

Community Designs protection system overview

共同体外观设计保护制度之简介

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Community designs protection system

共同体外观设计保护制度

Forms of protection 保护方式

Conditions for protection 保护申请条件

Examination prior the registration 注册前审查

Formal 形式上

Substantive 实质上

Some interesting numbers 有意义相关数据

Declaration of invalidity of Community designs

宣布共同体设计无效

Enforcement 执行

Forms of protection in EU 欧盟保护形式

UNREGISTERED Community Design (UCD) 未注册共同体外观设计

- since the 6th of March 2002 2002年03月6日后开始实施
- all new creations disclosed for the first time in the EU 欧盟境内首次披露的所有新设计
- protection against copying, throughout the EU for 3 years 欧洲境内提供三年防复制保护

REGISTERED Community Design (RCD) 注册共同体外观设计

- As of 1st April 2003 2003年4月1日开始实施
- Exclusive right to use the design and prevent the others
赋予其权利人排他性使用权且阻止任何第三方
- One application procedure 一次申请程序
- One language (any of the 24 EU languages)
一种语言（欧盟24种官方语言中任何一种）
- One payment, in one currency (€)
一次付款，以一种货币（欧元）
- Multiple application 多项申请
 - unlimited number of designs 外观设计的个数不受限
 - all designs in the same Locarno class 外观设计全部归属于同一洛迦诺分类中同一类
- Deferment 延期
 - delay of publication up to 30 months from filing/priority 可以由申请 / 优先日开始30个月内延期公开
 - Maximum life: 25 years 醉酒保护期为25年



Coexistence with other design protection systems: 与其他设计保护题词共存

National registration systems (in 26 EU Member States) 欧盟26个成员国的注册制度

DIRECTIVE 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs harmonising the conditions, scope and length of protection of designs in EU, and the rights conferred by the design right and their limitation

欧盟议会及理事会1998年10月13日98/71/EC号有关统一欧盟境内外观设计保护条件、范围及期间与外观设计权所赋予的权利及其限制相关的法律保护的指令

International registration system WIPO

国际注册制度

（国际知识产权组织）

Unregistered national designs (UK)

成员国未注册设计保护（英国）

Unitary character of Community designs

- equal effect throughout the EU 有效于整个欧盟
- registration, transfer, surrender, invalidity, prohibited use for the entire EU
注册、转移、放弃、无效、组织使用适用于整个欧盟

Rights conferred on the holder of a Community design 赋予给外观设计权利人的权利:

RCD - exclusive right to use and prevent: making, offering, putting on the market, importing, exporting, using or stocking for such purposes, products incorporating or applying on the design

注册共同体外观设计：排他性使用权，并且阻止任何第三方制造、提供、投入市场、进口、出口、使用或为以上目标库存包含或使用该外观设计的产品

UCD - right to use and prevent unauthorized use resulting from copying

未注册共同体外观设计：使用权，且阻止任何未经过同意的复制所带来的使用

RCD 注册共同体外观设计

UCD 未注册共同体外观设计

A formal right; presumption of validity
Easy, flexible and affordable filing and registration procedure

正式权利，推定外观设计有效

申请及注册程序便利、灵活、廉价

Long term of protection (up to 25 years)

保护长远（达25年）

An informal right; validity has to be proven when enforced at the court

非正式权利，法院执行相关权利时必须提出证据证明其有效性

No registration procedure 无注册程序

No grace period 无宽限期

No fees 无费用

Short term of protection (up to 3 years)

短期保护（达3年）

Special regime for ‘must match’ spare parts (Article 110 CDR) “必须匹配” 备件的特殊制度 （共同体外观设计条例第110条）：

e.g. car bonnet spare parts 例如汽车引擎盖备件

Designs for (spare) parts are registrable 备件及部件外观设计可注册

Right cannot be used to control market for spare parts prohibiting competitors from replacement of the same spare part incorporating the protected design for the purpose of repair of the original product .

不可使用权利控制备件市场，阻止竞争者在修理原来的产品过程中使用包含已被保护的外观设计的替代品

Right may prohibit the use of the spare part incorporating the protected design by others in another product

权利可以预防使用包含已被保护的设计的产品的用于其他产品

Registered community design: Who can file 谁可以申请注册共同体外观设计

Any natural or legal person without any restrictions as to nationality or state of incorporation
任何自然人或法人，不限制国籍或登记国

Community design: Who has the right 谁享有共同体外观设计的权利

Right vests in the designer or his successor in title

权利在设计师或其全力继承人手中

Joint ownership 共同所有权

Employer where the design is developed by employees 若由雇员发明则在雇主手中

Article 14 第14条

Right to the Community design 共同体享有权利者

1. The right to the Community design shall vest in the designer or his successor in title.
2. If two or more persons have jointly developed a design, the right to the Community design shall vest in them jointly.
3. However, where a design is developed by an employee in the execution of his duties or following the instructions given by his employer, the right to the Community design shall vest in the employer, unless otherwise agreed or specified under national law.

Definition of the Design 外观设计的定义

Design: the appearance of the whole or a part of a product resulting from its features.

由特征形成的产品全部或部分外观

Product : any industrial or handicraft item, including:

产品：任何工业或手工物品，包含：

- **Components assembled into a complex product** 将组合成复合产品的部件
- **Packaging** 包装
- **Get-up** 装订
- **Graphic symbols (2D designs)** 图标符号（2D设计）
- **Typographic typefaces** 印刷字体



ABCDEFGHIJKLMNOPQRSTU
 VWXYZ
 ÁÂÃÄÅ Æ Ç È É Ê Ë Ì Í Î Ï
 Ñ Ò Ó Ô Õ Ö Ø Ù Ú Û Ü Ý Þ ß
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 © ® ¢ £ ¤ ¥ ¦ § ¨ © ª « ¬ ® ¯ ° ±

A part of a product 产品的一部分

The parts of a product for which the protection is not sought may be disclaimed by a graphic disclaimer

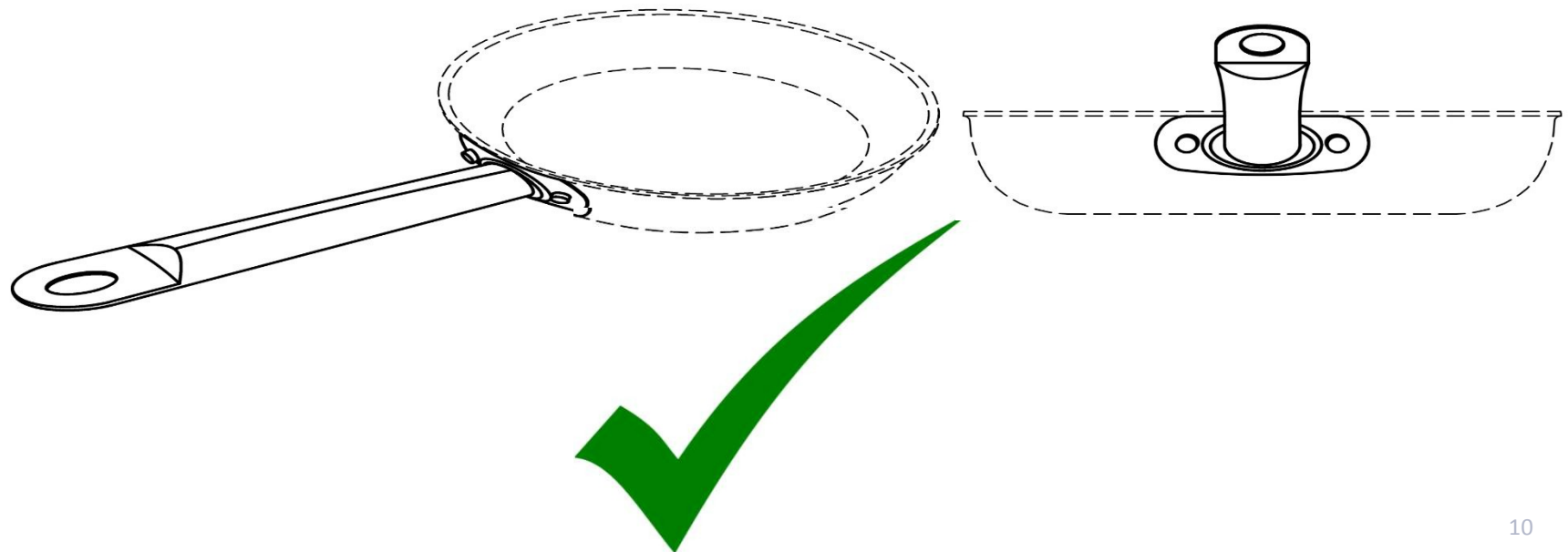
不属于申请保护范围的产品部分可以以如下图形显示



A component of a product 产品的组成部分

The parts of a product for which the protection is not sought may be disclaimed by a graphic disclaimer of interrupted lines

