

“COPY” OR “INSPIRATION”?
HOW CAN EMERGING DESIGNERS PROTECT THEIR FASHION CREATIONS IN
THE EUROPEAN UNION’S LANDSCAPE OF CONSTANT RISK

———— MASTER’S PROJECT ————

Alejandro Abadía Grimaldos

9:41



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Protection Measures

Paid Protection Measures

Trade Mark

Registered Design

Patent

Free Protection Measures

Unregistered Design



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Protection Measures

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Trade Mark

What is a Trade Mark?

Trade mark in the European Union: It is the sign through which customers identify a company and its products or services. It distinguishes one company from its competitors and can be registered with the **EU IPO**.

The most Common ones in Fashion

Words (proper names incl.) & Graphic Symbols in Fashion

- A European Union trade mark may consist of any signs: words or drawings, letters, numerals, colors, the shape of the product or its packaging, or sounds.
- The most common types of trade marks are word marks (composed of words) and figurative marks (composed of drawings and/or colors). Both types may be combined.

Word mark

A word mark consists exclusively of words or letters, numerals, or other standard typographic characters, or a combination of any of these.

Examples:

CHANEL adidas

Figurative mark

A figurative mark consists of non-standard characters, stylization, graphic features, or a combination of word and figurative elements (such as drawings, logos, or colors).

Examples:



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Trade Mark

Three-dimensional mark

Less commonly, a trade mark can protect the shape of a product or its packaging, provided it is distinctive.

Example:



The silhouette of the Hermès Birkin bag.

Trade marks & the Nice Classification

A Trade mark provides protection in relation to the specific goods and services offered by your company. When applying for a trade mark, you must select the appropriate goods and services. In our case, Class 25 of the Nice Agreement will normally have to be chosen.

25 - Clothing, footwear and headgear.

This Class includes, in particular:

- Parts of clothing, footwear and headgear, for example: cuffs, pockets, ready-made linings, heels, heelpieces, heel inserts, hat visors, hat frames;
- Clothing and footwear for sports, for example: ski gloves, sports singlets, cyclists' clothing, judo and karate uniforms, football boots, gymnastic shoes, ski boots;
- Masquerade costumes;
- Paper clothing, paper hats being clothing items;
- Bibs, not of paper;
- Pocket squares;



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Trade Mark

- Electrically heated clothing, not for protection.

See more Categories:

[CLICK HERE](#)

Trade Mark Search

When you have an idea for the sign you wish to register, you must first verify whether it is actually available or if an identical or similar sign has already been chosen by another company for goods or services identical or similar to those for which you intend to register your Trade mark. Check this by entering your sign here:

[CLICK HERE](#)

It is not possible to register the following as trade marks:

1. Non-graphic signs: e.g., sounds like a rooster crowing.
2. Non-distinctive marks: words that cannot identify and distinguish products/services, e.g., "Clothing" or "Sweater."
3. Descriptive signs: indicating type, quality, quantity, purpose, value, origin, production period, or other product/service features, e.g., kilo, meter, Paris, large.
4. Common language signs: terms that have become generic, e.g., "Velcro."
5. Shapes or characteristics of the product:
 - Imposed by the product's nature,
 - Necessary to achieve a technical result,
 - Adding substantial value to the product, e.g., the shape of a broom cannot be registered to distinguish brooms
6. Contrary to public order or morality.
7. Misleading marks: may confuse about the nature or origin of the product, e.g., "Orolex" for jewelry.



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Trade Mark

8. Protected emblems / symbols: coats of arms, flags, or public interest symbols without authorization, e.g., EU flag.
9. Geographical indications / designations of origin: e.g., Champagne.
10. Traditional designations of wines or other specialties, protected by law, e.g., Parma Ham.
11. Plant variety names.
12. Renowned trade marks: cannot be used if widely known to the public.



TIP! What to do if You find a potentially conflicting Trade mark

If you find a trade mark consisting of a sign identical or similar to yours for similar goods or services, what should you do? For an emerging designer, the simplest and most cost-effective solution is usually to redesign or reconsider the original trade mark idea.

Trade Mark Application

The application must be submitted here:

[CLICK HERE](#)

Fees and Payments

When you apply for an EU trade mark, you must pay the basic fee within 1 month of the EUIPO receiving the application. The EUIPO only examine trade mark applications and process any related communications once the fee has been paid.



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Trade Mark

- The basic online fee of €850 covers 1 class of goods or services
- The fee for the 2nd class is €50
- The fee for 3 or more classes is €150 for each class

For more information on costs:

[CLICK HERE](#)

Fees Calculator

You can calculate the exact fee depending on the number of classes and the filing method of your application. Access the calculator here:

[CLICK HERE](#)

Examination and Registration Process

What happens after the application?

