• Introduction to Convergence Project
• Scope of CP6
• The Practice
  – Disclaimers
  – Types of views
  – Neutral Background
• Practice implementation
INTRODUCTION TO CONVERGENCE PROJECT
Introduction – Starting Point

Internal dimension

• Setting up the Office and its internal processes

• Achieve internal efficiency.

External dimension

User oriented

Public Consultations
Convergence Project - Importance

EUIPN
EUROPEAN UNION INTELLECTUAL PROPERTY NETWORK

Colaborative Network connecting IP Offices, user associations and other IP organisations

EUIPN Website
The EUIPN – How does it work

- Project-based approach
- Objectives and priorities set up by the Members of the Network
- EUIPO provides infrastructure and resources
The Convergence Project - Aim

1. **Legal Certainty**
   - Increased legal certainty due to greater **consistency** and **predictability** in decisions made.

2. **Clarity and transparency**
   - Communication initiatives keep stakeholders informed of advancements in a timely manner, with unified information.

3. **Quality and usability**
   - Effective and efficient access to protection offered by registration systems.

4. **Time and cost savings**
   - Potential reduction in application processing times and cost savings for both IPO and users.
The Convergence Projects - Principles

- Focus on Practices → No legislative amendments required
- Commitment of implementation by the Participating National IP Offices
EUIPN Convergence Projects

- CP3: Distinctiveness - Figurative Marks containing descriptive/non-distinctive words
- CP4: Scope of Protection Black and White Marks
- CP5: Relative Grounds – Likelihood of Confusion (Impact of non-distinctive/weak components)
- CP6: Graphic Representation of Designs
- CP8: Use of a Trade Mark in a Form Differing from the One Registered
- CP9: Distinctiveness of Three-Dimensional Marks (Shape Marks) Containing Verbal and/or Figurative Elements when the Shape is not Distinctive in itself
- CP10: Criteria for Assessing Disclosure of Designs on the Internet
- CP11: New Types of Marks
- CP12: Proof of Use in Appeal Proceedings
The Convergence Projects - Results

´Common Communications´ published ONLINE
Inclusion in EUIPO Guidelines

DIRECTIVES RELATIVES AL EXAMEN DE LAS MARCAS DE LA UNIÓN EUROPEA (EUIPO)

PARTE B

EXAMEN

SECCIÓN 4

MOTIVOS DE DENEGACIÓN ABSOLUTOS

CAPÍTULO 4

MARCAS DESCRIPTIVAS

Artículo 7, apartado 1, letra c), del RMUE

4.2 Apreciación del umbral figurativo

La presencia de elementos figurativos puede o bien estar distinguida por un elemento verbal descriptivo o por otro no distintivo, de modo que se pueda distinguir entre el primero que se refiere al segundo como marco para el que se refiere el primero. Este distinto entre el primero y el segundo puede servir como indicación de origen.

En el marco de la Red Europea de Marcas, Dibujos y Modelos (ETM) existen distintos marcos de la Unión Europea que facilitan una práctica uniforme entre las marcas figurativas, que únicamente contienen elementos distintivos o no distintivos.

La Práctica Común establece criterios para determinar si un signo contiene un elemento figurativo y que el elemento figurativo de identificación de carácter distintivo (o proyecto de Identificación o Práctica CP3). (1)

- Elementos verbales, como el tipo y fuente del texto, el color de los signos de puntuación y otros semejantes, o cuando la visión o la interpretación de elementos distintivos de los elementos figurativos en relación a los elementos del texto, o si el elemento figurativo es una representación de un signo, o está directamente relacionado con él, si el elemento figurativo es un elemento de la marca, que se refiere a la marca, y que no sirve para distinguir la marca.

Direcciones relativos al examen hecho la Oficina, Parte B, Ensayo.

