



KADOR & PARTNER

NEWSLETTER

IP NEWS FROM EUROPE AND GERMANY

December 2024

I. NEWS ABOUT US

Advanced Training Course on European IP Law in October 2025

We cordially invite our valued clients and colleagues to an exclusive training course on European IP Law. The event will be held at our premises in Munich from October 4th to 11th, 2025. We look forward to providing an enriching and insightful experience. Please save the dates!

The course will begin with an overview of the European patent system and procedures, continuing with an in-depth treatment of the following topics:

- assessment of novelty and inventive step under the EPC, requirements of sufficient disclosure of the invention,
- the strict approach of the European Patent Office on amending claims – added matter,



Neuschwanstein Castle

- best practice in opposition and appeal proceedings, and
- infringement and litigation under European and German law.

Additionally, the course will provide an overview of the Unitary European Patent, the Unified Patent Court, and the European Union Trademark system.

Participants will also have the opportunity to attend an appeal hearing at the European Patent Office (EPO), offering a firsthand experience of such proceedings.



Dr. Utz Kador welcoming the participants of our seminar

The lectures will be presented by Kador & Partner attorneys as well as by prominent IP professionals from the European Patent Office, private practice and industry, including **Dr. Ludwig von Zumbusch**, litigation specialist at Preu Bohlig & Partner and **Mr. Konstantin Schallmoser, LL.M.**, specialist on International Private Law and International Law on Civil Procedure also at Preu Bohlig & Partner.

Beyond the professional aspects, participants can enjoy a range of social activities, including a visit to the iconic Neuschwanstein Castle, famously associated with King Ludwig II of Bavaria, a sightseeing tour of Munich, a visit to the Oktoberfest and an excursion to the picturesque Lake Chiemsee.

For detailed information about the seminar, including comprehensive descriptions of the lectures and leisure activities, please visit our website at www.kadorpartner.com and explore the "The Seminar" section.

We look forward to seeing you in October next year!

Celebration of Kador & Partner's 50th Anniversary in Nymphenburg Castle

Kador & Partner is proudly celebrating its 50th anniversary this year. To mark this special occasion, we gathered on a



Festively illuminated entrance to Orangerie Hall of Nymphenburg castle

beautiful, warm summer evening in the magnificent Orangerie Hall of Nymphenburg Palace in Munich.

Office staff, colleagues and friends of Kador & Partner came together to raise a glass, reminisce about the joys, challenges, and successes of the past five decades, and to look forward to the future. We extend our heartfelt thanks to everyone for their kind contribution, wishes and gestures as we celebrate this milestone.

A special thanks goes to Utz Kador, the founder of our firm, whose vision and leadership have brought us to where we are today. As a token of appreciation, our team made a donation to the Deutsches Museum, enabling a school class to visit and experience the wonders of the museum. Here's to the next 50 years!



Dr. Bernhard Pillep giving the welcoming speech

GO-Bio Initial Expert Session Webinar

Karoline (Dr. Karoline Bopp) was invited by Ascenion GmbH to give a talk in their Life Science Digital Hub Expert Session for the GO-Bio initial funding program on the Patenting Process in the life-science field.

With the GO-Bio initial funding program, the German Ministry of Education and Research supports the identification and development of early life science research approaches with recognizable innovation potential.

The webinar was attended by many interested scientists to gain knowledge on patenting life science inventions under the EPC including insights to Unitary Patent protection as well as International Applications.

We are excited to support the promotion of intellectual property awareness, especially in the scientific community. It's encouraging to note that many scientists and founders are still learning about these topics, which makes our contribution even more impactful and rewarding.

Excursion to Heidelberg

Each year, the entire Kador & Partner team sets off on a multi-day excursion designed to foster team spirit, engage in meaningful conversations beyond the usual business topics, explore new destinations, and simply enjoy quality time together.