不属于申请保护范围内的产品部分可以以如下图形种的非连续线显示



Set of articles

**Articles having aesthetic and functional complementarity
(common features, being on sale or intended to be used together)**

美观及功能上的配套性

（共同特征、一起出售或一起使用）



Excluded from protection by Community design 共同设计制度下无法被保护的内容

Natural products

天然产品

Ideas 概念

Functions 功能

Smells and fragrances

味道与香味

Music and sounds

音乐及声音

Computer programmes

电脑程式



...do not constitute the appearance of a product and therefore do not
comply with the definition of a design

.....并非为某种产品的外观组成部分，因此不符合外观的定义

Colour 颜色

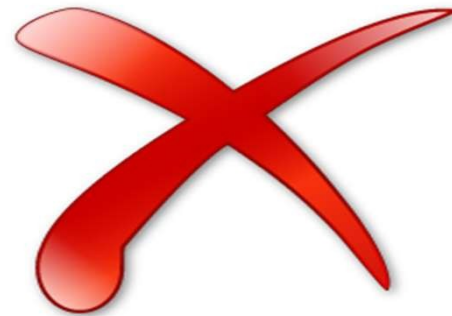


Indication of product: Deep red
产品名称：深红

Mere verbal elements

仅仅文字与词语等口
头成分

IKEA



Living organisms / Natural products

、 货物 / 天然产品



Minimal requirements for granting the filing date 批准申请日最低条件:

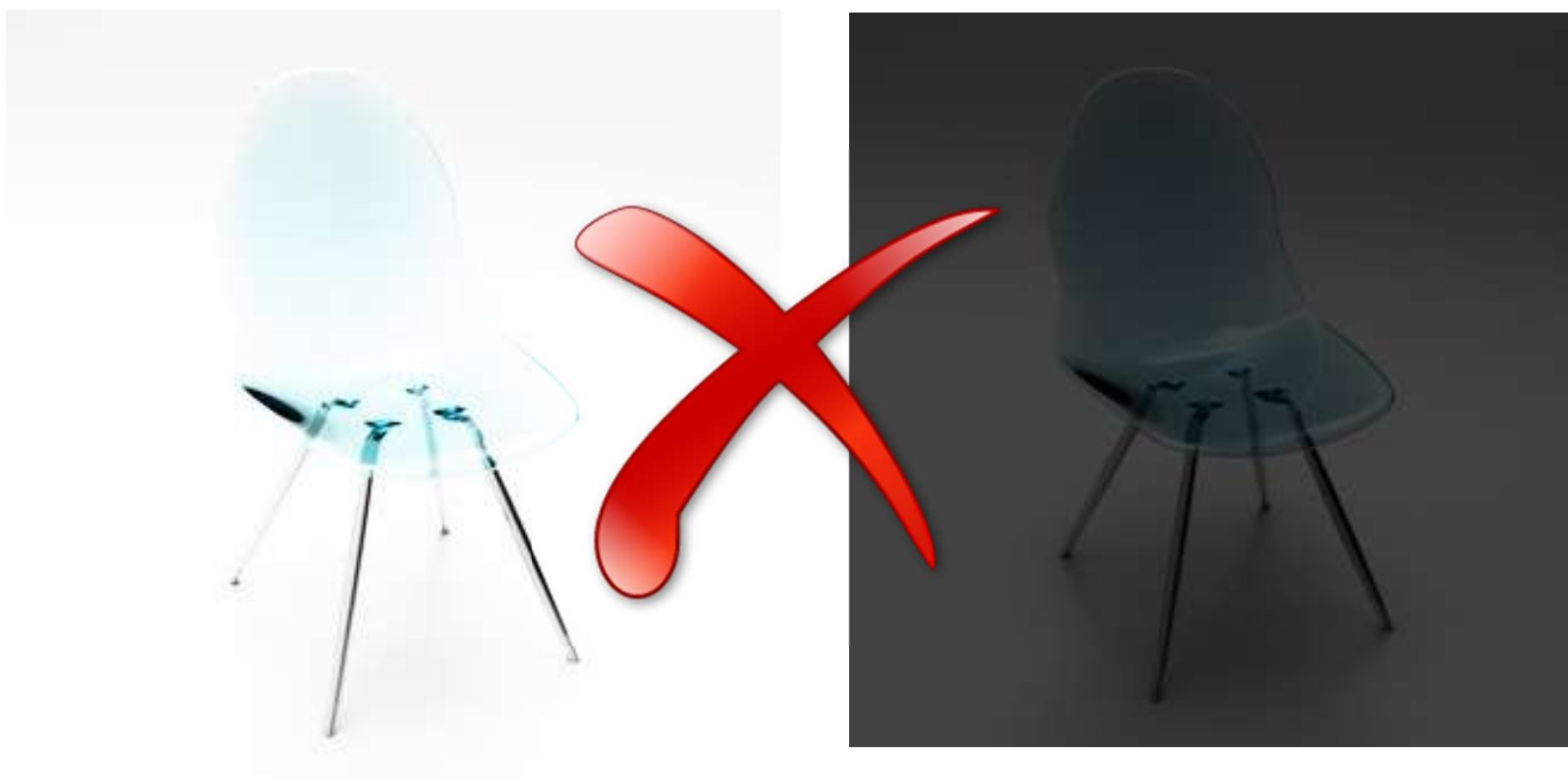
1. Request for design registration 正式外观设计请求

2. Information identifying the applicant 申请人的身份信息

3. Representation of the design suitable for reproduction (*Art. 4(1)CDIR*):
允许复制本项的设计外观设计表述（**CDIR第4（1）条**）

- Good quality - it should clearly show the details of the design for which protection is sought
良好的质量—该清晰地显示申请案中的外观设计的细节
- Neutral background - only the design for which the protection is sought without any additional matter
中性的背景—仅显示申请案中的外观设计，排除任何其他内容。

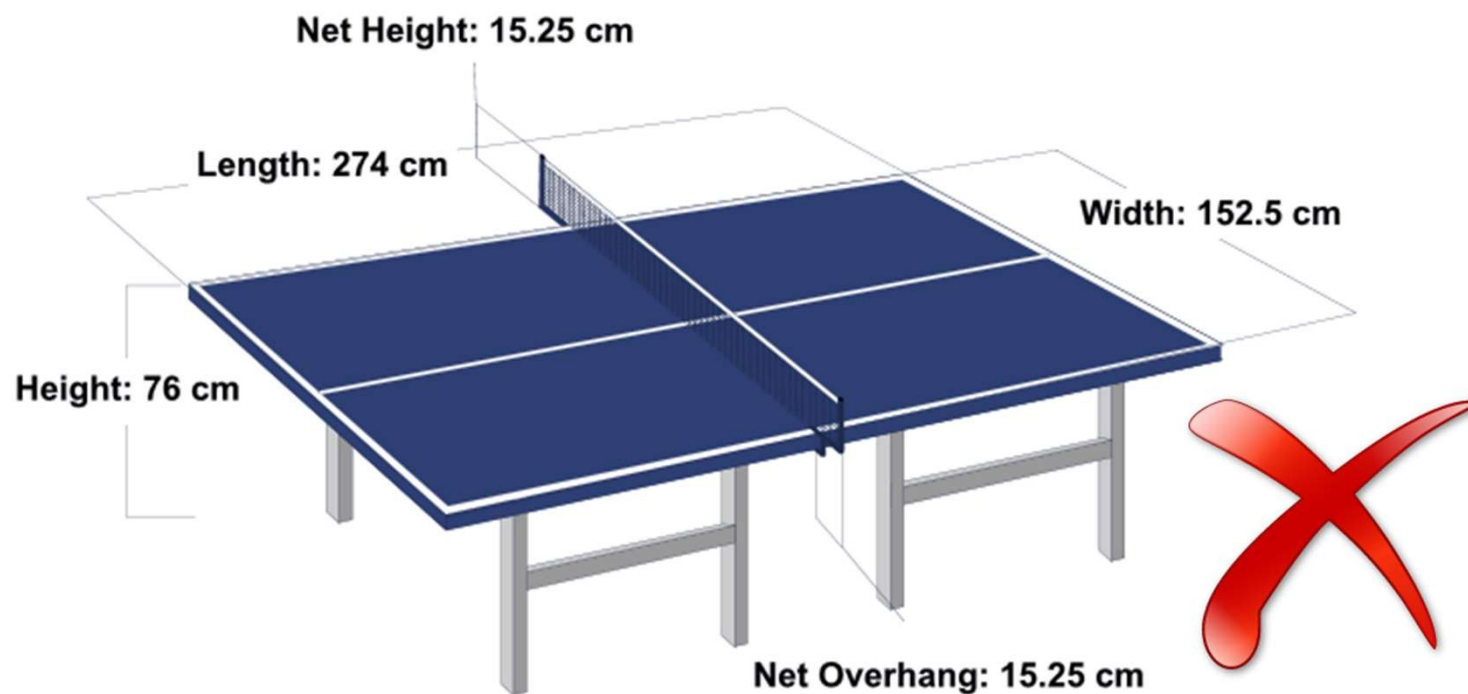
Quality of views 视图的质量



Quality of views 视图的质量



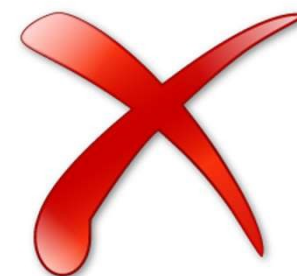
No additional matter: (Numbering, wording and symbols) are not accepted
无多余内容：不接受任何数字、文字或符号