1 Ver la Comunicación Común sobre la Práctica Común del carácter distintivo - Marcas figurativas que contienen palabras descriptivas o no descriptivas, disponible en https://www.euiropa.org/normativas/documentos/1611237383195/0f3d4a/16d/968785047521

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<th>Problem Category</th>
<th>Solution</th>
<th>Details</th>
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<tr>
<td>Flavour and aroma</td>
<td>Flavour and aroma</td>
<td>An initiative to enhance the public perception of the product by promoting its unique and appealing taste and smell.</td>
</tr>
<tr>
<td>Flavour and aroma</td>
<td>Flavour and aroma</td>
<td>A recent development to improve the sensory experience of the product, focusing on enhancing its natural flavors and aromas.</td>
</tr>
<tr>
<td>Flavour and aroma</td>
<td>Flavour and aroma</td>
<td>A related initiative to create a sense of appreciation and enjoyment, aiming to attract more customers and increase sales.</td>
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SCOPE OF CP6
4 different objectives:

- Disclaimers
- Types of views
- Neutral Background
- Format of views
  - Limited to Benchmarking
  - Recommendations
CP6: Out of Scope of the common practice

Disclaimers

Types of views

Neutral Background

Format of views

- Verbal disclaimers
- Additional elements
- Priority
- Disclosure
- Number of views
- Computer animated representations, 3D representations
THE PRACTICE
Objective 1: Use of visual disclaimers

Definitions

General requirements for acceptability

General recommendations

For each type of disclaimer:
- Definition
- Requirements
- Examples
Objective 1: Use of visual disclaimers

Definition

Visual disclaimers indicate that protection is not being sought for, and registration has not been granted for, certain features of the design shown in the representation. Thus, they indicate what is not intended to be protected.
Objective 1: Use of visual disclaimers

General Requirements

Visual disclaimers will only be accepted when:

• They **clearly** indicate that protection is not being sought for certain features of the design shown in the representation.
• They are shown **consistently** in all the views where the disclaimer appears.
Objective 1: Use of visual disclaimers

General Recommendations

Graphic or photographic representations showing only the claimed design are preferred.

However, disclaimers can be used when the graphic or photographic representation of the design contains parts of the product for which no protection is sought. In these cases, the disclaimer must be clear and obvious: the claimed and disclaimed features must be clearly differentiated.

RCD No. 002182238-0002 (26.03) (Outdoor lighting) Owner: Stanisław Rosa trading as Zakład Produkcji Sprzętu Oświetleniowego ROSA

Community design lapsed No. 000030606-0003 (14.03) Key button arrangement for mobile telephones
Objective 1: Use of visual disclaimers

Types of visual disclaimers
Where a disclaimer is used, broken lines are recommended:

- Colour shading
- Boundaries
- Blurring

Note: Only when broken lines cannot be used due to technical reasons (for example, when they are used to indicate stitching on clothing or patterns; or photographs are used), other disclaimers can be used.
Objective 1: Use of visual disclaimers

a) Broken lines
Broken lines are used to indicate that no protection is sought for the features that are shown using the interrupted trace.

 bx registered design No. 38212-0001 (12.16) (rearview mirrors) Owner: Interimage BV

b) Colour shading
Colour shading is a type of visual disclaimer that consists of using contrasting tones of colour to obscure sufficiently the features for which protection is not being sought.

RCD No. 000910146-0004 (12.08 Automobiles (part of-) Owner: TOYOTA MOTOR CORPORATION
Objective 1: Use of visual disclaimers

c) Boundaries

With this type of visual disclaimer, the features for which protection is sought should be clearly indicated/represented within the boundary whereas all the features outside the boundary are considered to be disclaimed and therefore not protected.

RCD No. 001873688-0003
(02.04 soles for footwear)
Owner: SK

CP6 Example (12.16) (Air-intake grilles for vehicles)

RCD No. 000244520-0002
(12.15) (Tyres for vehicle wheels, pneumatic)
Owner: Nokian Tyres plc

d) Blurring

Blurring is a type of visual disclaimer that consists of obscuring the features for which protection is not being sought and may only be accepted when the features for which protection is sought are clearly distinguishable from the disclaimed (blurred) features.
Objective 2: Types of views

For each type of view:
- Definition
- Requirements
- Recommendations
A view is a visual representation of the design. It may reproduce the design from various directions (angles) or at different moments in time or in various states.
Objective 2: Types of views

General Recommendations

• In most cases, aspect views are enough for disclosing all the features of the design. However, the applicant may provide complementary/additional views in order to further disclose the features of the design.

• It is not obligatory for the applicant to file a certain number of views or a certain type of view as long as all the features of the design can be clearly perceived, e.g. one view may be sufficient.

