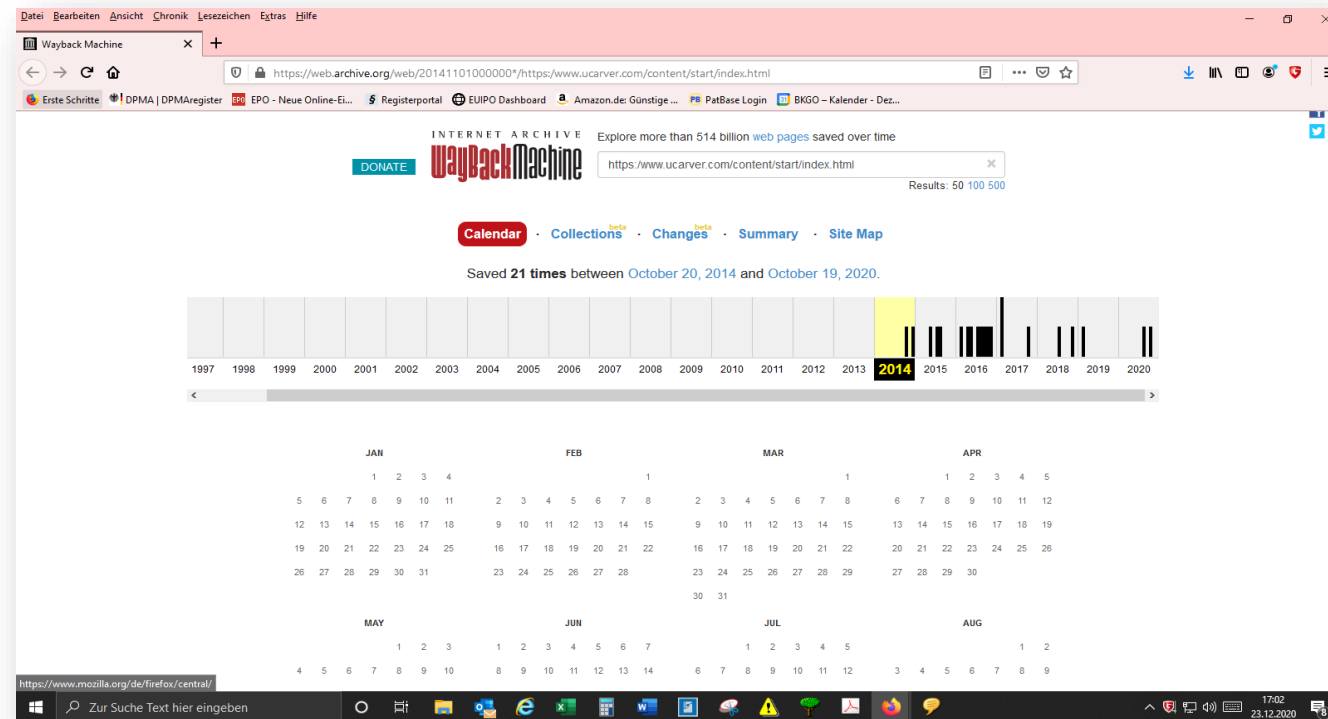
**Evidence:** printout or screenshot which shows a clear image of the relevant design + date of disclosure + URL address