No additional matter: (Numbering, wording and symbols) are not accepted
无多余内容：不接受任何数字、文字或符号



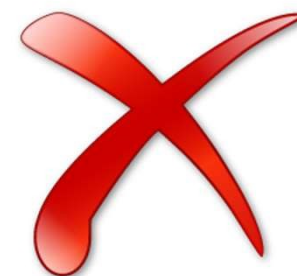
No additional matter: (declared indication of product: Sofas)
无多余内容：（产品名称：沙发）



No additional matter: (declared indication of product: Sofas)
无多余内容：（产品名称：沙发）



No additional matter: (declared indication of product: Chargers)
无多余内容：（产品名称：充电器）



No additional matter: (declared indication of product: Chargers)
无多余内容：（产品名称：充电器）





If a product is composed of several parts, at least one view on the assembled product is compulsory

若产品是由几个部件组成的，必须提供至少一个组装后的成品视图



View 1
视图1



View 2
视图2

If a set of articles is claimed to be protected as a single design, at least one view on the whole set is compulsory 若一套物品被申请为单一外观设计，必须提供至少一个全局视图



View 1
视图1



View 2
视图2



View 3
视图3



Consistency of views: the colours have to be the same
视图的一致性：颜色必须是一样



View 1
视图1

View 2
视图2

View 3
视图3

Consistency of views: the colours have to be the same
视图的一致性：颜色必须是一样



View 1
视图1

View 2
视图2

View 3
视图3

Consistency of views: the colours have to be the same
视图的一致性：颜色必须是一样



Design 1
设计1



Design 2
设计2



Design 2
设计2



Design 3
设计3

Consistency of views: the description may provide the explanation
视图的一致性：描述中可以提供说明

The red colour of the image is to show the colour when the product is on, and when it is turned off, it turns grey.

红色显示产品开机时的颜色，关机时颜色变成灰色。



Consistency of views: the description may provide the explanation

视图的一致性：描述中可以提供说明

Without the description, the variants are considered different designs

如不补充解释却被视为两个不一样的设计



Scope of protection 保护范围

- ✓ protection is conferred by way of registration upon the right holder for those design features of a product which are shown visibly in an application and made available to the public by way of publication
经过注册，权利人获得申请案中清晰地显示出的、向公众公布的产品外观设计特征的保护
- ✗ the indication of the products in which the design is intended to be used or on which it is intended to be applied,
申请案中提出的设计使用或适用方法
- ✗ the description explaining the representation, and
视图的解释 以及
- ✗ the classification of the products
产品分类类型

shall not affect the scope of protection of the design as such
却不影响外观设计本身的保护范围

Examination on Substance 实质上审查

- ✓ **compliance with the definition of xa design** 符合外观设计的定义
- ✓ **public policy and accepted principles of morality** 公共政策及公认道德原则
- ✗ **absolute requirements (novelty, individual character, visibility, technical function, designs of interconnections)** 绝对要求（新颖性、个体特征、技术功能、相互关联）
- ✗ **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**
先前权利（与先前设计的冲突、设计中先前特点的非授权使用、非授权版权的使用或巴黎公约第6条所单列出物品的不正当使用）
- ✗ **other emblems of public interest in a Member State**
任何其他成员国公共利益的标志
- whether the applicant is entitled to the design**
申请人是否可以享有外观设计相关权利

Declaration of invalidity of registered Community designs 政策共同体外观设计无效宣布

available after the Community design registration
substantive check of validity of the right
注册共同体外观设计后提供
对权利的有效性进行实质检查

absolute grounds (namely novelty & individual character)
relative grounds (conflict with prior rights)
entitlement to the RCD
绝对理由（即新颖性及个体特征）
相对理由（与先前权利的冲突）
是否有申请政策共同体外观设计的权利

Convention PRIORITY CLAIM and REQUIREMENTS 主张优先权及条件

- ✓ **within 6 months of filing the first application;** 首次申请起6个月内;
- ✓ **claimed in the RCD application or within 1 month of its filing date;**
包含于注册共同体外观设计申请案内或申请日期起一个月内;
- ✓ **the copy of the first application has to be submitted within 3 months of the claim was made;** 首次申请案的副本必须提出主张起3个月内提交;
- ✓ **the first application has to concern a design or a utility model;**
首次申请必须有关外观设计或实用新型
- ✓ **the first application has to be filed in a country that is a member of the Paris Convention or the World Trade Organization (WTO), or in another state with which there is a reciprocity agreement;**
- ✓ 首次申请必须在巴黎公约、世贸组织成员国、或其他由互惠协定的国家提出
- ✓ **the first application has to be a first filing** 必须是首次申请
- ✓ **the proprietor is to be the same or an assignment document has to be filed** 拥有者必须是同一个人，否则需要转让合同

Registrations: regular and fast track 注册：普通及快速

Fast track applications 快速申请

complying with all registration requirements and with speedy procedure requirements 符合所有注册要求及快速程序要求
registered within two working days 两个工作日内获得注册.

Non-fast track applications 非快速申请

satisfying all requirements for registration, are registered within ten working days. 符合所有注册条件情况下，十个工作日内获得注册。

HOW MUCH DOES IT COST? 费用如何?

	REGISTRATION 注册	PUBLICATION 公布		DEFERMENT OF PUBLICATION* 公布延期
1 st DESIGN 第一设计	230 €欧元	+ 120 €欧元	= 350 €欧元	40 €欧元 *
DESIGNS 2 TO 10 底2到底10个设计	115 €欧元	60 €欧元	= 175 €欧元	20 €欧元 *
DESIGN 11 AND ADDITIONAL 第11及其他设计	50 €欧元	30 €欧元	= 80 €欧元	10 €欧元 *

HOW MUCH DOES IT COST? 费用如何?

	1 st renewal 首次续展	2 nd renewal 第二次续展	3 rd renewal 第三次续展	4 th renewal 第四次续展
Per DESIGN 每项设计	90 EUR	120 EUR	150 EUR	180 EUR

RENEWAL IN ADDITIONAL 6 MONTHS GRACE PERIOD: + 25% OF THE BELATED RENEWAL FEE
若包含6个月的宽限期: +25%的迟来的续展费