This year, the choice came down to Venice or Heidelberg, and ultimately, the team selected Heidelberg – the oldest university town in Germany, situated in Baden-Württemberg. The trip began with a guided tour of Heidelberg Castle.



Our team at Heidelberg castle

Despite being partially in ruins, the castle's timeless charm and historical significance remain captivating.

Perched on the northern slope of Königstuhl hill, Heidelberg Castle offers stunning panoramic views of the town and the Neckar River, particularly enchanting when bathed in the golden hues of the evening sun.

In the following days, we delved into the local wine culture, strolling through picturesque vineyards and indulging in wine tastings. By the end of our journey, we all unanimously agreed – Heidelberg is an absolute must-visit.

II. EUROPEAN PATENT LAW

Romania Acceded UPC System¹

Romania joined the Unitary Patent system with effect of September 1, 2024, upon ratification of the Agreement on a Unified Patent Court (UPCA) on May 31, 2024. With Romania's accession to the system, the number of participating EU member states has increased to 18.

A Unitary Patent covers those states in which the UPCA was in force at the date of registration of unitary effect with the

¹ See <https://www.unified-patent-court.org/en/news/romania-becomes-18th-member-state-ratify-agreement-unified-patent-court-upca>

EPO. Hence, the territorial scope of Unitary Patents with an earlier date of registration of unitary effect is not extended to Romania. Accordingly, September 1, 2024 also marks the beginning of a second generation of Unitary Patents covering now 18 instead of 17 EU member states adding a market of about 19 million people to the original area of 330 million people.

In addition, the Unified Patent Court (UPC) is now also available for disputes concerning European patents validated in Romania.

The UPCA has been signed but not yet ratified by six further EU member states (Cyprus, Czech Republic, Greece, Hungary, Ireland and Slovakia). These states are eligible to join the Unitary Patent system upon ratification.

New Referral to Enlarged Board of Appeal G 1/24² on Interpretation of Claim Language

In accordance with Article 112(1)(a) EPC, Technical Board of Appeal 3.2.01 has referred important points of law concerning interpretation of claim language to the Enlarged Board of Appeal (EBA) by interlocutory decision of 24 June 2024 in case T 439/22. The case is pending at the Enlarged Board as G 1/24 ("*Heated aerosol*").

The referred points of law are the following:

"1. Is Article 69 (1), second sentence EPC and Article 1 of the Protocol on the Interpretation of Article 69 EPC to be applied on the interpretation of patent claims when assessing the patentability of an invention under Articles 52 to 57 EPC?"

² See www.epo.org/en/boards-of-appeal/decisions/t220439eu1

³ Art. 69 (1) EPC reads: "*The extent of the protection conferred by a European patent or a European patent application shall be determined by the*

2. May the description and figures be consulted when interpreting the claims to assess patentability and, if so, may this be done generally or only if the person skilled in the art finds a claim to be unclear or ambiguous when read in isolation?"

3. May a definition or similar information on a term used in the claims which is explicitly given in the description be disregarded when interpreting the claims to assess patentability and, if so, under what conditions?"

The questions referred to the Enlarged Board of Appeal (EBA) can be grouped into two main categories. The first pertains to question 1, which addresses the relevance of Article 69 (1) EPC in interpreting claims when assessing patentability – specifically, novelty and inventive step. Notably, Article 69 EPC is primarily intended for a different purpose, as it governs the extent of protection conferred by a European patent or patent application³.

Closely linked to Article 69 EPC is the Protocol on the Interpretation of Article 69 EPC, which, though not formally designated as an article, forms an integral part of the European Patent Convention. This protocol provides further guidance on how Article 69 EPC should be interpreted.

Historically, the first-instance bodies and Boards of Appeal of the EPO have generally rejected the relevance of Article 69 EPC (and its protocol) for claim interpretation in the context of patentability assessments. These bodies have argued that determining the scope of protection and evaluating patentability are not congruent tasks. Additionally, it has been emphasized that questions regarding the scope of protection are typically resolved by national courts during

claims. Nevertheless, the description and drawings shall be used to interpret the claims."

infringement proceedings, where additional factors may come into play.