# Establishing the event of disclosure

## Website archiving services - «WayBack Machine»

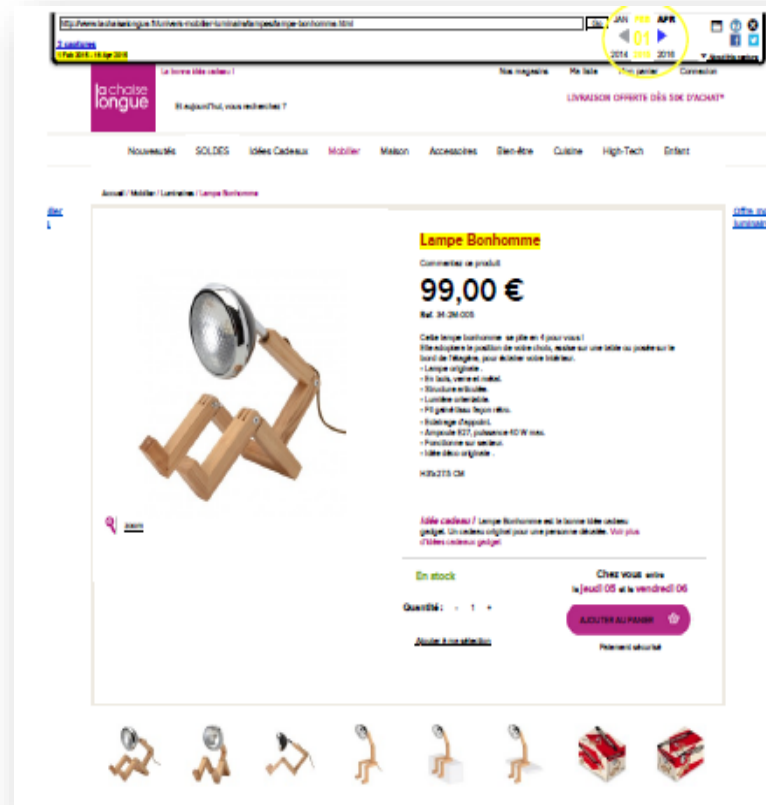
**Evidence:** URL address + screenshot showing the earlier invoked design + relevant date



# Establishing the event of disclosure

## Website archiving services - «WayBack Machine»

**Evidence:** URL address + screenshot showing the earlier invoked design + relevant date



# Establishing the event of disclosure

## AMAZON

**Evidence:** printout showing earlier design + URL address visible in the printout + product information (ASIN + date of first availability)



### Product information

#### Technical Details

Package dimensions	10.6 x 10.6 x 7.3 centimetres
Package Weight	0.28 Kilograms
Item Weight	80 Grams
Brand	Lincom
Colour	Pink
Part number	DC5PK-2
Zoom Type	Digital Zoom
Effective still resolution	30 MP

#### Additional Information

ASIN	B08Z8C3479
Delivery information:	We cannot deliver certain products outside mainland UK (Details). We will only be able to confirm if this product can be delivered to your chosen address when you enter your delivery address at checkout.
Item model number	DC5PK-2
Batteries	1 Lithium Polymer batteries required. (included)
Date First Available	17 Mar. 2021
Customer Reviews	3.7 out of 5 stars <a href="#">179 ratings</a>
Best Sellers Rank	21,795 in Electronics & Photo (See Top 100 in Electronics & Photo) 124 in All-in-One Digital Cameras



# Establishing the event of disclosure

**AMAZON**

**Evidence:** printout showing earlier design + URL address visible in the printout + product information (ASIN + date of first availability)

Digital camera 2.7K 48MP camera Vlogging camera 4x digital zo... <https://www.amazon.co.uk/Digital-camera-Vlogging-digital-YouT...>

Deliver to Spain Electronics & Photo™ Account & Lists Orders

All Best Sellers Gift Ideas Customer Service Music New Releases Today's Deals PC & Video Games Books Vouchers Kindle Books

Electronics Best Sellers Deals Phones & Accessories TVs & Home Cinema Camera & Photo Audio & HIFI Computers & Accessories

Camera & Photo > Digital Cameras > All-in-One Digital Cameras

**Digital camera 2.7K 48MP camera Vlogging camera 4x digital zoom camera for YouTube**  
Brand: Lincom 179 ratings

EUR 65.25

Note: This item is eligible for FREE Click and Collect without a minimum order subject to availability. Details

Colour Name: Pink

Brand: Lincom  
Model number: DCSPK-2  
Photo sensor technology: CMOS  
Effective: 30 MP

EUR 78.30  
EUR 65.25

See more

32GB  
16GB  
8GB

10 MEGA PIXELS  
167.45mm F3.0

Roll over image to zoom in

EUR 65.25

EUR 6.59 delivery Wednesday, August 17. Details

Or fastest delivery Tuesday, August 16. Order within 2 hrs 41 mins. Details

Deliver to Spain

In stock.