Registered Community designs 注册共同体外观设计

over 90 000 per year

九万多案件 / 年

and 14 000 international designs with effects in the EU

及1.4万有效于欧盟的国际外观设计

only 0.35% is subject to an invalidity claim

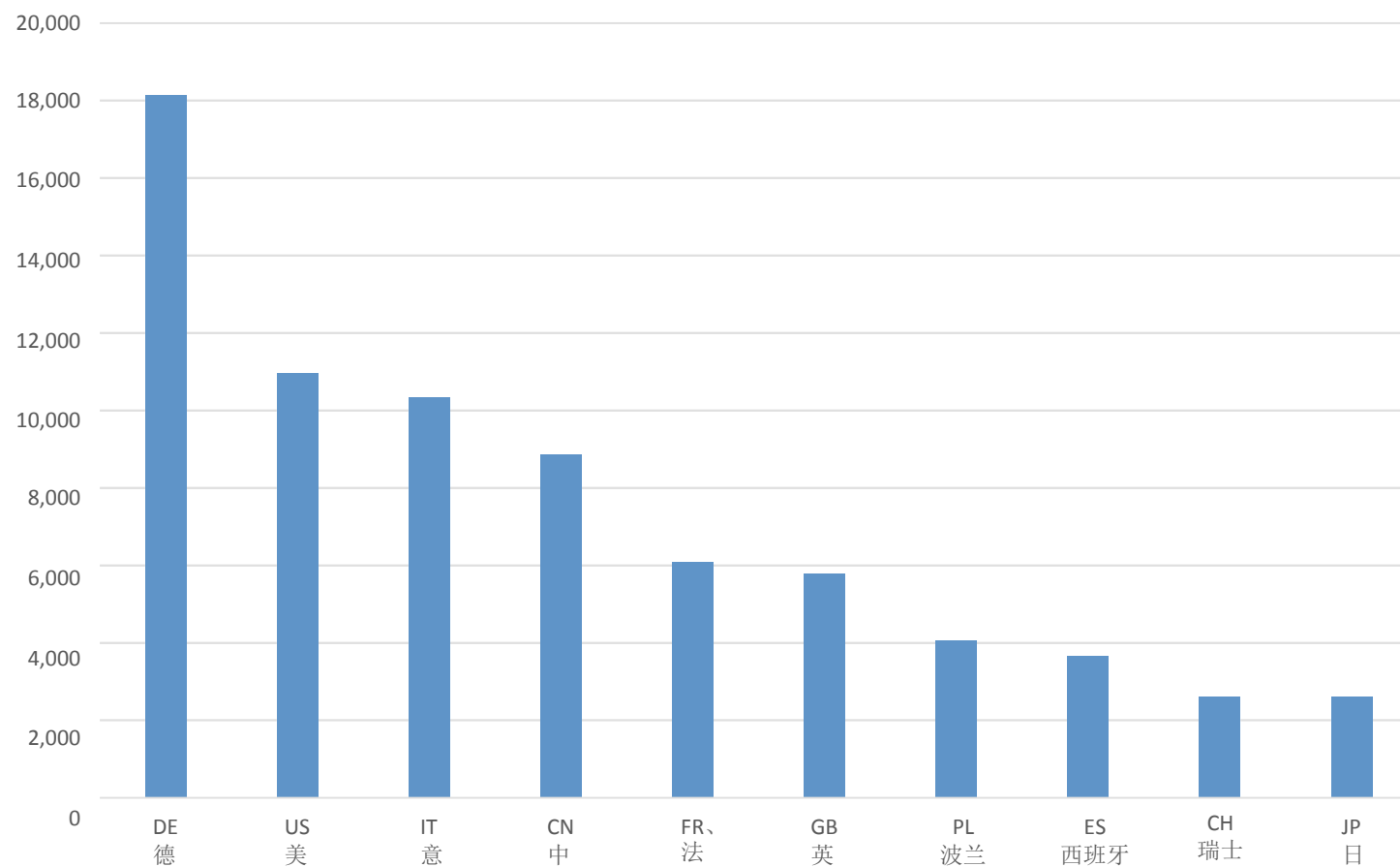
仅0.35%的案件掀起无效诉求

2018

Nr. of designs/applications received	93,409 / 26,336
已收设计、申请总数	
Single applications 单项申请:	53%
Multiple applications 多项申请:	47%
Nr. of designs per application 每项申请的设计:	3.55
Method of filing 申请方式:	99% e-filing 在线
Office response time to applications 本局回复时间:	99.73% within 10 days 10日内
Objections free applications 不掀起异议的申请:	78%
Registered designs (out of the designs filed):	97.93%
申请设计保护中的注册设计案件	
Fast-track (registration within 48h) 快速通道 (48小时内)	37%
Percentage of designs deferred 延期设计的百分比:	14%
Designs renewal rate 设计续展率:	51% 1st renewal 首次续展 60% 2st renewal 第二次续展 65% 3st renewal 第三次续展

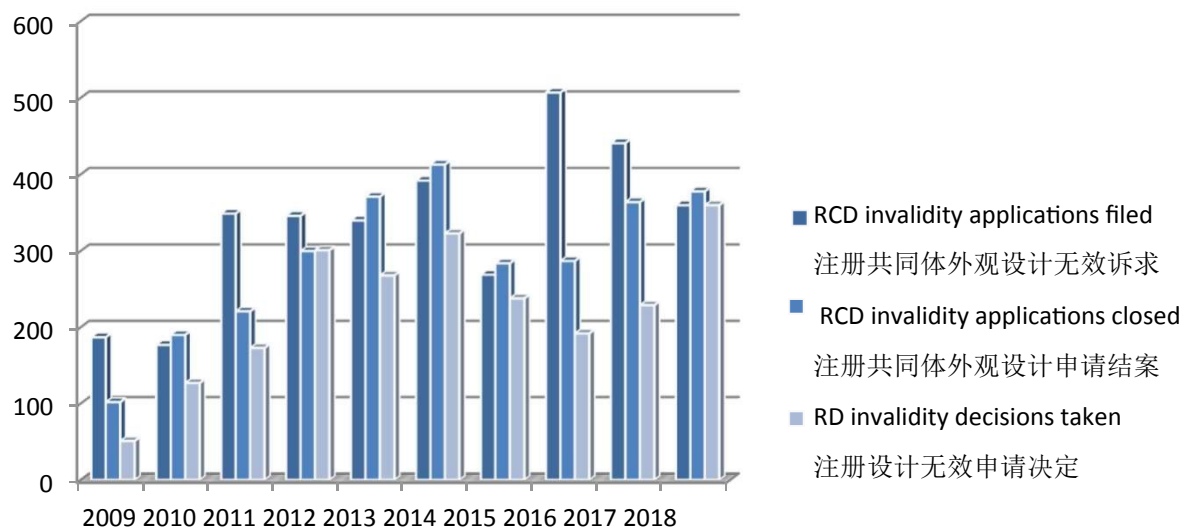
By country 按国家

Designs filed in 2018 by owner's nationality
2018年申请的设计，按照权利人国籍



Invalidation figures 无效数据

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
RCD invalidity applications filed 注册共同体外观设计无效诉求	187	177	349	346	340	392	269	507	441	360
RCD invalidity applications closed 注册共同体外观设计申请结案	102	190	221	300	371	413	284	287	364	378
RD invalidity decisions taken 注册设计无效申请决定	51	127	173	301	268	323	238	192	229	360



Breakdown of invalidity applications filed, by Locarno Classification

无效申请相关领域，照洛迦诺分类

LOCARNO CLASS	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	TOTAL
2	12	26	29	25	32	71	16	38	33	28	310
9	16	11	50	49	24	21	38	40	34	25	308
6	18	36	27	18	18	18	20	69	33	26	283
25	5	13	27	56	30	43	25	49	19	10	277
23	7	10	25	15	47	14	9	38	27	19	211
32	0	4	10	11	25	16	10	64	40	11	191
26	13	10	17	6	9	26	13	18	34	22	168
7	10	5	32	22	12	21	8	7	17	18	152
12	17	6	12	12	8	10	15	15	23	27	145
21	13	8	21	11	3	12	9	11	37	15	140
8	7	6	6	14	15	13	20	10	15	2	108
19	3	6	12	14	5	18	1	17	11	0	87
10	1	1	1	19	22	2	17	6	4	2	75
11	10	2	1	6	1	13	1	12	8	13	67
28	5	0	1	4	8	9	11	14	9	6	67
3	6	3	6	13	9	3	3	7	9	3	62
1	0	2	1	4	2	0	6	14	15	6	50
31	0	0	0	0	0	37	5	1	3	1	47
5	24	3	6	0	0	2	0	0	0	6	41
27	0	0	10	2	22	2	0	0	4	1	41
14	2	2	7	3	3	2	14	0	3	4	40
15	7	8	7	0	4	1	3	2	5	1	38
24	1	0	2	4	5	1	5	9	3	8	38
13	0	2	2	1	1	10	0	9	4	1	30
20	2	0	6	0	2	0	1	9	2	4	26
30	0	3	2	0	1	2	2	8	4	3	25
99	5	2	0	0	1	5	2	0	0	0	15
4	0	0	0	1	6	0	1	1	3	0	12
16	1	0	0	2	2	1	0	1	2	1	10
29	1	1	0	1	1	1	0	1	0	0	6
17	0	0	0	0	0	0	0	5	0	0	5
22	0	1	1	0	0	0	0	1	0	0	3
18	0	0	0	0	2	0	0	0	0	0	2