- After you file your application, the EUIPO will proceed with an examination to ensure that the application and the sign comply with the legal requirements. Once this step is completed, your application will be published in the EU Trade Marks Bulletin.
- When your trade mark application is published, a three-month opposition period begins, during which any party holding an earlier filed or registered trade mark may oppose your registration. If no opposition is filed (or if the opposition is rejected), your trade mark will be registered and the registration will be published.
- Finally, the trade mark will be yours. From that moment onwards, only you will be entitled to use it in the market to distinguish your products in the class – in this case, Class 25 – for which it was registered, and you will be able to oppose any commercial use attempted by another party or competitor.



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Trade Mark

Term and Renewal

- A European Union trade mark (EUIPO) has an initial duration of 10 years from the filing date of the application.
- It can be renewed indefinitely in successive periods of 10 years.
- Renewal must be requested within the 6 months prior to the expiry date, although there is a 6-month grace period afterwards (subject to a surcharge on the fee).

For more information:

[CLICK HERE](#)

What to Do in Case of Infringement

If someone copies an identical or similar trade mark to mine for identical or similar products – Class 25 – how should I react?

1. Confirm the infringement

- Verify that your trade mark is registered and in force.
- Check that the competitor's use is identical or similar in relation to goods/services that are related and likely to cause consumer confusion.

2. Initial contact (optional, but recommended)

- In many cases, the process begins with a "cease and desist letter," in which you request the infringer to stop using your trade mark.

Cease and Desist Letter example:

1. Sender Information

[Your Name / Company Name]
[Your Address]
[City, Postal Code]
[Phone / Email]



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Trade Mark

2. Recipient Information

[Recipient's Name / Company Name]

[Recipient's Address]

[City, Postal Code]

3. Date and Place

[City], [Day] [Month] [Year]

4. Subject

Cease and Desist – Unauthorized Use of the European Union Trade Mark [TRADE MARK NAME] (No. [EUIPO Registration Number])

5. Introduction

Dear Sirs,

I am writing to you as the legitimate owner of the European Union Trade Mark [TRADE MARK NAME], duly registered before the European Union Intellectual Property Office (EUIPO) under registration number [number], valid since [date of grant], covering Nice Class(es) [specify classes and goods/services covered].

6. Description of the Infringement

It has come to our attention that your company [infringer's name] is using our trade mark [briefly explain: on products, services, advertising, website, social media, etc.] without authorization. Such use constitutes an infringement of our exclusive rights under Regulation (EU) 2017/1001 on the European Union trade mark.

7. Demands

Accordingly, we hereby formally require that you:

1. Immediately and permanently cease any use of the trade mark [TRADE MARK NAME] or of any identical or similar sign likely to cause confusion in the marketplace.
2. Remove from the market all products or materials using the infringing sign.



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Trade Mark

3. Provide written confirmation within [e.g.,10 business days] of receipt of this letter of your compliance with the above and of your undertaking not to infringe again.

8. Consequences of Non-Compliance

Should you fail to comply with this request within the deadline specified, we will have no alternative but to initiate legal proceedings before the competent European Union Trade Mark Courts, including claims for damages and legal costs.

9. Closing Statement

We trust that you will appreciate the seriousness of this matter and resolve it amicably and without the need for judicial intervention.

10. Signature

Yours faithfully,
[Signature]
[Full Name]
[Position, if applicable]
[Trade mark owner / Legal representative]

TIP! Send it through a reliable and verifiable channel (e.g., courier, international registered mail, or via a lawyer). This way, the matter can often be resolved amicably without going to court.

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3. Legal Actions Available

Civil action before courts specialized in EU trade marks (designated in each Member State). For example:

1. In Spain:
 - Commercial Courts of Alicante (first instance).
 - Alicante Court of Appeal (appeal).
2. In Italy:
 - Intellectual Property and Industrial Courts in Milan, Rome, and Naples.



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Trade Mark

You may request:

- The cessation of the infringing trade mark use.
- Compensation for damages and losses.
- The withdrawal and destruction of illicit products.
- Criminal action may also be available in certain EU countries if the infringement is severe (e.g., counterfeiting).
- Customs measures: you can record your trade mark with the EU Customs system so that counterfeit products are blocked at the borders.

4. Professional Assistance

It is highly advisable to seek the support of a lawyer specialized in intellectual property or a European trade mark attorney, since proceedings can be complex and vary depending on the country where the competent court acts.

TIP! You must act quickly, as prolonged inaction may weaken your position. The most effective approach is usually to begin with a cease and desist letter and, if unsuccessful, proceed before the EU trade mark courts to demand cessation and claim damages. If someone uses that trade mark, or a similar one, without your permission, it is your responsibility to take action to put an end to such use.