Quantity: 1

Add to Basket

Buy now

Secure transaction

Dispatches from Amazon Sold by Hanzo Tech EU

Return policy: Returnable within 30 days of receipt

Add gift options

Add to List

Have one to sell? Sell on Amazon

Digital camera 2.7K 48MP camera Vlogging camera 4x digital zo... <https://www.amazon.co.uk/Digital-camera-Vlogging-digital-YouT...>

Audio: Built-in microphone and speaker  
PC interfaces: USB2.0 ;Win XP/Vista/win7 and above;MAC (OS 10.4.11 only supported MSDC)  
Automatic shut-down: 1min/3min/5min/OFF  
Power Supply: BL-5B lithium battery 3.7V (750mAh)  
Product Size (L x W x H) : 97\*27.5\*60.2mm/3.82\*1.08\*2.37inch  
Product Weight: approx. 85g /3oz

Package Contents:  
1 x 30.DMP Digital Camera  
2 x BL-5B Lithium battery  
1 x 32 GB SD Card  
1 x Lanyard rope  
1 x USB Cable  
1 x Camera Cloth Bag  
1x User manual

Product information

Technical Details

Package dimensions	10.6 x 10.6 x 7.3 centimetres
Package Weight	0.28 Kilograms
Item Weight	80 Grams
Brand	Lincom
Colour	Pink
Part number	DCSPK-2
Zoom Type	Digital Zoom
Effective still resolution	30 MP

Additional Information

ASIN	B08Z8C3479
Delivery information:	We cannot deliver certain products outside mainland UK (Details). We will only be able to confirm if this product can be delivered to your chosen address when you enter your delivery address at checkout.
Item model number	DCSPK-2
Batteries	1 Lithium Polymer batteries required. (included)
Date First Available	17 Mar. 2021
Customer Reviews	179 ratings 3.7 out of 5 stars
Best Sellers Rank	21,795 in Electronics & Photo (See Top 100 in Electronics & Photo) 124 in All-in-One Digital Cameras

Warranty & Support

Amazon.com Return Policy: Regardless of your statutory right of withdrawal, you enjoy a 30-day right of return for many products. For more information, see our Return Policy.





# Establishing the event of disclosure

## ARTICLES

**Evidence:** printout showing earlier design + URL address visible in the printout + date of publication

Amazon Prime Day 2022: the best home and technology deals <https://www.cosmopolitan.com/uk/interiors/g10283910/best-home-deals>


COSMOPOLITAN > subscribe UK

We earn a commission for products purchased through some links in this article.

### The best home and technology deals for Amazon Prime Day 2022

Discounts are still live until midnight!

by CHARLEY WARD and LAUREN CODLING 12 JUL 2022



AMAZON PRIME

Good news for online sales fans: Amazon Prime Day is here and there are so many deals to be had. If you don't know what Prime Day is (erm, where have you been?), it's a 48 hour sale where Amazon slashes its prices on various items throughout the day to give its Prime customers a bit of a bargain. This year, it's running until midnight tonight (13 July) so you've still got time to bag a discount.

You need to be signed up to Amazon Prime to take part, and then keep an eye out for Lightning Deals and Spotlight Deals. Lightning Deals start every five minutes and run for a set amount of time, while Spotlight Deals last until an item is sold out. Basically, check in often and shop quickly. Exciting!