While the latter point is particularly valid – for instance, the scope of protection can extend beyond the literal claim wording under the doctrine of equivalents – a consistent approach to claim interpretation for both patentability assessment and scope of protection would be highly desirable. Furthermore, the claim interpretation provided by the EPO will undoubtedly influence decisions made by national courts, and now also the Unified Patent Court (UPC), in such matters.

The second category of referred questions comprises questions 2 and 3, which address broader issues of claim interpretation. The first part of question 2 has largely been affirmed in past rulings and has also been applied generally. It is anticipated that the EBA will adopt a similar stance in this case.

Question 3 seeks to clarify the treatment of definitions for terms used in claims but contained only in the description. This issue has been inconsistently addressed in the past. Typically, an affirmative response was given only when the claims explicitly referenced such definitions. The EBA's answer to question 3 is expected to bring much-needed clarity to this matter.

According to a notice from the European Patent Office⁴ the departments of first instance (Examining and Opposition Divisions) have been ordered by the President of the EPO to continue any pending proceedings, i.e. not to stay proceedings until the Enlarged Board hands down its decision on the question referred.

⁴ See [OJ EPO 2024, A67 – Notice from the European Patent Office dated 1 July 2024 concerning the continuation of examination and opposition proceedings in view of referral G 1/24](#)

Fee Reduction for Micro-Entities at the EPO Effective as of April 1, 2024⁵

The Administrative Council of the EPO has opened the possibility for so-called micro-entities, such as micro enterprises, natural persons, nonprofit organization, universities, and public research organization to get a fee reduction of 30% on most official fees payable to the EPO. This has been made effective as of April 1, 2024.

While well-intentioned, the new fee reduction scheme under Rule 7(3) EPC introduces considerable complexity. For instance, it requires that an applicant must have filed fewer than five applications in the five years preceding the relevant date of the application in question, with the relevant date varying depending on the type of application.

Moreover, the new scheme has a significant pitfall that could render its practical use highly questionable. This pitfall lies in the requirement that the EPO must be notified whenever a change in the applicant's status results in the loss of eligibility for the fee reduction. For instance, this could occur if a "micro enterprise", defined as an enterprise which employs fewer than 10 full-time persons and an annual turnover and/or annual balance sheet total of up to EUR 2 million, transitions to a larger enterprise that no longer meets these criteria.

If the EPO is notified of such a change and the fees, such as annuity fees, are paid in full without applying the reduction, no issue arises. However, if the reduced fees continue to be paid despite the applicant no longer being eligible for the reduction, these payments are considered invalid, effectively treated as if the fees were not paid at all.

As announced by the EPO, in such cases, only the usual remedies are available. However, these remedies

⁵ See <https://www.epo.org/en/service-support/faq/applying-patent/fee-reductions-small-and-micro-entities>

heavily depend on how soon after paying the reduced fees the applicant's ineligibility for the fee reduction is discovered and the regular fees are paid.

For example, if annuities are paid at a reduced rate when they should have been paid in full, and this oversight is not identified by the applicant or their representative within the fee payment deadline – including the six-month grace period for late payment with a surcharge – and subsequently corrected, the only available legal remedy is a *restitutio in integrum*. This remedy, however, requires strict compliance with the EPO's stringent “in spite of all due care taken” standard.

Even more concerning, if the oversight is discovered only more than one year after the fee payment deadline has passed, no legal remedy at all is available to retroactively validate the payment.

As a severe consequence, the application will be irrevocably lost in such a scenario.

In practice, ensuring that any changes affecting an applicant's eligibility for reduced fees are promptly identified, reported to the EPO, and followed by payment of the correct fees will demand significant monitoring efforts. Naturally, this responsibility falls solely on the enterprise itself. However, it is highly doubtful whether small or very small enterprises, in particular, will have the capacity to manage this effectively.