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Protection Measures

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Registered Design

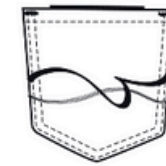
What is a Registered Design?

Registered Community Design in the European Union: It protects the appearance of the whole or a part of a product. Protection covers features such as lines, contours, colours, shape, texture, materials, and ornamentation. It may also include movement, transitions, or any other form of animation of these features. It can be registered with the **EUIPO**.

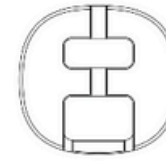
Examples:



Shoe style



Pocket stitching



Button design

Registered Designs & the Locarno Classification

A Registered Design protects the appearance of a product or part of it. When applying for a Registered Design, you must also indicate the product to which the design will be applied, according to the Locarno Classification. In our case, clothing, footwear and accessories are covered by Class 02.

02 – Clothing and Haberdashery

This Class includes, in particular:

- 02-01: Ladies' underwear and lingerie (dresses, skirts, blouses, corsetry, undergarments).
- 02-02: Men's underwear and lingerie.
- 02-03: Jerseys, pullovers, cardigans, jackets.
- 02-04: Footwear, stockings, socks.
- 02-05: Hats, headgear.
- 02-06: Gloves.
- 02-07: Neckties, bow ties, scarves, pocket squares.
- 02-99: Miscellaneous (items not included above).



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Registered Design

Registered Design Search & Requirements

Before filing, you must ensure that your design is new. This means verifying that no identical or similar design has already been disclosed to the public here:

[CLICK HERE](#)

Requirements for Protection

A Registered Community Design (RCD) protects only the appearance of a product, not its function. The representation of the design is the most important element of the application, as it defines the scope of protection.

A design must be:

1. New

- No identical design has been made available to the public before (except if disclosed by the creator within 12 months prior to filing).
- Public disclosure anywhere in the world (exhibition, marketing, online publication, etc.) may destroy novelty.
- Designs are considered identical if they differ only in immaterial details.
- The assessment focuses on visible features in normal use, not hidden or functional aspects.

2. Individual character

- It produces a different overall impression on the informed user (someone more attentive than the average consumer, but not necessarily a technical expert) from any other design previously made available to the public.

3. Not contrary to public policy or morality

- Designs that are offensive, contrary to good morals, or include protected symbols (official, religious, etc.) cannot be registered.



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Registered Design

Registered Design Application

When filing your design application, you will be required to provide:

Representation of the design

- Same version of the design (identical color, size, proportions).
- Views from all perspectives: front, sides, top, bottom.
- On a neutral background (preferably white).
- Without text, logos, watermarks, or symbols.

Example:



The application must be submitted here:

[CLICK HERE](#)

Fees and Payments

When you apply for a Registered Community Design (RCD), you must pay the registration fee at the time of filing the application. The fee starts at €350 per design.

Application fee per design:

- 1st design is €350
- From 2nd design is €125

Deferment fee per design:

- 1st design is €40
- From 2nd design is €20

Deferment of Publication

Applicants may request to defer publication of their design for up to 30 months from the filing or priority date.



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Registered Design

This option allows you to keep your design confidential until you decide to launch it on the market.

For more information on costs:

[CLICK HERE](#)

Fees Calculator

You can calculate the exact fee depending on the number of designs you wish to register. Access the calculator here:

[CLICK HERE](#)

Examination and Registration Process

What happens after the application?

- The EUIPO will examine your application to ensure it meets the legal requirements. No substantive examination is carried out, but it will be verified that the application concerns a design and that the design is not contrary to public policy or accepted principles of morality.
- If your application is approved, your design will be registered. You will become the holder of a registered design. Your design will be published in the Community Designs Bulletin and on the EUIPO website a few days after registration.

Term and Renewal

- A Registered Community Design (RCD) has an initial duration of 5 years from the filing date of the application.
- It can be renewed in successive periods of 5 years, up to a maximum total duration of 25 years.



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Registered Design

- Renewal must be requested within the 6 months prior to the expiry date of the registration. A 6-month grace period is also available after expiry, subject to the payment of a surcharge.

For more information:

[CLICK HERE](#)

TIP! This right allows you to commercially exploit your design exclusively and to prohibit any competitor from doing so, unless they have your authorization.

What to Do in Case of Infringement

If someone copies an identical design, how should I react?

1. Confirm the infringement

- Check that there is a product reproducing your design, or one very similar, as it creates the same overall impression for the informed user.
- Verify that your design is still valid (RCDs last 5 years from the filing date, renewable up to 25 years).

2. Initial contact (optional, but recommended)

- You can attempt a negotiation or out-of-court settlement by sending a "cease and desist letter", to try to resolve the issue without going to court.