# Establishing the event of disclosure

## SOCIAL MEDIA

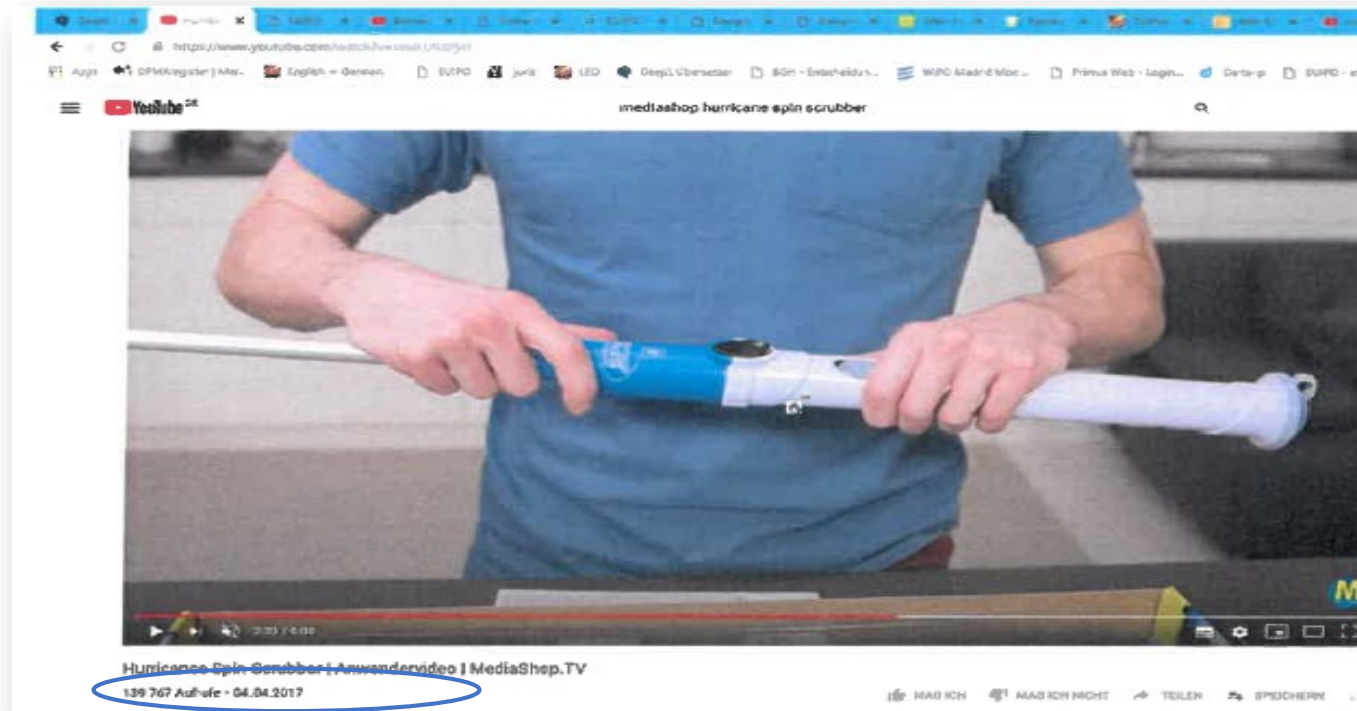
**Evidence:** printout or a screenshot showing a clear image of the relevant design + URL address + date of publication + any other relevant information (the 'popularity' indicators, views, likes...)