As a result, applicants and their representatives should approach the new fee reduction regime with caution and establish clear procedures to ensure compliance with the EPO's reporting requirements and the accurate payment of fees. If it is not feasible to implement such procedures, it is advisable to refrain from using the reduced fees altogether.

Decision of the Enlarged Board of Appeal in Cases G 1/22 and G 2/22 on Validity of Priority Claim⁶

In its decision on the consolidated cases G 1/22 and G 2/22 the Enlarged Board of Appeal (EBA) clarified the competence of the European Patent Office to assess whether a party is entitled to claim priority under Article 87(1) EPC.

This decision stems from the revocation of a patent owned by Alexion Pharmaceuticals, Inc., granted based on a PCT application claiming priority from an earlier U.S. application.

The validity of the priority claim was challenged during opposition proceedings because the priority application was filed in the names of the three inventors. However, in the subsequent PCT application, the inventors were listed as applicants only for the U.S., while Alexion Pharmaceuticals, Inc. was named as the applicant for all other designated states.

The priority claim was deemed invalid, resulting in a lack of novelty, because only the priority rights of one inventor had been assigned to the applicant in a written document. Consequently, Alexion Pharmaceuticals, Inc. was not recognized as the rightful successor in title to the priority application.

In a related case involving a divisional application ultimately derived from the opposed patent, the application was also refused for the same reason.

In both cases, appeals were filed (T 1513/17 and T 2719/19), which were handled as consolidated cases. While the principle of the “joint applicants approach” – allowing joint applicants of a European application to rely on the priority right originating from an application filed by only one of them – was not contested, the applicability of a similar con-

⁶ See [OJ EPO 2024, A50 – Decision of the Enlarged Board of Appeal dated 10 October 2023 - Consolidated cases G 1/22 and G 2/22](#)

cept, referred to as the “PCT joint applicants approach,” was a matter of dispute.

The “PCT joint applicants approach” suggests that in a PCT application, different applicants named for different designated states could claim priority from an earlier application filed by just one of them, without requiring a formal transfer of priority rights. This concept, however, remained contentious.

Based on these issues, the EBA was asked to clarify two key points. First, whether the EPO is generally competent to assess a party's entitlement to claim priority under Article 87(1) EPC (Question 1). Second, whether, in a scenario like the one described above, a party (Party B) can validly rely on a priority right claimed in a PCT application, where the PCT application designates Party A as the applicant for the U.S. only, and Party B as the applicant for other designated states (including Europe), while the priority application was filed solely in the name of Party A as the applicant (Question 2).

As to Question 1 the EBA ruled that *“the European Patent Office is competent to assess whether a party is entitled to claim priority under Article 87(1) EPC. There is a rebuttable presumption under the autonomous law of the EPC that the applicant claiming priority in accordance with Article 88(1) EPC and the corresponding Implementing Regulations is entitled to claim priority.”*

In this context, it was clarified that an applicant filing a European patent application must possess two distinct entitlements: the right to file the application and the right to claim priority from an earlier application, if priority is asserted. These two rights are strictly differentiated.

The EBA further clarified that the priority rights of subsequent European applications are governed exclusively by Articles 87 to 89 EPC, with no involvement of national laws in their creation or assertion. Given that priority rights are

considered autonomous under the EPC, their assessment should be conducted solely within the framework of the EPC. The EBA also referenced earlier decisions by the Boards of Appeal that addressed the transfer of priority rights, including cases T 1201/14, T 577/11, and T 1946/21.

Given that most national laws impose minimal or no formal requirements for the transfer of priority rights, the Enlarged Board of Appeal further expressed the view that the EPO should not impose stricter formal requirements. This approach aligns with the goals of harmonization with national laws and facilitates international patent protection by reducing the risk of non-compliance with formalities.