Cease and Desist Letter example:

1. Sender Information

[Your Name / Company Name]
[Your Address]
[City, Postal Code]
[Phone / Email]

2. Recipient Information

[Recipient's Name / Company Name]
[Address]



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Registered Design

[City, Country]

3. Date and Place

[City], [Day] [Month] [Year]

4. Subject

Cease and Desist – Infringement of Registered Community Design No. [XXXXXX]

5. Introduction

Dear Sirs,

We act as the owner (or legal representative of the owner) of Registered Community Design No. [XXXXXX], registered before the EUIPO on [date], covering [brief description of the design].

6. Description of the Infringement

We have become aware that you are manufacturing, offering for sale and/or commercialising products reproducing this design without our authorisation, namely [description of infringing product + evidence attached]. This conduct constitutes an infringement of the exclusive rights granted under Article 19 of Council Regulation (EC) No 6/2002, which entitles the right holder to prevent the manufacture, offering, placing on the market, import or export of products incorporating the protected design.

7. Demands

Therefore, we formally require that within [7-15] calendar days from receipt of this letter you:

1. Immediately and permanently cease the manufacture, distribution and commercialisation of the infringing products.
2. Withdraw all such products from both online and offline sales channels.
3. Confirm in writing that you have complied with the above.
4. Undertake not to reproduce or use the protected design in the future.



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Registered Design

8. Consequences of Non-Compliance

Should you fail to comply within the deadline, we will have no alternative but to initiate legal proceedings before the competent Community Design Courts, including claims for damages and costs.

9. Closing Statement

We trust you will take the necessary steps to avoid litigation.

10. Signature

Yours faithfully,

[Signature]

[Full Name]

[Position, if applicable]

[Legal representative / Attorney, as applicable]

TIP: Send it through a reliable and verifiable channel (e.g., courier, international registered mail, or via a lawyer). This way, the matter can often be resolved amicably without going to court.

[GET TEMPLATE](#)

3. Legal Actions Available

Civil proceedings before courts specialized in EU designs (designated in each Member State). For example:

1. In Spain:
 - Commercial Courts of Alicante.
2. In Italy:
 - Industrial Property Court of Turin.

You may request:

- Cessation of the infringement, so that the infringer stops manufacturing, importing, offering, or selling the product.
- Withdrawal from the market and destruction of infringing products.



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Registered Design

- Compensation for damages caused by the copying.
- Precautionary measures, such as preventive seizures, temporary bans on marketing, or retention of goods.
- Publication of the judgment at the infringer's expense.

4. Professional Assistance

It is highly advisable to seek the support of a lawyer specialized in intellectual property or a European design attorney, since proceedings concerning registered designs can be complex and vary depending on the country where the competent court acts.

TIP! You must act quickly, as prolonged inaction may weaken your position. The most effective approach is usually to start with a cease and desist letter and, if unsuccessful, proceed before the EU courts specialized in designs to demand cessation and claim damages. If someone uses your registered design, or a similar one, without your permission, it is your responsibility to take action to stop such use.



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Patent

What is a Patent?

Unitary Patent: It is a form of Intellectual Property that protects an invention against copying, manufacturing, use, or commercialization without the authorization of its owner across multiple European Union countries through a single procedure. It can be registered with the **EPO**.

But what is an invention?

An invention is a human creation that provides a new technical solution to a specific problem.

In the fashion industry, patents are less commonly used than other forms of IP, since aesthetic creativity does not always fit what the law defines as a "technical invention." However, as a designer, you may come up with an invention linked to your creation. Indeed, patents in fashion do exist, usually related to technical innovations in materials, manufacturing processes, or garment functions. For example:

- **New fabrics:** Lycra® (Spandex), patented by DuPont in 1958, revolutionized sportswear and swimwear by introducing unprecedented levels of stretch, comfort, and durability.
- **Special treatments:** Techniques such as the stone-wash finish for denim, patented by Levi Strauss & Co., transformed the aesthetics of jeans, giving them their characteristic worn appearance, while other treatments achieved stain resistance and enhanced fabric performance.
- **Wearable technology:** Levi's® x Google Jacquard jacket, which integrates conductive fibers enabling smartphone control directly from the sleeve, and other garments with built-in sensors designed to monitor vital signs.
- **Footwear:** Nike has secured hundreds of patents related to the structure of its soles. Among the most notable is the Nike Air® cushioning system, protected



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Patent

by multiple patents since the late 1970s, which employs pressurized air pockets to enhance comfort and performance.

- **Functional garments:** Innovations include jackets with ventilation systems, hidden pockets, or magnetic closures, as well as innovations like Uniqlo's HEATTECH® technology, which converts body moisture into heat to provide warmth in cold conditions.