# Establishing the event of disclosure

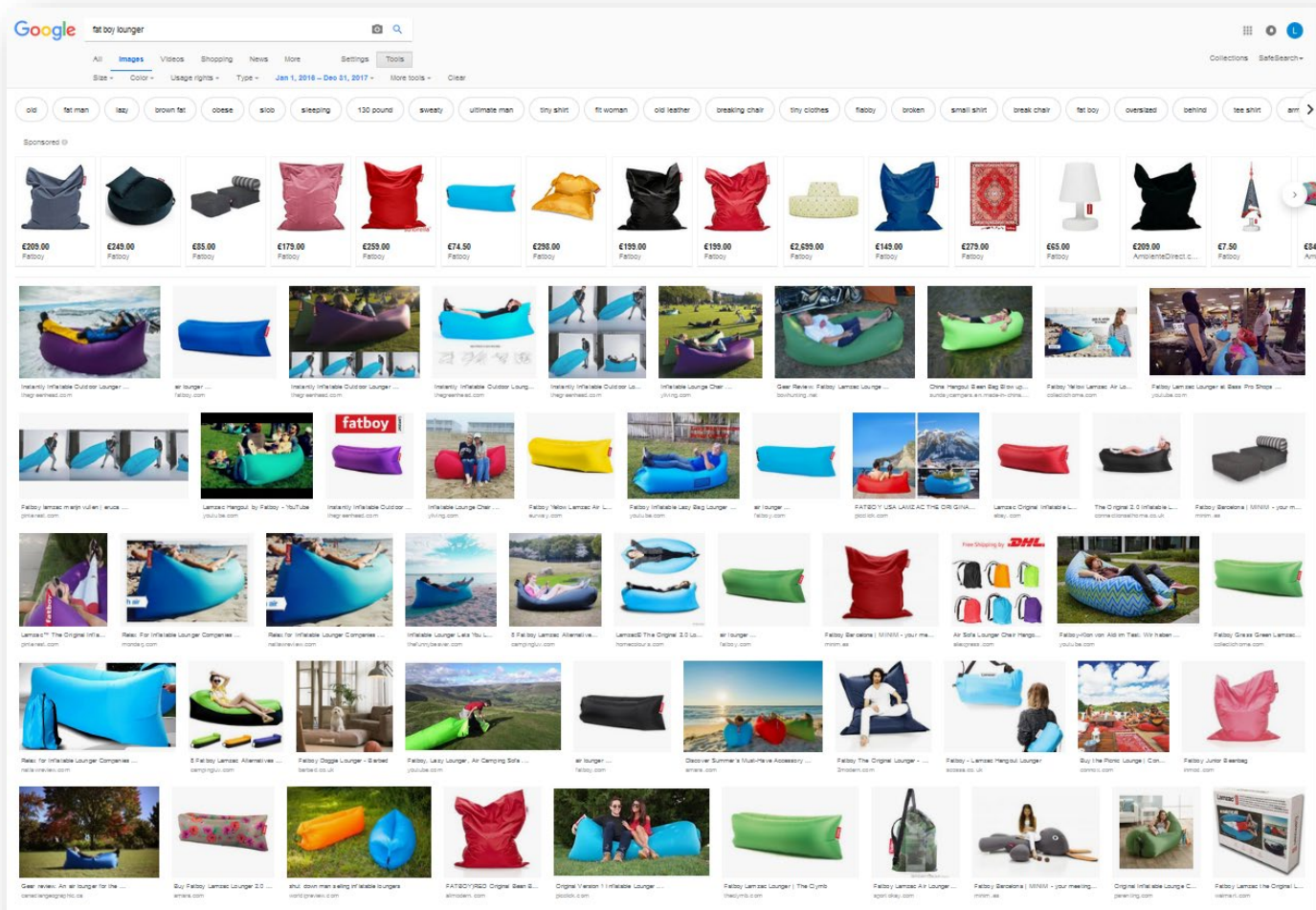
## YouTube

**Evidence:** printout or a screenshot showing a clear image of the relevant design + URL address + date of publication of the video + any other relevant information (the 'popularity' indicators, views, likes...)