Breakdown of invalidity applications filed, by the frequency of applicants

无效申请，照最平凡提出相关要求的申请人

Appliants	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Grand Total
CROCS, INC.				4	13	4	12	13	3	3	52
OUT OF THE BLUE KG			1				2	43		5	51
THE HAPPY TOE LAB SRL				1	3	3	11	23	9		50
ALUPROF SA				46							46
JOHN MILLS LIMITED						34					34
ORIENT HOME OOD					17	8					25
ALLERGAN HOLDINGS FRANCE SAS								2	23		25
FATBOY THE ORIGINAL B.V.								6	14		20
BIRCHER REGLOMAT AG				17							17
SWEDISH MATCH NORTH EUROPE AB			9	7							16
NBL EUROPE GMBH										16	16
PRODECO SARL, SOCIETE DE DROIT FRANCAIS	15										15
INDUSTEX, S.L.				1	13						14
JERONIMO MARTINS POLSKA S.A.						14					14
GLAXO GROUP LIMITED					4		2			7	13
MCCAIN FOODS LIMITED									12		12
SAVERGLASS						1	2	7		1	11
KOZ PRODUCTS B.V.				11							11
EGLO LEUCHTEN GMBH							3	2	3	3	11
CATRAL EXPORT S.L.					3		8				11



Substantive requirements for protection of Community designs (RCDs & UCDs) 共同体外观设计保护实质上条件（注册及未注册共同体外观设计）

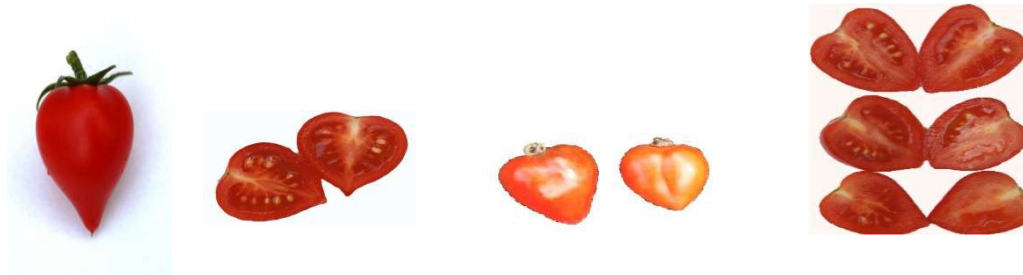
- **to meet the definition of ‘design’** 不符合外观设计的定义
- **to meet the requirement of novelty & individual character**
不符合新颖性及个体特征要求
 - **Derogations from protection** 减损保护:
 - features of component parts invisible in normal use**
在正常使用过程中不可见产品组件
 - features dictated by their technical function**
产品的外观设计仅取决于其技术功能
 - features of interconnections**
相互关联的外观设计
- **designs shall not be contrary to public policy or accepted principles of morality**
外观设计不可违反公共政策或公道

Not a design 非外观设计

Does not correspond to the definition of design 不符合外观设计的定义:

- **not a product, e.g. living organisms – representations of them in their natural state, not resulting from an industrial or manual processing**

不是产品，例如自然状态的、未经过工业或手工处理加工的活物



Decision of 18/02/2013, R 595/2012-3, „Groente en fruit“ (real tomato filed to seek protection by the registration of Community design)
2013年02月18日R595/2012-3号决定“Groente en fruit”（申请者希望为真正西红柿获得共同体外观设计获得保护）

- **inconsistent views representing different products**

不一致的视图，显示不同产品

Not a design 非外观设计

- a concept – an example of unlimited number of a design variants, an idea...
- 概念—无数种设计、想法



Judgment of 06/06/2013, T68/11, „Watch dials“ (1 view left: contested RCD, 3 views right: prior design)

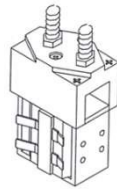
2013年6月6日T68/11号判决“表盘”（最左：遭争议的注册共同体外观设计，右三图：先前设计）

(72) Moreover, as is apparent from Articles 1 and 3 of Regulation No 6/2002, as a rule, the law relating to designs protects the appearance of the whole or a part of a product, but does not expressly protect the ideas that prevailed at the time of its conception. Therefore, the applicant cannot seek to obtain, on the basis of the earlier designs, a protection for those designs' underlying idea, that is, the idea of a watch dial that makes it possible to tell the time on the basis of the colours of the discs that compose it.

此外，2002/6号规章明文规定，一般而言，外观设计相关法律保护部分或全部产品的外观，但明确不保护产品构想时的想法。因此申请者无法基于先前设计申请这些设计基本想法的保护，也就是说有不同颜色显示时间的表盘。

Visibility 可视性

- The RCD related to a component part of a complex product is considered new & having individual character to the extent
有关一个复合产品的一个部件注册共同体外观设计被视为全新及拥有个体特征，如果：
- the component part is visible (when incorporated in the complex product) during normal use of the complex product 复合产品正常使用过程中（安装好的）部件是可见的
- normal use excludes maintenance, servicing or repair works 正常使用不包括维修、保养及修理



Decision 03/08/2009, R 1052/2008-3, „Electrical contactors“, para. 42-53 2009/08/03 R1052/2008-3号决定 “电气接头” 第42-53条

(1 view left: contested RCD, 2 views right: demonstration of use of the spare part related to the RCD

最左：遭争议的注册共同体外观设计，右二图操作中外观设计相关的部件)

- An electrical connector is a component part which is normally incorporated in a casing in order to be shielded from any contact with potential users when a complex product, such as a train or electric vehicle, is in operation.

电气接头等部件通常置于套管内，以免复合产品（例火车或电动车）用户操作时无意中接触受伤

- A hypothesis of a transparent casing or cover must be disregarded

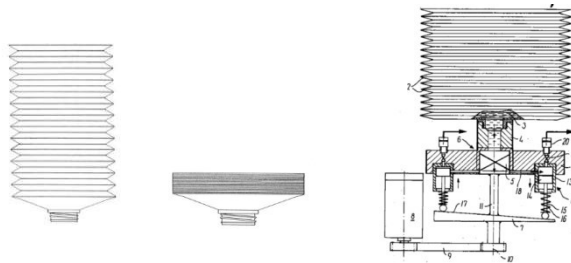
其中不考虑假设性的透明套管或覆盖物

Technical Function 技术功能

- The RCD shall not subsist in features of appearance of a product which are solely dictated by its technical function. If all essential features are solely dictated by technical function, the RCD is invalid.

共同体外观设计不适用于取决于技术功能的外观设计特征。若所有主要特征仅取决于即使功能，注册共同体外观设计则无效。

- The RCD related to a product features of which are solely dictated by its technical function is assessed on novelty & individual character to the extent that such features are excluded.
- 申请案中产品的一些特征取决于产品的技术功能，注册共同体外观设计仍然以新颖性及个体特征进行评估，并且排斥技术功能为基础的特征。



Decision of 21/01/2013, [ICD 8891](#), Left: contested RCD 000639349-0001 'packaging container', right: utility model "grease container in a portable lubrication unit"
2013/01/21 ICD8891好决定 左：遭争议的000639349-0001号“包装容器”，右“便携式润滑器的油容器”的实用新型



Decision of 19/02/2013, [ICD 8670](#); Left: contested RCD 001925587- 0001 "filters for fluids", right&bottom: examples from the prior art

2013/02/19 ICD8670号决定，左：遭争议的001925587-0001号“液体过滤器”注册外观设计，右、下：先前技术案例



Different tests 不同测试

NOVELTY 新颖性

Objective test (matter-of-fact) 客观审查 (事实上) :

Does there exist, in the relevant prior art an identical design? 相关先前技术有相同的外观设计吗?

The later design 较晚的设计:

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

区别仅设计非物质、不重大、通常不会被发现的细节

INDIVIDUAL CHARACTER 个体特征

Perception of the informed user 见多识广用户的看法:

Does there exist, in the relevant prior art, a design which does not differ in the overall impression? 相关先前技术有在整体印象相同的设计吗?