Patent Search & Requirements

For an invention to be patentable, it must meet three requirements:

- **Novelty:** An invention is considered new if it is not already part of the "state of the art." You can check whether your invention already exists by searching here:

[CLICK HERE](#)

or

[CLICK HERE](#)

European Patent Register

Espacenet

- **Inventive step:** An invention involves an inventive step if it is not obvious to a person skilled in the field, based on the existing state of the art.

But what is the state of the art?

It includes everything that has been made public before the filing date of the patent application, anywhere in the world: articles, theses, conferences, patents from any country, catalogues, advertisements, social media, blogs, etc.

- **Industrial application:** An invention is considered industrially applicable if it can be manufactured or used in any type of industry.

Important: What is not considered an invention?



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Patent

- Discoveries, scientific theories, and mathematical methods.
- Purely aesthetic creations.
- Plans, principles, and methods for intellectual activities, games, or business activities, as well as computer programs.
- Ways of presenting information.
- Methods of diagnosis applied to the human or animal body (with the exception of devices, substances, or compositions used for those methods).
- Animal breeds, plant varieties, and essentially biological processes for the production of animals or plants (except microbiological processes and the products obtained through them).

Patent Application

What is the process to obtain a Unitary Patent and what will be required?

To obtain a Unitary Patent, you must first apply for a European Patent in English, French, or German.

A European patent application consists of: an application for the grant of a European Patent, a description of the invention, one or more claims, any drawings referred to in the description or claims, and a summary.

Important: For the patent application, you must first conduct a search to ensure that your invention is novel. If it is, you must then gather the following documents:

1. You must provide a detailed and clear description of your invention. For example, you could write:
"Conventional shoes have features A, B, and C. But my invention has new features D, E, and F, never before seen in shoes, which offer the following advantages..."
2. You must specify your claim or claims that define the scope of the protection requested. A claim specifies which aspects of the invention are protected by the patent and must use technical language.



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Patent

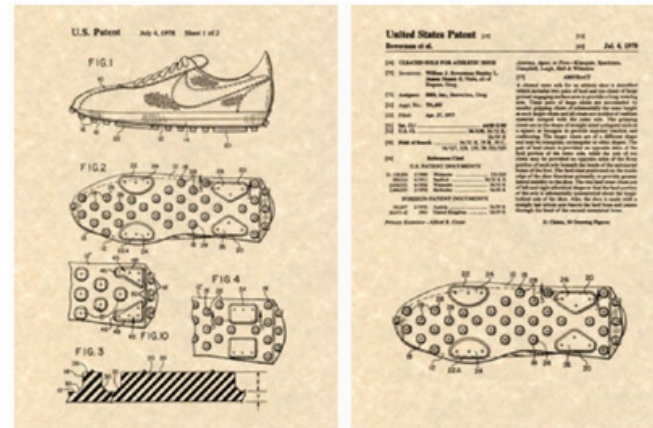
Example, I want to register:

Detachable shoe comprising:

- An upper part that includes the vamp and the laces.
- A detachable and replaceable sole that attaches to the upper part through a fastening mechanism.
- Where the upper part and the sole are designed to be separated and reattached without damaging the shoe.

3. Drawings or diagrams that help to understand the invention.

Example:



4. Abstract: a brief summary of the invention

For further information on the application:

[CLICK HERE](#)

Once all the documentation is prepared, you must submit your application to the EPO via the Online Filing 2.0 service here:

[CLICK HERE](#)

Examination and Registration Process



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Patent

Examination and Registration Process

What happens after the application?

After submitting the application, the EPO will carry out an examination process to verify that:

1. The application meets all formal requirements and that the necessary fees have been paid.
2. The application is published in the European Patent Bulletin.
3. A patent examiner evaluates the novelty, inventive step, and industrial applicability of the invention.
4. The examiner may raise objections; if so, the applicant can make the necessary modifications.
5. The office will assign the patent an IPC classification according to the technical content of the invention.

The International Patent Classification, available here:

[CLICK HERE](#)

It is divided into 8 sections, identified by capital letters (A–H):

- A: Human necessities
- B: Performing operations; transporting
- C: Chemistry; metallurgy
- D: Textiles; paper
- E: Fixed constructions
- F: Mechanical engineering; lighting; heating; weapons; blasting
- G: Physics
- H: Electricity

- Classes and subclasses: Each section is divided into classes and subclasses, identified by numbers and letters.
- Groups and subgroups: Classes and subclasses are



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Patent

further divided into groups and subgroups, identified by numbers.

6. Finally, the EPO may grant the European patent. It is then published in the European Patent Bulletin.

What to do after obtaining a European patent?

Once you have obtained a European patent, you must request unitary effect to obtain a Unitary Patent before the EPO within one month from the publication of the European patent grant in the European Patent Bulletin. The Unitary Patent provides uniform protection in 18 EU Member States.