• In case of products consisting of several parts, at least one view must present the whole product.
## Objective 2: Types of views

**Guidelines for each type of view**

The use of aspect views to disclose the features of the design is preferred.

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<td>Sectional views</td>
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<tr>
<td>Sequence of snapshots (animated design)</td>
</tr>
<tr>
<td>Combination of several means of visual representation</td>
</tr>
</tbody>
</table>

**Note:** However, the applicant is free to provide complementary/additional views.
Objective 2: Types of views

a) Aspect views
These types of views show the design from certain directions (angles) and encompass the following views: front view, top view, bottom view, right side view, left side view, back view and perspective views.

The applicant is recommended to file as many views as necessary to fully disclose the features of the design. In some cases one view can be sufficient.

RCD No. 002325456-0001 (31.00) (Mixers, electric [kitchen]) Owner: KENWOOD LIMITED

b) Views magnifying part of the design
This type of view shows one part of an overall design in an enlarged scale.

A single magnified view is acceptable provided that the magnified part is already visible in one of the other submitted views and it is presented in a separate single view.

RCD No. 001913690-0002 (24.02) (PCR multi-well plates) Owner: ABGENE LIMITED
Objective 2: Types of views

b) Views magnifying part of the design

RCD No. 001913690-0006 (24.02) (PCR multi-well plates) Owner: ABGENE LIMITED
Objective 2: Types of views

c) Alternate positions
Designs with alternate positions have an appearance which can be modified into several configurations without any addition or removal of any parts.

The views showing the different configurations of the design must be shown separately.

RCD No. 000588694-0012 (Mobile phones) Owner: Fujitsu Mobile Communications Limited

d) Exploded views
Exploded views consist of views where the parts of a product are shown disassembled in order to clarify how the parts fit together.

These views must be combined with at least one view representing the product assembled.

Croatian registered design No. D20140080 (24.01) (Bracelets with muscle stimulator) Owner: Dominik Žinić
Objective 2: Types of views

d) Exploded views
Objective 2: Types of views

e) Partial views

Partial views show a part of a product in isolation.

Partial views can be magnified and must be combined with at least one view representing the product assembled.

f) Sectional views

Cutaway portions that complement aspect views by illustrating a feature or features of the appearance of the product such as the contour, surface, shape or configuration of the product.
Objective 2: Types of views

**g) Sequence of snapshots (animated design)**

Short sequence of views used to show a single animated design at different moments in time, in a clearly understandable progression. This applies to an animated icon (design consisting of a sequence) or an animated graphical user interface (design of an interface).

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**h) Combination of several means of visual representation**

It is recommended that a design should be represented using only one visual format (drawing, photograph) so as to avoid disclosing aspects that contribute to a different overall impression.

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RCD No 2085894-0014 (14.04) (Animated screen displays) Owner: NIKE Innovate C.V.

RCD No 001068001-0002 (14.04) (Icons, Animated icons, Screen displays and icons) Owner: Deutsche Telekom AG
Objective 3: Neutral background

- Colors
- Contrast
- Shadows
In order to assess if a background is neutral, the following aspects should be taken into consideration:

**a) Requirements related to colours**

- A single or predominant colour in a background is always acceptable if it stands out against the colours of the design.
- Graduating colour and more than one colour in a background is acceptable if the design is clearly distinguishable.
Objective 3: Neutral background

b) Requirements related to contrast

All features of the design should be clearly visible.

The contrast is considered insufficient when the colour of the background and the design are similar and partly melt into each other.

![Example](image1)

Portuguese lapsed design No. 420-0006 (06.01) (chairs) Owner: Abril Mobiliário

![Example](image2)

Danish registered design No. 2013 00069 (12.11) (wheeled cargo bike) Owner: 3PART A/S

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c) Requirements related to shadows/ reflections

Shadows or reflections are acceptable as long as all features of the design remain visible.

They are unacceptable when:

- There is limited colour contrast with the design, and/or
- shadows interfere with, or hide parts of, the design or they distort the contour of the design.
Practice Implementation

- Practice published as a common communication
- Practice incorporated in EUIPO guidelines
- Presentation to our global partners during WIPO Standing Committee 2018