Factors affecting perception of the informed user 会影响见多识广用户看法的因素:

- **designer's freedom & technical features due to the purpose, function and nature of some types of products**

设计师的自由及某些产品的功能及本质所形成的技术特点

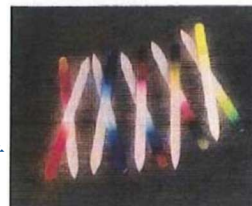
- **design corpus & saturation of the market 设计库及市场饱和**

- **visibility of some features during the normal use 正常使用时特点的可视性**

- **banal and common features to all the designs of the type of a product 产品设计的平庸及普遍特点**

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

2009/07/28 R921/2008-3号决定“指甲锉刀”左：遭争议的注册外观设计右：现有设计的案例



Matters excluded from the novelty & individual character tests 不包含在新颖性及个体特征审查的因素

Invisible features of parts of complex products (Article 4(2) CDR)

看不见的符合产品部分特点（共同体外观设计条例4（2）条）

Features solely dictated by technical function (Article 8(1) CDR)

仅仅由技术功能所形成的特点（共同体外观设计条例8（1）条）

Features of interconnections (Article 8(2) CDR)

相互关联所形成的特点（共同体外观设计条例8（2）条）

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)

注册案件中该特点不明显（或非常明显）（序文11DD及2008/03/10的R0586/2007-3号决定，烤肉设备 § 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)

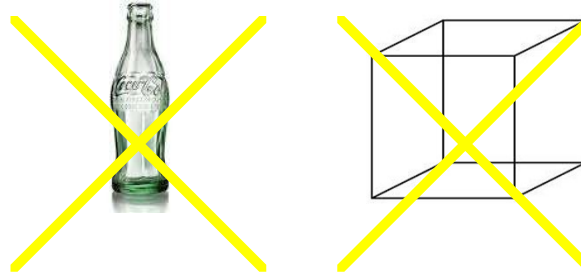
保护申请案不包含的特点及注册共同体外观设计明确不包含该特点（2011/06/14的T68/10号判决“手表” § 59 64）



Disclosure 公开

The RCD is protected to the extent it is new & has individual character over any design made available to the public prior to the RCD's filing or priority date

注册共同体外观设计与任何在注册共同体外观设计的申请日或优先权日尚未向公众公开的外观设计的新颖特点及个体特征获得保护



design = the appearance of the whole or a part of a product 外观设计=全部或部分产品的外观

made available to the public = any disclosure unless the holder proves that it could not have reasonably become known in the normal course of business 公开=任何披露的设计，除非权利人可以证明在正常业务中无法合理地接触到该设计

the public = circles specialised in the sector concerned, operating within the Community (EU)
公众=相关行业的内行人，在共同体（欧盟）内进行工作

A disclosure shall not be taken into consideration for the purpose of applying Articles 5 and 6 (novelty and individual character) and if a design for which protection is claimed under a registered Community design has been made available to the public:

若申请注册共同体外观设计保护的外观设计在注册外观设计的申请日或优先日不到一年前以设计师或继承人的行为或滥用 或 以设计师或其继承人的通知或从未未动力的第三方的行为 向公众公开 以及 在实用第五及六条（新颖性及个体特征）时 却不会考虑如此的披露

less than one year preceding the RCD's filing or priority date

as an action of,

abuse of

the designer

the successor in title action of

a third person upon the information or action of

the designer

the successor in title

...for the reason to offer a creator or his successor in title the opportunity to market a design, for a period of 12 months, before having to proceed with the formalities of filing. The creator or his successor in title may ascertain that the design concerned is a commercial success before incurring the costs relating to registration, without fear that the disclosure that takes place at that time may be successfully raised during any invalidity proceedings brought after the possible registration of the design concerned.

.....为了进行提交申请的形式任务前提供创造者或其继承人为期12个月的让外观设计上市的机会。如此创造者或其继承人可以确认相关外观设计市场上成功才负担注册费用，无畏相关外观设计注册后这样的先前披露会在无效程序中遭到争议。

Traps 陷阱

Does the grace period apply to the disclosure of variants? 宽限期适用于变体的披露吗?

‘...a design for which protection is claimed under the registered Community design’
‘申请注册共同体外观设计保护的外观设计’

= any design which does not differ from the protected design and does not have individual character

=任何被保护的外观设计相同的、无个体特征的外观设计

Does the grace period apply to earlier designs registered and published within the grace period?

宽限期适用于先前的、宽限期内注册及公开的外观设计?

The disclosure of a design in a Design Bulletin does not have the purpose of testing the design on the market and may not fall, therefore, within the exception of Article 7(2) CDR. (see R 2428/2013-3 – Chaussures)

在设计刊物公布设计不算试用外观设计的市场价值，因此共同体外观设计条例7（2）条不适用于如此的情况。

in priority period (may be challenged by the applicant) where the priority 优先期内（允许申请者提出挑战），若优先案件:

- **is not design or utility model application (international patent application under PCT is accepted)** 不涉及外观设计或实用新型的使用（接受PCT框架下的国际专利申请）
- **is not first filing in the priority office** 不是首次向相关当局提交申请
- **is not the same design** 不是同一个外观设计

in grace period if it is 宽限期内，如果

- **the RCD disclosure by the holder** 权利人披露注册共同体外观设计
- **unauthorised disclosure of the RCD** 注册共同体外观设计遭到非授权披露

under conditions of confidentiality 保密条件下

Art. 7(1) CDR: The design shall not, however, be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality.

共同体外观设计条例7（1）条：但若外观设计在隐式或显式的保密的条件下向第三方被披露，则不被视为向公众公开

Acts of disclosure 披露行为

anywhere and anytime before filing/priority date 申请、优先日，在某处某时

➤ to be proven by invalidity applicant 必须有无效申请者证明

except where the disclosure could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the Community (EU) 除非在该行业的、在共同体（欧盟）进行工作的内行人正常业务中不会合理地知晓该外观设计的披露

COM(96) 66 final – COD 464: Aim is to protect the design industry from claims that a design right is not valid because there was an earlier design in use somewhere in the world where the European industry could not possibly have been aware of it. The intention of the safeguard clause is to avoid the situation where design rights can be invalidated by infringers claiming that antecedents can be found in remote places or museums.

COM(96) 66 最后版本 – COD 464: 意图在于保护外观设计行业，避免某个外观设计因为在世界其他地区由类似、居于欧盟内行人不可能知道的外观设计遭到无效诉求。保障条款的意义在于避免侵权者可以宣布外观设计因为在远处或博物馆有先前类似设计而无效

➤ presumption to be refuted by holder of contested Community design (T-22/13, 21/05/2015, Umbrellas)
遭争议外观设计的午安理人可拒绝这样诉求（T-22/13, 2015/05/21, 雨伞）

Examination restricted to facts, evidence and arguments provided by the parties 审查仅顾及相关者提供的事实、证据及论点。

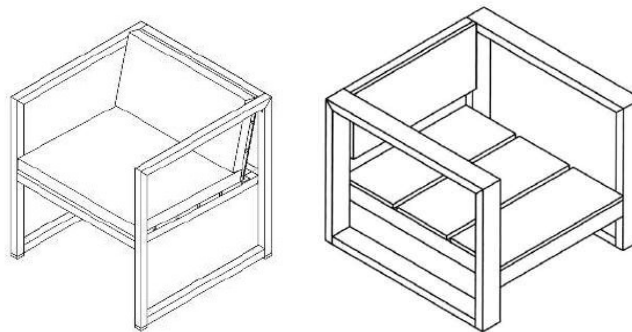
CDR/CDIR do not specify the kind of evidence required to show prior art. Parties are free to choose evidence (T-450/08, 09/03/2012 – Phials) CRD / CDIR不指定需要何样的证据显示证明先前技术，相关者可以自由地选择证据（T-450/08, 2012/03/09, 小玻璃样本瓶）

Disclosure cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence (T-450/08, 09/03/2012 – Phials) 披露不可以可能性或猜测而证明的，但需要可靠客观的证据（T-450/08, 2012/03/09, 小玻璃样本瓶）

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).

包含被比较设计的产品本质上允许的话，相关产品的整体印象的评估基于见多识官的用户有法直接对两个设计进行比较的假设。



Decision of 25/05/12, R 970/2011-3 – ‘Armchairs’ left: contested RCD, right: prior design

Different overall impression

2012/05/25的R970/2011-3号‘扶手椅’决定，右：先前设计

整体印象不同

INDIVIDUAL CHARACTER assessment 个体特征评估

1. What is the sector to which the products related to the designs belongs?

外观设计的产品属于哪一个行业？

2. Who is the informed user of those products in accordance with their purpose? What is their degree of awareness of the prior art and the level of attention?

该产品使用的见多识广用户是谁？他们多么了解先前技术且多么关注？

3. What is the designer's degree of freedom in developing his design (Art. 6(2) CDR)?

设计师的自由研发设计的范畴如何（共同体外观设计条例第6（2）条）？

4. Comparison of the designs at issue, taking into account the sector in question, the designer's degree of freedom and the overall impressions produced on the informed user by the contested design and by any earlier design which has been made available to the public.