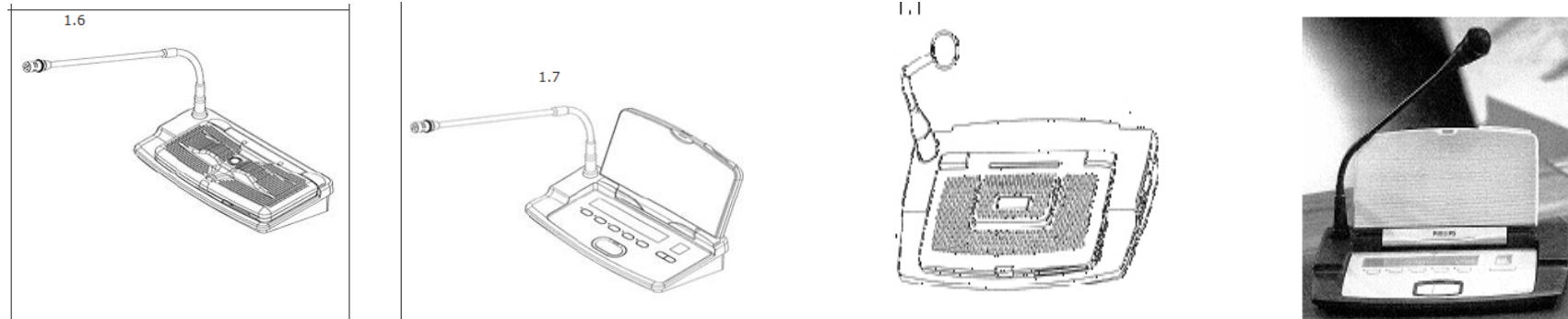


# Establishing the event of disclosure

## Google cache search



# NOT CONCLUSIVE EVIDENCE MAY SUPPORT OTHER EVIDENCE



Judgment of 22/06/2010, T-153/08, Communications equipment

Even if **some items of evidence are not conclusive in themselves**, **they may contribute** to establishing the event of disclosure when examined **in combination with other items**. (09/03/2012, T-450/08, Phials, EU:T:2012:117, § 25, 30-45; 27/02/2018, T-166/15, Sacs pour ordinateurs portables, EU:T:2018:100, § 24; 14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 52; 17/05/2018, T-760/16, Fahrradkörbe, EU:T:2018:277, § 42, 45 and 50; 13/06/2019, T-74/18, Informationstafeln für Fahrzeuge, EU:T:2019:417, § 22).

# Article 25 CDR in conjunction with Article 7 CDR

**EXCEPTIONS**

## EXCEPTIONS

### **DISCLOSURE = PRELIMINARY STEP**

**1° step:** the **invalidity applicant** must prove the event of disclosure (Art. 7(1) CDR)

**2° step:** the **holder** of the contested Community design can **claim an exception to disclosure** (Art. 7(1 - second half), (2) and (3)CDR)

## EXCEPTIONS

### Safeguard clause:

1. [...] except where these events could not reasonably have become known **in the normal course of business** to the **circles specialised** in the **sector concerned**, operating within the Community;





## EXCEPTIONS

### Grace Period - Art. 7(2) CDR

Disclosure of the Community design within **12 months** preceding **the date of filing** or the **priority** date of the contested Community design will not be taken into consideration if it was made **by**:

- the **designer**, or
- its **successor in title**

The **holder must establish** that it is either :

- the **creator of the design** upon which the application is based, or
- its **successor in title**

# Article 25 CDR



## Novelty and Individual character tests

# Article 25 CDR: Different tests

## NOVELTY

### Objective test

Matter of fact

Does there exist, in the relevant prior art an identical design?

The later design:

- exactly reproduced, or
- different only in immaterial details (insignificant details which may pass unnoticed)

## INDIVIDUAL CHARACTER

### Perception of the informed user:

Does there exist, in the relevant prior art, a design which does not differ in the overall impression?

**Factors** affecting perception of the informed user:

- designer's freedom & technical features due to the purpose, function and nature of some types of products
- design corpus & saturation of the market
- visibility of some features during the normal use
- banal and common features to all the designs of the type of a product

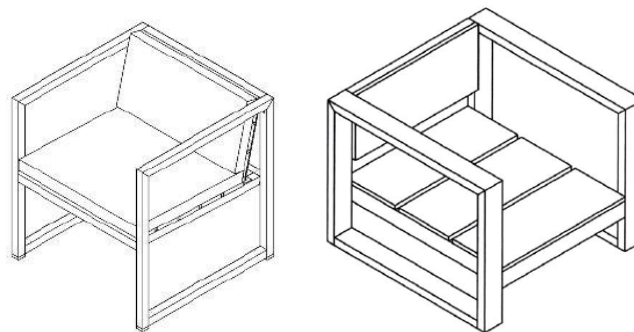


Decision of 28/07/2009, R 921/2008-3, 'Nail files'  
(left: contested RCD, right: examples from the state of the art)

## Comparison of designs is not an imperfect recollection test

When the nature of the product in which the compared designs are incorporated makes it possible, the overall impression left by these designs will be assessed on the assumption that the informed user can make a direct comparison between them

(judgment of 18/10/2012, joint cases C 101/11 P and C 102/11 P, Ornamentation, § 54-55).



