

Protecting Intellectual Property Rights In The European Union

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The European Union established Registered Community Designs (RCD) for protecting intellectual property rights. Those interested in protecting intellectual property rights normally protected by industrial designs, design patents, trade dress, or copyrights in member countries of the European Union should consider filing an RCD.

The RCD is a single application that is uniformly effective throughout the European Union. There is only a single set of fees and a single renewal process. An RCD application may include multiple design variants, provided the requisite fees are paid. As the application is only subjected to a limited examination, the time between filing and issuance is expected to be relatively short, i.e., less than five (5) months. The RCD has a maximum enforceable term of twenty-five (25) years.

The RCD process provides a twelve (12) month grace period between the initial disclosure of the RCD subject matter and the filing date of the application. This permits design protection in member countries even when the filing of a design patent application would not be possible due to the lack of absolute novelty.

An RCD application can claim priority from an earlier U.S. design patent applications if the RCD application is filed within six (6) months of the U.S. application. An RCD application can also be filed to protect the design of product packaging. This can provide protection for product packaging that would not otherwise qualify for protection under traditional trade dress or trademark standards.

Another advantage of the RCD is that its protection against copying may be easier to enforce than traditional copyrights. To establish infringement of the design in an RCD, the RCD owner need only show the similarity between the RCD and the unauthorized work. There is no requirement to show copying of the RCD.

While the RCD provides a potentially useful and cost effective tool for protecting intellectual property rights, it does have the disadvantage that invalidation in any European Union member country results in the RCD being invalidated throughout the European Union. Thus, depending on the commercial value of the subject matter to be protected, it may be advisable to use the RCD process for supplemental protection rather than as a substitute for traditional protection methods. Nevertheless, the relatively lower RCD costs suggest that the RCD should be considered as a potentially useful tool for protecting intellectual property rights in the European Union.