比较涉嫌的外观设计，考虑着相关行业、设计师的自由及见多识官用户对掀起争议的外观设计的整体印象，以及任何是钱已向公众公开的设计。

The same overall impression 相同整体印象



Decision of 15/01/2014, R 2232/2011-3, 'Shoes'

left: contested RCD, right: prior design

2014/01/15的R2232/2011-3 ‘鞋子’，左：
遭争议的注册共同体外观设计，右：
先前设计

Different overall impression 不同整体印象

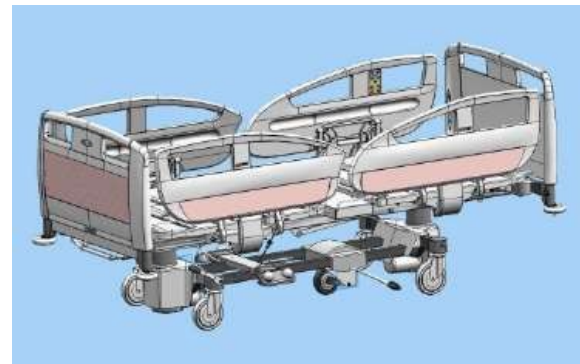
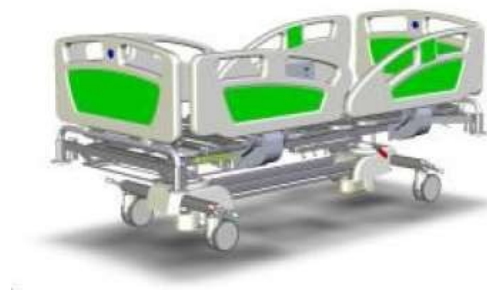


Decision of 04/01/2016, R 2298/2014-3, 'Boots'

left: contested RCD, right: prior design

2016/01/04的R2298/2014-3 ‘靴子’，左：
遭争议的注册共同体外观设计，右：
先前设计

Different overall impression 不同整体印象



Decision of 17/12/2014, R 2091/2012-3, 'Nursing beds'

left: contested RCD, right: prior design

2014/12/17的R2091/2012-3 ‘病床’，左：遭争
议的注册共同体外观设计，右：先前设计

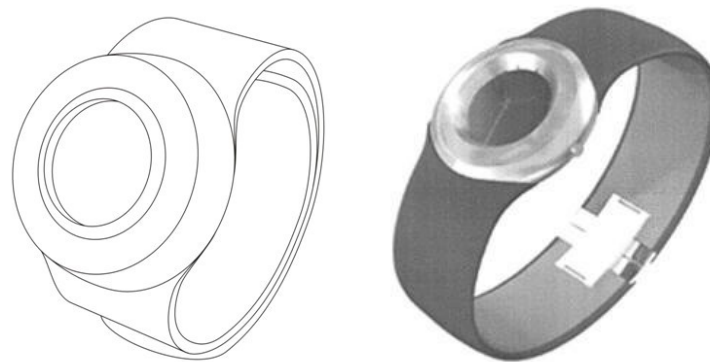
The same overall impression 相同整体印象



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

2015/05/13的R915/2013-3 ‘家具的脚’，左：遭
争议的注册共同体外观设计，右：先前
设计

The same overall impression 相同整体印象



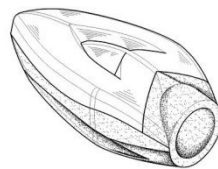
Decision of 20/01/2014, R 1495/2012-3, 'Part of watches'

left: contested RCD, right: prior design

2014/01/20的R1495/12-3 ‘手表的部件’，

左：争议的注册共同体外观设计，右：先前设计

Different overall impression 不同整体印象



Decision of 07/02/2014, R 2152/2012-3, 'Luminous devices for vehicles'
left: contested RCD, right: prior design

2014/02/07的R2152/2012-3 ‘汽车发光设备’，左：遭争议的注册共同体外观设计，右：先前设计

Absolute grounds/Relative grounds of invalidity 绝对、相对无效理由

RCD examination in post registration invalidation proceedings (before EUIPO or a national Community design court) 注册后无效程序的注册共同体外观设计审查（在欧盟知识产权局成员国外观设计法院）

UCD challenged solely before a national Community design court. 未注册外观设计仅可于共同体成员国的外观设计法院挑战

Invoked 援引方法:

by any natural or legal person if absolute / by the holder of an earlier right if relative ground

若以绝对理由或若由享有先前权利的人以相对理由进行的，就可以由自然人或法人援引

at any time after publication of registration 注册公布后任何时候

even after a Community Design has lapsed or has been surrendered if legitimate interest is shown (Art. 24(2) CDR) 共同体外观设计失效或被放弃后可以援引合法利益为理由（共同体外观设计条例第24（2）条）

RCD can be also invalidated only partially. 注册共同体外观设计也可以以部分宣布无效

Art. 25(1)(c) CDR 共同体外观设计条例第25（1、c）条:

A Community design may be declared invalid if, by virtue of a court decision, the right holder is not entitled to the Community design

若法院决定确认权利人无权享有共同体外观设计权利则可以将共同体外观设计宣布无效

A legal proceeding shall be initiated within three years after the date of RCD's publication unless the RCD was applied for, disclosed or assigned in bad faith.

法律程序需公布注册共同体外观设计的日期起三年内启动，除非注册共同体外观设计申请、披露或批准是恶意的。

Commitments承诺

Timeliness 快速:	10 weeks from closing the exchange of communications between the parties till the decision notification 交流阶段完毕后10周内则提出决定通知
Decision takers、 决策者:	8 (all of them part time, having different language profiles) 8（语言组合不一）
Office languages 官方语言:	5 (DE, EN, ES, FR, IT) 5（德、英、西、法、意）

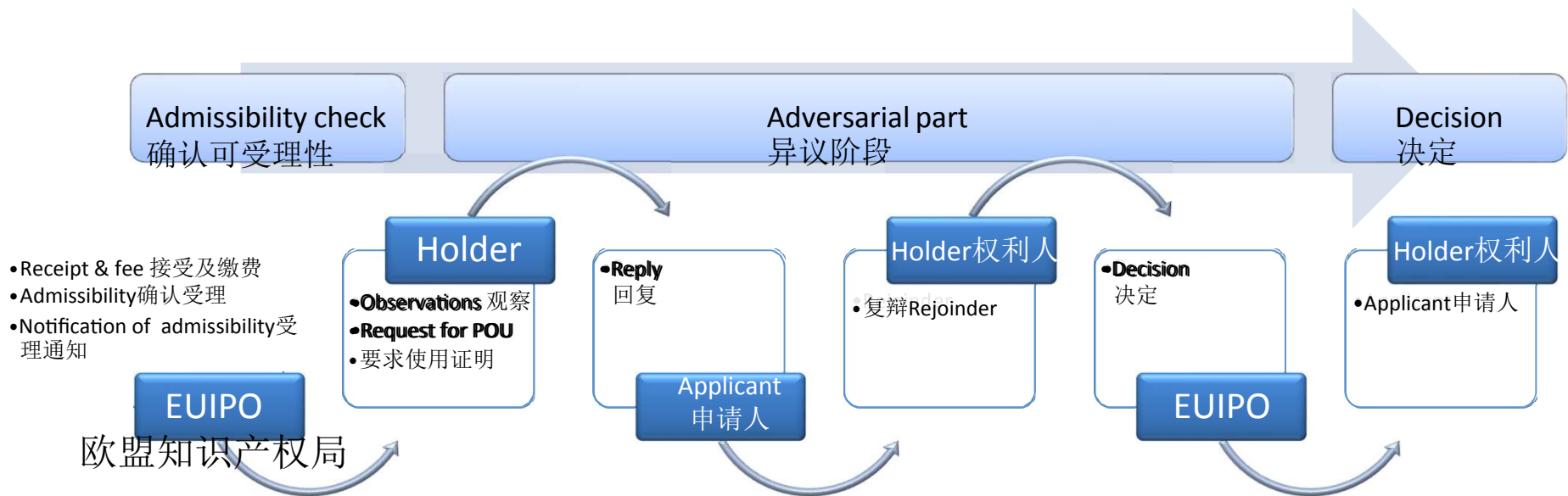
Invalidity Procedure 无效程序

- **one RCD per application** 一次申请只可针对一个注册共同体外观设计
- **surrendered designs are decided on merits only if it is in the legal interest of the applicant** 若符合申请者法律利益则亦考虑已放弃外观设计
- **in writing** 以书面方式:
 - **on the Office form (not obligatory)** 使用本局的表格（非强制性）
 - **via e-filing Office application** 在线
 - **with reasoned statement** 附上理由解说
 - **evidence (original document/printed materials or copies/scans, electronic carriers accepted)** 证据（原版本 / 印刷品或副本 / 扫描版本，电子载体皆接受）
- **is considered to be filed only after payment of the invalidity fee: EURO 350,-** 支付无效费用（350欧元）后才进行考虑