It was further assumed that when a party transfers a right to a subsequent application, it is with the intention that the subsequent applicant benefits from the priority right. Moreover, it was emphasized that the consent and, potentially, the cooperation of the priority applicant are necessary to fulfill the formal requirements of Article 88(1) EPC for claiming priority.

The EBA concluded that entitlement to priority should generally be presumed when priority is claimed, regardless of whether the subsequent application is a European or a PCT application.

However, the EBA pointed out that this presumption is rebuttable to account for exceptional cases where the priority applicant may have valid reasons to oppose the subsequent applicant's claim to priority. In such instances, the burden of proof lies with the party challenging the subsequent applicant's entitlement to priority.

Question 2 was answered as follows: *“The rebuttable presumption also applies in situations where the European patent application derives from a PCT application and/or where the priority applicant(s) are not identical with the subsequent applicant(s). In a situation where a PCT application is jointly filed*

by parties A and B, (i) designating party A for one or more designated States and party B for one or more other designated States, and (ii) claiming priority from an earlier patent application designating party A as the applicant, the joint filing implies an agreement between parties A and B allowing party B to rely on the priority, unless there are substantial factual indications to the contrary.”

In this context, the EBA considered two key concepts in reaching its conclusions: the “PCT joint applicants’ approach” and the notion of an implied agreement.

While the “joint applicants’ approach” for European applications was undisputed, as it is explicitly supported by Article 118 EPC, it was argued that this justification does not extend to the PCT framework. The PCT does not preclude the possibility of different priority rights being assigned to different territories.

Nevertheless, the EBA held that it was unnecessary to decide on the viability of the “PCT joint applicants’ approach,” as the concept of an implied agreement would achieve the same outcome in most cases.

According to the EBA, the lack of formal requirements allows priority rights to be transferred through an implied agreement. In the scenario described in Question 2, the priority applicant (A) and the subsequent applicant (B) jointly present themselves as claiming priority from A’s priority application. Under normal circumstances, the Enlarged Board interprets such joint filing as an implicit agreement between A and B, permitting B to rely on the priority right.

The EBA also clarified that the concept of a rebuttable presumption regarding the priority right fully applies to the situation outlined in Question 2.

⁷ See <https://www.epo.org/en/boards-of-appeal/decisions/t210056eu1>

Our Comment: *This ruling by the Enlarged Board of Appeal is highly significant and should be warmly welcomed, as it unequivocally establishes that entitlement to priority should generally be presumed whenever priority is claimed, regardless of whether the subsequent application is a European or a PCT application.*

This clarification is particularly beneficial for U.S. applicants, where priority applications must be filed in the names of the inventors, while subsequent applications are typically filed in the name of the company employing the inventors. By recognizing a presumption of entitlement, the ruling addresses a frequent challenge faced by U.S. applicants, ensuring a more consistent and practical approach.

As the EBA further emphasized, this presumption is rebuttable. However, to successfully challenge entitlement, proof must be provided that the applicant was not entitled to the priority right. This requirement raises the bar for such challenges and discourages baseless allegations.

Decision T 0056/21 on Adaption of Description before Grant

In recent decision T 0056/21⁷ the Board of Appeal held that the European Patent Convention (EPC) does not provide a basis for requiring the description to be amended to align with claims that are limited to a narrower subject matter.

The decision under appeal concerned the refusal of an application by the Examining Division for failing to meet, i.a., the requirements of Article 84 EPC⁸, specifically because the description included claim-like clauses. The applicant filed an appeal, requesting that the decision be overturned and that a patent be granted. Alternatively, the applicant sought a referral to the Enlarged Board

⁸ Art. 84 EPC reads as follows: “*The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.*”

of Appeal.

In a detailed and well-reasoned analysis, the Board of Appeal concluded that neither Article 84 EPC (nor Rules 42, 43, and 48 EPC which were also considered) provide a legal basis for requiring the description to be adapted to align with allowable claims of more limited subject matter.