As the holder of the Unitary Patent, you have the exclusive right to prevent third parties from manufacturing, using, offering, selling, or importing your invention without your consent in the countries where the Unitary Patent applies, **for 20 years from the filing date of the application, without the possibility of renewal** (currently: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, and Sweden). It is expected that more EU Member States will ratify the UP Agreement in the coming years, so that, over time, Unitary Patents will provide patent protection in up to 25 EU Member States.

Fees and payments

Filing a European patent with the EPO involves several fees, including filing, search, examination, and renewal fees. The total cost varies depending on the complexity of your invention and the number of claims.

Additional fees may apply for translations, legal assistance, or optional services.

For detailed information on current fees and payment options:



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Patent

[CLICK HERE](#)

What to Do in Case of Infringement

If someone infringes your European Unitary Patent, how should you react?

1. Confirm the infringement

- Check that a third party is manufacturing, using, offering for sale, or importing products that exploit your patented invention without authorization.
- Verify that your Unitary Patent is in force (protection lasts 20 years from the filing date, without renewal).

2. Initial contact (optional, but recommended)

- You can attempt a negotiation or out-of-court settlement by sending a "cease and desist letter" to request that the infringer immediately stop the unauthorized activity. This can prevent lengthy litigation and may resolve the matter amicably.

Cease and Desist Letter example:

1. Sender Information

[Your Name / Company Name]
[Your Address]
[City, Postal Code]
[Phone / Email]

2. Recipient Information

[Recipient's Name / Company Name]
[Address]
[City, Country]

3. Date and Place

[City], [Day] [Month] [Year]

4. Subject

Cease and Desist – Infringement of European Unitary Patent No. [Patent Number]



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Patent

5. Introduction

Dear [Recipient Name],
I am writing on behalf of [Your Name / Company Name], the lawful owner of European Unitary Patent No. [Patent Number], titled "[Patent Title]" ("the Patent"), which is currently in force across the applicable European Union member states.

6. Description of the Infringement

It has come to our attention that [Recipient Name / Company Name] has been manufacturing, using, selling, or offering for sale products that infringe the claims of the Patent without authorization. Specifically, [briefly describe how the infringing activity occurs, e.g., "your product X incorporates the patented technology described in claim Y of the Patent"].

7. Demands

This letter serves as a formal demand to immediately cease and desist from any further infringement of the Patent. You are required to:

1. Immediately stop the manufacture, use, sale, and distribution of any products or processes that infringe the Patent.
2. Provide written confirmation within [e.g., 14 days] from the date of this letter that you have complied with this demand.
3. Preserve all relevant records related to the manufacture, sale, and distribution of the infringing products.

8. Consequences of Non-Compliance

Please note that failure to comply with this demand will leave us with no choice but to pursue all available legal remedies, including seeking injunctive relief, monetary damages, and reimbursement of legal costs.

9. Closing Statement

We hope that this matter can be resolved promptly and amicably without resorting to litigation.



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Patent

10. Signature

Sincerely,
[Your Signature]
[Your Name / Title]
[Company Name]

TIP! Send it through a reliable and verifiable channel (e.g., courier, international registered mail, or via a lawyer). This way, the matter can often be resolved amicably without going to court.

[GET TEMPLATE](#)

3. Legal Actions Available

You may initiate infringement proceedings before the Unified Patent Court (UPC), which has exclusive jurisdiction over Unitary Patents and also covers classical European patents here:

[CLICK HERE](#)

The UPC can issue:

- Cessation of infringement, requiring the infringer to immediately stop manufacturing, using, selling, offering for sale, or importing products that violate your patent.
- Market withdrawal and destruction of infringing products.
- Compensation for damages caused by the infringement.
- Precautionary measures, such as preventive seizures, temporary bans on marketing, or retention of goods.

The UPC provides a unified forum across participating EU member states, which simplifies enforcement compared to pursuing separate actions in each country.



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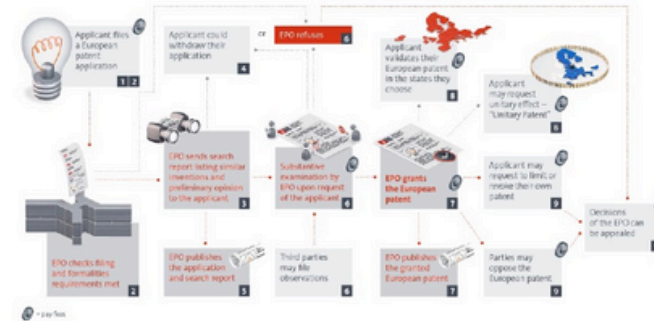
Patent

4. Professional Assistance

It is strongly recommended to seek the support of a lawyer specialized in intellectual property or a European patent attorney, as proceedings concerning Unitary Patents can be complex and require expert knowledge of patent law and UPC procedures.