Decision of 25/05/12, R 970/2011-3 – ‘Armchairs’

left: contested RCD, right: prior design

Different overall impression



## Article 5 CDR – Lack of Novelty

What do you think?

ICD 112 922



Earlier design



Contested design  
RCD No 006371787-0020



## Article 5 CDR – Lack of Novelty

# What do you think?

ICD 114 061	
	
Earlier design	Contested design RCD No 1 943 283-0001

## Article. 6 CDR – Lack of Individual Character

1. A design shall be considered **to have individual character** if the **overall impression it produces on the informed user differs from the overall impression produced** on such a user by any **design** which has been **made available to the public**:

[...]

b) in the case of a registered Community design, **before the date of filing** the application for registration or, if a priority is claimed, **the date of priority**.

2. In assessing individual character, the **degree of freedom of the designer** in developing the design will be taken into consideration.

## Article 6 CDR – Lack of Individual Character

Four-stage examination to establish:

1. **the sector concerned**
2. **the informed user**
3. **the designer's degree of freedom**
4. **the overall impression**



## Article. 6 CDR – Lack of Individual Character

### 1. The sector concerned

*To determine the sector to which the product of the contested design belongs (and hence the informed user and the degree of freedom of the designer in developing the design), it is appropriate to **look at the design itself** to specify the nature, intended **purpose or function of the product**. Taking the design itself into account may make it possible to better determine the product concerned within the wider category of products indicated in the registration (18/03/2010, T-9/07, Metal rappers, EU:T:2010:96, § 56).*



## Art. 6 CDR – Lack of Individual Character

### 1. The sector concerned

RCD No 006371126-0001 – ICD 110 684	
 <p>08-06 Door handles.</p>	 <p><i>Door handles</i></p>
Contested design	Sector concerned

## Article 6 CDR – Lack of Individual Character

### 2. The informed user

*The informed user is a legal fiction and the interpretation of that concept must be that the status of ‘user’ implies that the person concerned uses the product in which the design is incorporated, according to the purpose for which that product is intended. The qualifier ‘informed’ suggests that, without being a designer or a technical expert, the user is familiar with the various designs that exist in the sector concerned, possesses a certain degree of knowledge about the features which those designs normally include and, as a result of their interest in the products concerned, pays a relatively high degree of attention when they use them (18/10/2018, T-368/17, Electrically operated lifting column, in particular for tables, EU:T:2018:695, § 26 and the case-law cited therein).*



## Article 6 CDR – Lack of Individual Character

### 2. The informed user

RCD No 006371126-0001 – ICD 110 684	
 <p>08-06 Door handles</p>	<p><b>any person</b> who <b>habitually</b> purchases and use them and has sought information about those products, inter alia, by <b>browsing through catalogues</b> of, or including, door handles, <b>visiting shops</b> selling such products or <b>downloading information from the internet</b> (05/07/2017, T 306/16, Door handles, EU:T:2017:466, § 41).</p>
Contested design	Informed user

## Art. 6 CDR – Lack of Individual Character

### 3. The designer's degree of freedom

*The greater the designer's freedom in developing the contested design, the less likely it is that minor differences between the conflicting designs will be sufficient to produce a different overall impression, and vice versa (09/09/2011, T 10/08, Internal combustion engine, EU:T:2011:446, § 33).*

*The designer's freedom is limited in particular as regards those features imposed by the technical function of the product or an element thereof, or by statutory requirements, resulting in a standardisation of certain features (18/03/2010, T 9/07, Metal rappers, EU:T:2010:96, § 67), which thus apply to all designs intended for use in the products concerned.*

*However, the fact that the intended purpose of a product requires the presence of certain features does not automatically imply a limitation of the designer's freedom (14/06/2011, T 68/10, Watches, EU:T:2011:269, § 69).*



## Article 6 CDR – Lack of Individual Character

### 3. The designer's degree of freedom

RCD No 006371126-0001 – ICD 110 684	
 <p>08 06 Door handles</p>	 <p>Not limited: handles can come in any combination of colours, patterns, shapes and materials (05/07/2017, T-306/16, Door handles, EU:T:2017:466, § 46)</p>
Contested design	Designer's degree of freedom