The Board went even further, finding that since the question to be answered relates to the relationship between claims and description, the potential applicability of Article 69(1) EPC and the protocol on its interpretation, in combination with Article 84 EPC, had to be thoroughly considered.

According to Article 69(1) EPC and its protocol, the extent of protection is determined by the claims, and the description serves to interpret the claims, but only insofar as it relates to the claim elements.

The Board of Appeal dismissed the relevance of Article 69(1) EPC in the context of Article 84 EPC for the issue at hand, emphasizing that Article 69 EPC does not apply to the examination process before the EPO. Instead, Article 69 EPC is concerned with determining the scope of protection in national proceedings, such as infringement disputes. The Board noted that the only circumstance in which Article 69 EPC is pertinent to EPO proceedings is in post-grant cases, specifically when assessing compliance with Article 123(3) EPC. In contrast, Article 84 EPC, which governs the clarity of claims during pre-grant proceedings, was deemed independent of and unrelated to Article 69(1) EPC.

The Board concluded that the EPC provides no legal basis for requiring an adaptation of the description to match the allowed claims. Consequently, any such adaptation rests solely with the applicant's discretion. The Board also determined that a referral to the Enlarged

Board of Appeal was unnecessary.

Our Comment: *This decision by the Board of Appeal sharply contrasts with the established practice outlined in the Guidelines for Examination in the European Patent Office. According to chapter F.IV.4.3 of these guidelines⁹, applicants are expected to either delete subject matter no longer covered by the allowed claims or explicitly state that such subject matter does not fall within the scope of the invention. Additionally, the guidelines require that claim-like clauses should be removed.*

While the Guidelines for Examination provide procedural and practical instructions for examination, they are not legally binding on the Boards of Appeal.

As the issue in question has not been referred to the Enlarged Board of Appeal, there is no definitive ruling on the matter. It remains uncertain whether the current decision will be implemented in EPO proceedings, and if so, in what manner.

III. EUROPEAN TRADEMARK LAW

“Sound of an Engine Noise”: EUIPO Board of Appeal Decision on Sound Marks

In a decision dated June 20, 2024 (R 1900/2023-5¹⁰), the Fifth Board of Appeal (BoA) of the EUIPO rejected the registration of a sound mark representing the "sound of an engine noise." The BoA upheld the earlier decision of the EUIPO examiner, which found that the sound lacked distinctive character and, therefore, could not serve to distinguish the goods and services of the applicant from those of other undertakings. As a result, registration of the mark was denied.

⁹ See https://www.epo.org/en/legal/guidelines-epc/2024/f_iv_4_3.html

¹⁰ See https://euipo.europa.eu/eSearch-CLW/#key/trademark/APL_20240620_R1900_2023-5_018795489

In this case, the German car manufacturer Porsche AG sought to register the "rapid acceleration sound of a motor" as a sound mark for several goods and services, including:

Class 12: "Vehicles and parts thereof."

Class 28: "Model vehicles and toy cars."

Class 9: "Virtual reality models; downloadable digital collectibles, namely motor vehicles, motor vehicle parts, model vehicles, and toy cars."

Class 41: "Providing online non-downloadable digital goods, namely automobiles and motor vehicle parts."

The EUIPO examination division concluded that the sound would be perceived by the public as an electronically synthesized reproduction of an accelerating engine noise. It was determined that the sound imitated the typical noise of an internal combustion engine. The examiner further argued that the sound lacked any distinctive or memorable elements, meaning consumers would not be able to associate the sound with a specific undertaking.

In its appeal, Porsche argued that it was unnecessary for consumers to recall the exact sequence of sounds for the mark to possess distinctive character. Porsche emphasized that the sound sequence was not naturally associated with the claimed goods or services but was instead specially composed and artificially generated. Because the sound sequence was not realistic, it could not be typical of real goods or services (e.g., vehicles). Furthermore, since the sound was an "unrealistic" alteration of an engine sound rather than a genuine one, Porsche argued that this very artificiality supported the distinctiveness of the sound.

