

## COMMUNITY REGISTERED DESIGNS

From 1st April 2003 it will be possible to obtain registered design protection throughout the European Union with a single registration.

Applications may be filed now but they will be accorded a filing date of 1 April 2003.

Community Registered Designs represent a major change since it will be cheaper to obtain protection in all 15 countries of the European Union than to file even just two national applications.

The main benefits are:

- single registration to protect all 15 member states of the EU.
- as new member states are admitted to the EU, protection is automatically extended to those states.
- fast protection: there is no substantive examination and so registration is expected within 2-3 months of filing.
- multiple applications can be filed to protect an unrestricted number of designs provided that all designs fall within the same Eurolocarno class.
- long period of protection: maximum life of registration is 25 years (renewals due every 5 years).
- exceptionally low cost: protection of one design will cost about £500 in total. Additional designs covered in a multiple application cost about £200 each.
- infringement and validity issues considered by national courts in any member country of the EU.

Other factors to consider:

### *1. Maintaining a watch*

In view of the low cost of obtaining Community Registered Design protection, and because there is no substantive examination, we expect that many companies will seek Community Registered Design protection even though they know the registration to be of dubious validity.

We therefore recommend that clients instruct us to maintain a watch for competitors' registrations in order to be forewarned of possible infringement problems.

## ***2. Three dimensional trademarks***

Certain types of three dimensional trademarks are registrable as a Community Trademark provided that they have acquired sufficient distinctiveness through use in the EU.

At the time of filing an application for a Community Trademark Registration for this type of mark, it is worth considering also filing an application for a Community Registered Design, provided, of course, that the design is novel or has been published only in the last year (see below, regarding the grace period). Doing so adds only marginally to the cost but, in the event that the Community Trademark application fails due to lack of distinctiveness, the design registration would provide interim protection whilst the owner builds up use of the mark. It would then be possible to re-apply for a Community Trademark Registration when sufficient use has been built up.

## ***3. Grace period of 1 year***

A valid Community Design Registration may be obtained despite the proprietor having publicly disclosed the design within 1 year of the filing date of the application.

We do not normally recommend that clients should rely on this provision.

However, the new opportunity of filing of a Community Design Registration ought to be considered in respect of any design that has been published after 1 April 2002 in order to extend the protection for that design throughout the entire EU.

### **Action**

1. If you wish to obtain the earliest possible filing date, namely 1 April 2003, please let us have your instructions by 14 March.
2. If you need to take advantage of the grace period, please advise us of the dates of any prior disclosures or design applications.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

Please note that all our Newsletters can be found on our website at [www.eric-potter.com](http://www.eric-potter.com).

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Park View House · 58 The Ropewalk · Nottingham · NG1 5DD · UK  
Tel: +44 (0)115 955 2211 Fax: +44 (0)115 955 2201  
E-mail: [epc@eric-potter.com](mailto:epc@eric-potter.com) Website: [www.eric-potter.com](http://www.eric-potter.com)