TIP! Act promptly. Delayed action may weaken your position. The most effective approach is typically to start with a cease and desist letter and, if unsuccessful, escalate to formal UPC proceedings to demand cessation and claim damages. If someone uses your Unitary Patent without permission, it is your responsibility to take action to stop such use.

Overview of the European patent application process



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Protection Measures

Paid Protection Measures

Trade Mark

Registered Design

Patent

Free Protection Measures

Unregistered Design



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Protection Measures

Paid Protection Measures

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Free Protection Measures

Unregistered Design



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Unregistered Design

What is a Unregistered Design?

Unregistered Community Design in the European Union: It was created to offer quick, automatic, and flexible protection for designs in industries where innovation moves fast and product life cycles are short, such as fashion collections. It is particularly suitable for emerging designers, since it requires no formal registration and is completely free.

Example:



Karen Millen winning against Savida at Dunnes Stores in an unregistered design case.

Requirements for Protection

For an unregistered design in the EU, the conditions are the same as for a registered design, with the big difference that you don't need to file or pay for anything. The key requirements are:

- 1. Novelty:** This means that no identical design, or one whose features differ only in insignificant details, has been made public anywhere in the world before the date on which the design seeking protection was disclosed for the first time.
- 2. Disclosure:** A design is considered to have been made public if it has been published, exhibited, marketed, or



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Unregistered Design

otherwise disclosed in such a way that it could reasonably have become known to the specialized circles of the relevant sector. However, a design will not be considered public if it has only been shared with a third party under conditions of confidentiality.

- 3. Individual character:** This means that the design must create a different overall impression on the informed user compared to any design that has been made public before the date of its disclosure. Minor or trivial differences, from the perspective of the informed user, do not prevent designs from being considered identical. An "informed user" is someone who has a higher level of attention than the average consumer, but is not necessarily a technical expert.

Term and Renewal

- In the EU, unregistered design protection is short-lived: it only lasts for three years from the moment your design is first made public.
- Its scope is also quite limited. It only protects you against direct or almost identical copies of your work. This means you cannot stop someone from creating a similar design with small but noticeable differences you can only take action if your design has been copied outright.

Pre-constituting Proof of Ownership

The biggest challenge in protecting an unregistered design is that, since it is not formally registered, you must prove that it is truly yours, that you actually created it. For this reason, when pre-constituting evidence of an unregistered design in the EU, you need to collect and document proof of three key things:

- The exact date of the first disclosure of the design.
- The identity of the design itself.
- The context in which it was disclosed.



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Unregistered Design

It is also essential to show that the disclosure took place in the EU and was accessible to the relevant circles, such as clients or industry professionals.

How to Do It?

Proof of the date and place of the first disclosure:

Date: You need evidence showing when your design was first shown to the public

Example: a screenshot of your Instagram post featuring the design with the publication date visible.

Place: You must show that the disclosure took place within the EU so it was accessible to the relevant circles.

Example: photos of your design presented at a fashion show in Paris, or a press article in a European magazine covering the launch.

Proof of the design itself:

Detailed description: Provide clear materials that highlight the main and unique features of your design.

Example: high-quality photos from different angles, or technical drawings that show a distinctive cut or pattern.

Example:



Documentation of its creation: Collect records of how and when you developed the design.

Example: original sketches dated and signed, computer files with time stamps, or emails with manufacturers discussing early prototypes.

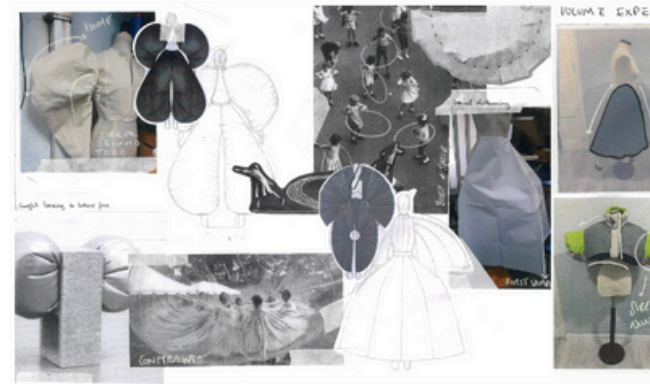
Example:



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Unregistered Design



Sketchbook page of the previous design.

What to Do in Case of Infringement

If someone copies an identical design, how should I react?

1. Gather evidence:

- Keep photos, sketches, or publications proving you created the design and the date of creation.

2. Initial contact (optional, but recommended)

- You can attempt a negotiation or out-of-court settlement by sending a "cease and desist letter", to try to resolve the issue without going to court.