However, the BoA disagreed and upheld the decision of the EUIPO Examination Division. The BoA concluded that the sound sequence replicated the effect of acceleration or increased performance

in vehicles, a feature inherently characteristic of the claimed goods and services. Specifically, for vehicles and cars, the public would immediately associate this sequence of sounds with acceleration or enhanced performance. As a result, the Board determined that the sound mark lacked the distinctive character required for registration.

Our comments: *Non-traditional trademarks, such as sound marks, have yet to achieve significant prominence in trademark law practice, despite their often highly memorable nature. Iconic examples include the roaring lion of MGM, the famous fanfare of Twentieth Century Fox, and McDonald's distinctive "I'm lovin' it" jingle. These sound marks demonstrate the potential of auditory branding to create strong associations with a brand, even though their legal recognition remains relatively limited.*

Ultimately, we think that in the present case the BoA's decision was correct, although the rejection of the sound mark should have been based on its descriptive nature rather than lack of distinctiveness. A minimum degree of distinctiveness is sufficient to avoid a refusal of registration on the grounds of non-distinctiveness. This is evident from the registration of a sound mark by BMW, which did not describe acceleration or evoke a similar association with cars. Interestingly, Porsche's sound mark was successfully registered with the German Patent and Trademark Office (PTO), meaning Porsche still retains some protection for its sound mark, despite the EUIPO decision.

IV. EUROPEAN DESIGN LAW

New European Design Regulation

On October 10, 2024, the European Council approved a new "design protection package," which consists of two parts: an amended directive on the legal protection of designs and a revised EU

Regulation on Community Designs¹¹. The key updates in the new regulation can be summarized as follows:

The regulation updates the terminology to align with modern usage. Notably, the term "Community Designs" has been replaced with the new designation "Union Designs," which is also reflected in the German term "Unionsdesign," replacing the previous, outdated term "Gemeinschafts-Geschmacksmuster."

Additionally, several formal changes have been made to the registration process and associated fees. One significant change is that Union design applications will now only be accepted directly at the EUIPO, eliminating the option to submit them to national offices. The regulation also removes the restriction on multiple design applications, allowing designs from different classes to be included in a single application. Another key update is the introduction of a revised fee schedule.

A key substantive change in the regulation for European Union designs is the redefinition of the terms "design" and "product," which broadens the scope of what can be protected as a registered design. The definition of a "design" has been expanded to include not only the appearance of a whole or part of a product characterized by features such as lines, contours, shapes, colors, materials, etc., but also the movement, transitions, and animations of these features.

The concept of a "product" is further clarified to include both physical and non-physical objects. Notably, elements of spatial arrangements of objects forming interior or exterior spaces, as well as graphical user interfaces, are now explicitly recognized as protectable products. While this clarification addresses the legal status of digital products, computer programs remain excluded from design protection.

Additionally, the regulation resolves the

previously controversial issue of the visibility requirement, which had been applied inconsistently to exclude objects from design protection without clear legal grounding. According to the new regulation, the key criterion for protection is that certain features must be made visible in the design application. However, protectability is not restricted to design features that are visible during the normal use of the product.

The scope of protection has also been expanded, with the catalog of prohibited acts now including digital use aimed at reproducing the design. This makes it clear that the creation of files, such as CAD files for 3D printing of a protected product, constitutes an infringement. Additionally, the transit of goods infringing a registered community design is now explicitly prohibited under the new regulation.

The revised regulation on European Union Community Designs was published in the Official Journal of the European Union on November 18, 2024, and will come into force on December 8, 2024. It will be fully applicable four months later, i.e. on April 8, 2025.

¹¹ See: <https://www.euipo.europa.eu/de/news/eu-adopts-design-legislative-reform-package>



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