Language regime 语言制度

- **the Office holds the invalidity proceedings in 5 languages (EN, FR, DE, IT, ES)**
本局以五种语言进行无效程序（英、法、德、意、西）
- **the RCD holder is allowed to defend in the language of RCD registration (24 EU languages); the Office arranges and pays for translation into the proceedings language in such case**
权利人可以注册共同体外观设计申请语言（欧盟的24种官方语言）辩护；
本局安排及支付翻译
- **the parties may agree on any EU official language; the parties and the Office bear their own costs of translations**
相关者可以同意使用任何一种欧盟官方语言，相关者及本局各负责翻译成本

KEY FEATURES 主要特点



Effects of invalidity 无效效果

The RCD is declared invalid with the effects “ex tunc”
注册共同体外观设计被宣布无效，具有溯及效力（ex tunc）

for the whole EU territory 于欧盟全部领土

The design may be maintained in the Register in amended form
外观设计可以以修正版本列入登记册

Appeals 上诉

Appeal has suspensive effect 上诉具有暂缓效力

- **3rd Board of Appeal at OHIM 欧盟内部市场协调局（OHIM）的第三上诉委员会**
- **General Court (EU): the court of first instance**
欧盟普通法院：一审法院
- **Court of Justice of EU: the court of second instance**
欧洲联盟法院：二审法院

Legal Acts法律文书

DIRECTIVE 98/71/EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs 欧盟议会及理事会于1998年10月13日通过的、有关外观设计法律保护的98/71/EC指令

COUNCIL REGULATION (EC) No 6/2002 of 12 December 2001 on Community designs (CDR) 欧盟理事会2001年12月12日有关共同体外观设计6/2002号规章

COMMISSION REGULATION (EC) No 2245/2002** of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (CDIR) 欧盟委员会2002年10月21日实施外观设计（共同体外观设计实施细则 CDIR）6/2002号规章的2245/2002**号规章

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) 欧盟委员会2002年12月16日有关欧盟内部市场协调局（外观设计和商标）共同体外观设计注册费用

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

GUIDELINES FOR EXAMINATION OF DESIGN APPLICATIONS FOR REGISTRATION AND INVALIDITY APPLICATIONS

外观设计申请注册及无效程序审查规定

- **as of 01/07/2012** 截至2012年07月01日为止
- **reviewed every second year with a new edition published online**
每两年进行审查，网路上提供新版本
- **procedural and substantial practice** 程序上及实质上惯例
- **harmonization with EUTM practice** 与欧盟商标惯例协调
- **case-law** 判例法

Scope of protection of Community designs: 共同体外观设计保护范围

- **Includes any design which does not produce on the informed user a different overall impression** 包含任何一项传递给见多识广用户的整体印象不同于其他之前外观设计所传递的整体印象的外观设计
- **The degree of freedom of the designer in developing the design is taken into consideration**
会考虑进去设计师在发展外观设计过程中一定的自由度

The Community design courts have exclusive jurisdiction: 共同体外观设计法庭在以下情况享有专属管辖权

- **for infringement actions and - if permitted under national law - actions in respect of threatened infringement of Community designs;**
侵权案件及（若成员国国家法律允许）对共同体外观设计涉嫌侵犯
- **for actions for declaration of non-infringement of Community designs, if they are permitted under national law;**
对共同体外观设计的未侵犯声明，若成员国国家法律允许
- **for actions for a declaration of invalidity of an unregistered Community design;**
对未注册共同体外观设计的无效声明，若成员国国家法律允许
- **for counterclaims for a declaration of invalidity of a Community design raised in connection with actions infringement or threatened infringement.**
与侵权与涉嫌侵犯有关的对共同体外观设计无效声明反诉

Enforcement Database (EDB)

执法数据库



What is the EDB? 执法数据库是什么？

Free of charge, secure platform enabling real-time exchange of information between right holders and enforcement

执法数据库为知识产权所有人与执法当局实时交流信息提供了免费和安全的网络平台

BUILT UPON TMview AND DesignView



The EDB is a legal tool 数据库是一个法律工具:

its use by law enforcement authorities is founded on article 2(1) of Regulation

EU 386/2012 establishing the mandate of the EU Observatory

执法当局数据库的使用基于设立欧盟瞭望台职权的EU386/2012规章2（1）条

Who participates? 谁参加?

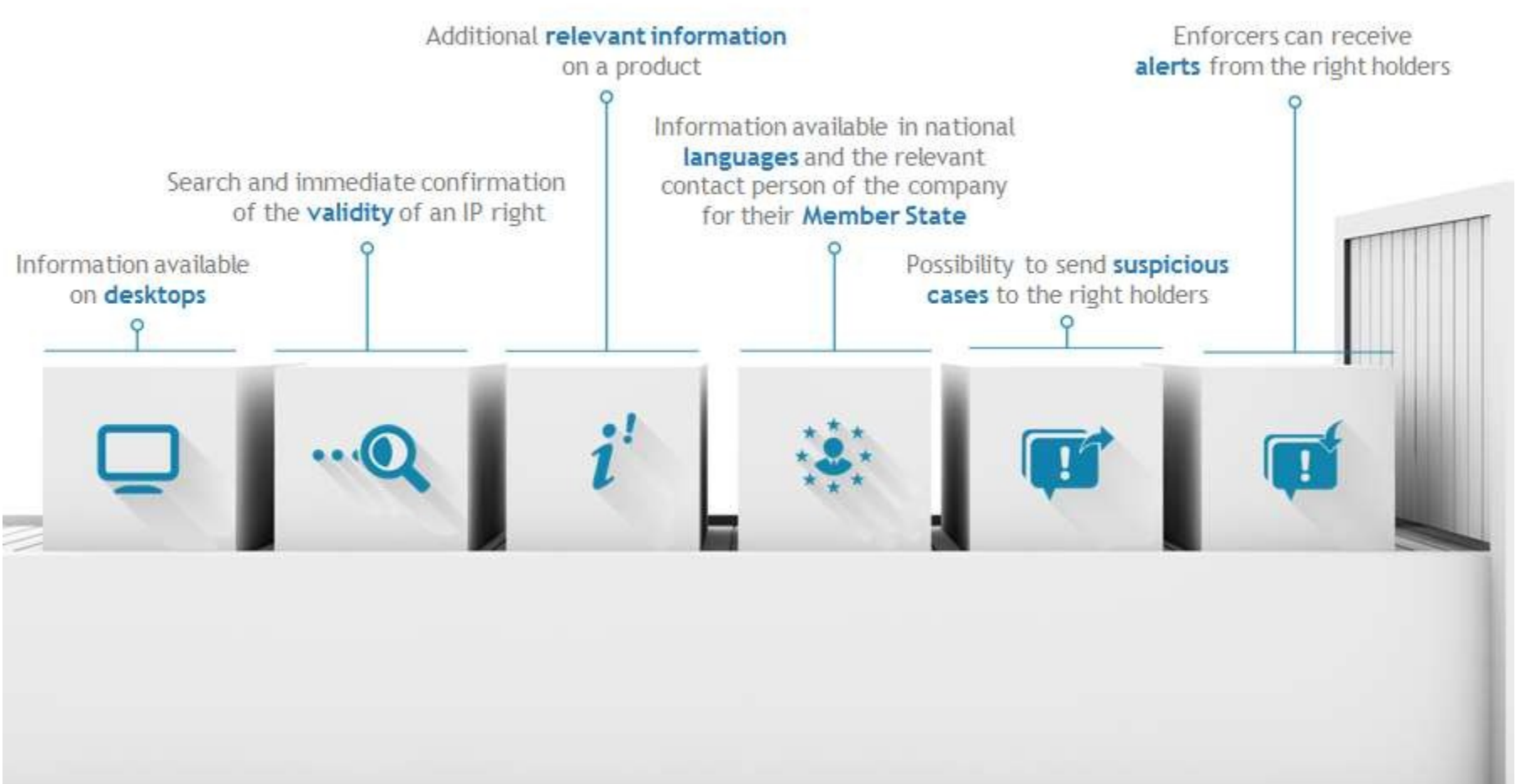
A joint effort 共同努力：

欧盟委员会（税务与海关同盟总司）、执法者、欧洲知识产权局、欧洲警察组织、权利人



What are the benefits for ENFORCERS? 对执法者的有何利益?

电脑可参考资讯、可立即搜索及确认专利有效性、补充性产品信息、成员国语言中及在成员国当地联络人信息、可以将可疑案件提交给权利人、权利人可以提醒执法者





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Thank you

Presentation

Status

DRAFT / APPROVED

Approved by owner

-

Authors

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-

Contributors

-

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Revision history

Version	Date	Author	Description
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		