

BOIP



Benelux Office for
**Intellectual
Property**

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Design protection in the EU

2022 EU-Taiwan Seminar on Design Protection



Pieter Veeze
pveeze@boip.int



Programme

Design protection in the EU

What can (not) be protected?

Why protect a design?



The EU design landscape



- Community designs (registered / unregistered) - CDR



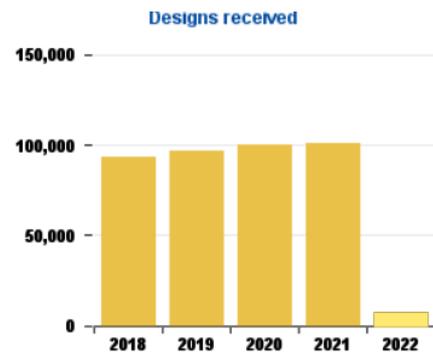
- National (or BeNeLux) designs – BCIP (harmonised by Designs Directive (1998, 98/71/EC))



- IR designs (Hague Agreement)

Community design (registered)

- Valid in all (27) EU countries
 - Filed at EUIPO
 - Valid for max 25 years (5x5)
 - Protection against deliberate copy + independent development
- +/- 100K designs (>30K applications) p/y





Community design (unregistered)



- Valid in all (27) EU countries
- No filing required
- Valid for 3 years after first public disclosure
- Protection only against deliberate copy
- Numbers ∞



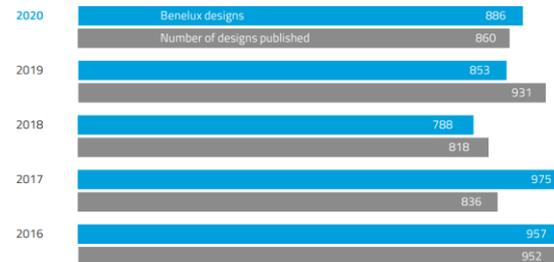
Benelux design (only registered)

- Valid in 3 countries (BeNeLux)
- Filed at BOIP
- Valid for max 25 years (5x5)
- Protection against deliberate copy + independent development

+/- 1.000 designs p/y (100% e-filing)



Benelux designs 2016-2020 (in numbers) ¹





IR design

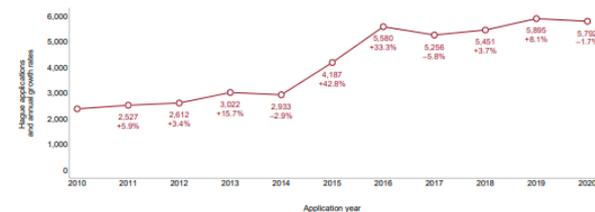
- One single application for different MS (or group of MS) to the Hague Agreement
- Filed directly at WIPO - no basic registration required (\neq TM)
- Protected under the legislation of the designated MS concerned.

+/- 6.000 designs p/y



International applications declined 1.7% in 2020 to 5,792 applications.

A1. Trend in international applications, 2010–2020





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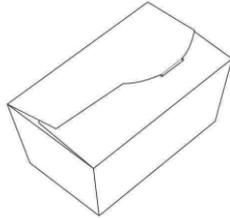
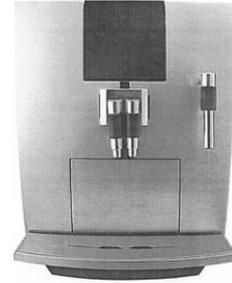


Definition of a design

- The **appearance** of the whole or a part **of a product** shall be regarded as a design
- A product shall mean any **industrial or handicraft** item
- A design shall be protected to the extent that it is **new** and has **individual character**



What can be a design?





One creation, several IP rights...



TM = word, logo..

Patent : technique

Design

Other: copyright, unfair competition... ???





Excluded as a design

1. If it is **not new** (i.e. no identical design has been made available to the public)
 2. If it has **no individual character** (i.e. 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 design is deemed to have been made available to the public if it has been **disclosed in any way**, except where this **could not reasonably have become known to the specialized circles operating within the EU (both CD and national/Benelux designs)**



Also excluded as a design



Some examples:

- Designs exclusively dictated by their technical function
- Flags and other symbols (Art. 6ter Paris Convention)
- Designs contrary to public policy or morality

NB: Ex officio examination (both EUIPO and BOIP) **is very limited.** Invalidity can be requested by any interested party, either before the Office or Court (only option in Benelux)



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Weapon against copying

- The scope of the protection conferred by a **registered design** shall include **any design which does not produce on the informed user a different overall impression.**
- A **registered design** shall confer on its holder the **exclusive right** to use it and to prevent any third party not having his consent from using it. (i.e. **making, offering, putting on the market, importing, exporting or stocking** such a product).
- Enforcement measures (recall, destruction, damages...) make design protection an effective weapon against look-a-likes.



Monopolies stimulate creativity (but there must be limits...)

- Protection should be the exception, not the rule..
- A limited period is preferable.



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Thank you for your attention!

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