## Art. 6 CDR – Lack of Individual Character

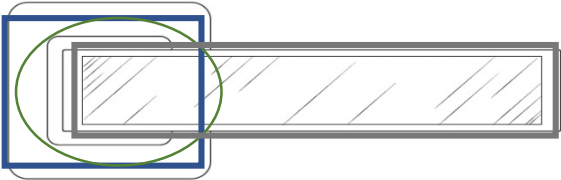
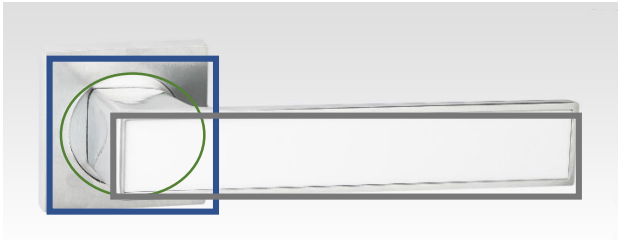
### 4. The overall assessment

- **Direct and synthetic comparison**
- **Contested design must be compared individually with each prior design invoked**
- **Saturation of the prior art**
- **Relative weight is given to:**
  - *Less visible features when the product is in use*
  - *Banal, arbitrary and different from the norm features*
  - *Features in relation to which designer's freedom was limited or broad*



## Art. 6 CDR – Lack of Individual Character

### 4. The overall assessment

RCD No 006371126-0001 – ICD 110 684	
	
Earlier design	Contested design



# Article 25 CDR



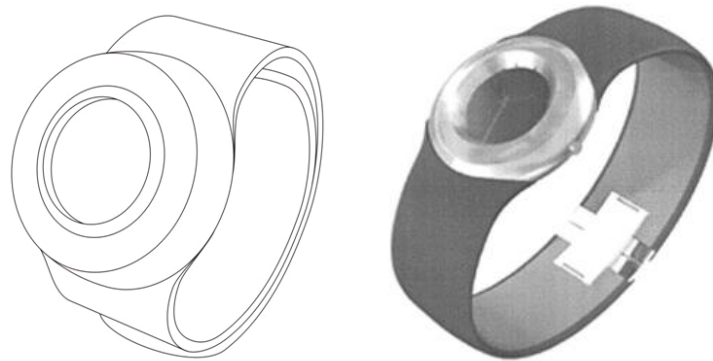
## Examples

## The same overall impression



Decision of 13/05/2015, R 915/2013-3, 'Furniture legs'  
left: contested RCD, right: prior design

## The same overall impression



Decision of 20/01/2014, R 1495/2012-3, 'Part of watches'  
left: contested RCD, right: prior design



# Article 25 CDR

The same overall impression



Decision of 15/01/2014, R 2232/2011-3, 'Shoes'  
left: contested RCD, right: prior design

# Article 25 CDR



Different overall impression



Decision of 04/01/2016, R 2298/2014-3, 'Boots'  
left: contested RCD, right: prior design

## Effects of invalidity

The RCD is declared invalid with the effects “ex tunc” for the whole EU territory

The design may be maintained in the Register in an amended form

# Appeals

**Appeal has a suspensive effect**

- **3<sup>rd</sup> Board of Appeal at EUIPO**
- **General Court (EU): the Court of first instance**
- **Court of Justice of EU: the Court of second instance**

## Legal Acts

**DIRECTIVE 98/71/EC** of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs

**COUNCIL REGULATION (EC) No 6/2002** of 12 December 2001 on Community designs (CDR)

**COMMISSION REGULATION (EC) No 2245/2002\*\*** of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (CDIR)

**COMMISSION REGULATION (EC) No 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 (CDFR)

Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

Commission Regulation (EC) No 876/2007 of 24 July 2007 amending Regulation (EC) No 2245/2002 implementing Council Regulation (EC) No 6/2002 on Community designs following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs

Commission Regulation (EC) No 877/2007 of 24 July 2007 amending Regulation (EC) No 2246/2002 concerning the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) following the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs



# Thank you \* Gracias \* Merci \* Bedankt

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