Cease and Desist Letter example:

1. Sender Information

[Your Name / Company Name]
[Your Address]
[Phone / Email]

2. Recipient Information

[Recipient's Name / Company Name]
[Address]

3. Date and Place

[City], [Day] [Month] [Year]

4. Subject



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Unregistered Design

Cease and Desist – Unauthorized Use of an Unregistered Design

5. Introduction

I am the creator and owner of the design entitled “[Design Name]”, originally created on [Date] and documented through [photographs, sketches, or publication references].

6. Description of the Infringement

It has come to our attention that your company [Recipient Name] is using a design that reproduces or is substantially similar to our unregistered design in [products/services/advertising/website/etc.]. Such use constitutes an infringement of our rights under applicable European and national laws protecting unregistered designs and prohibiting unfair commercial practices.

7. Demands

Accordingly, we hereby formally request that you:

1. Immediately and permanently cease any use of the design in question.
2. Withdraw from the market all products or materials reproducing or incorporating the design.
3. Provide written confirmation within [e.g., 10 business days] that you have complied with the above requirements.

8. Consequences of Non-Compliance

Please be advised that failure to comply with this request may leave us no option but to initiate legal action, including claims for damages and injunctive relief, under applicable laws concerning unregistered designs and unfair competition.

9. Closing Statement

We trust that you will understand the seriousness of this matter and resolve it amicably without the need for judicial proceedings.



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Unregistered Design

10. Signature

Yours faithfully,

[Signature]

[Full Name]

[Position, if applicable]

[Legal representative / Attorney, as applicable]

TIP: Send it through a reliable and verifiable channel (e.g., courier, international registered mail, or via a lawyer). This way, the matter can often be resolved amicably without going to court.

[GET TEMPLATE](#)

3. Legal Actions Available

Civil proceedings before courts specialized in EU designs (designated in each Member State). For example:

1. In Spain:

- Commercial Courts of the location where the infringement occurs or where the infringer resides.

2. In Italy:

- Industrial Property Court, e.g., Milan or Turin.

You may request:

- Cessation of the infringement, so that the infringer stops manufacturing, importing, offering, or selling the product.
- Withdrawal from the market and destruction of infringing products.
- Compensation for damages, including lost profits and harm to your brand or reputation.
- Precautionary measures, such as preventive seizure or temporary bans on marketing.

4. Professional Assistance

It is highly advisable to seek the support of a lawyer specialized in intellectual property or unfair competition



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Unregistered Design

law, since proceedings concerning unregistered designs can be complex and vary depending on the country and court where the case is brought.

TIP! You must act quickly, as prolonged inaction may weaken your position. The most effective approach is usually to start with a cease and desist letter and, if unsuccessful, proceed before the EU courts specialized in designs to demand cessation and claim damages. If someone uses your registered design, or a similar one, without your permission, it is your responsibility to take action to stop such use.



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Copy vs. Inspiration

Copy vs. Inspiration

In the context of design and intellectual property in the EU, the distinction between "copy" and "inspiration" can be crucial in determining whether a design infringes the intellectual property rights of another.

Copy:

Substantial reproduction: A copy involves the substantial reproduction of an existing design without authorization. If a design is almost identical or very similar to another pre-existing one, and this similarity is not merely coincidental, it may be considered a copy.

Example:



Copy of a Diane von Furstemberg dress by Forever21

Inspiration:

Influence without direct reproduction: Inspiration means taking ideas or elements from an existing design and reinterpreting or combining them in a way that creates something new and original. Inspiration does not necessarily imply direct or substantial reproduction of the original design.



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Copy vs. Inspiration

Example:



Zara (right) being inspired by Gucci (left).

Key differences:

Originality and creativity: Inspiration usually adds creative value or reinterprets elements in an original way, whereas copying directly and substantially reproduces elements.

Legal impact: Copying may constitute an infringement of intellectual property rights, whereas inspiration, if it results in a truly original design, may fall within legal boundaries.

Evaluation in the EU:

Overall impression test: In the EU, the "overall impression test" is often used to determine whether one design infringes another. This involves assessing whether the allegedly infringing design produces the same overall impression on the informed user as the protected design.



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Ask

SLAW ASK

Ask your question: the community will answer

A safe space for emerging designers to ask about intellectual property. See our [privacy & safety policy](#).



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Questions Community Notifications

 **Helena** Emerging designer
3 minutes ago



Can I use inspiration from vintage pieces like this without legal issues?

 21 likes  4 coments

 **Daniel** Emerging designer ...
2 hours ago

Is it worth registering every design, or only the best-sellers?

 6 likes  18 coments

 **Oscar** Lawyer ...
1 day ago



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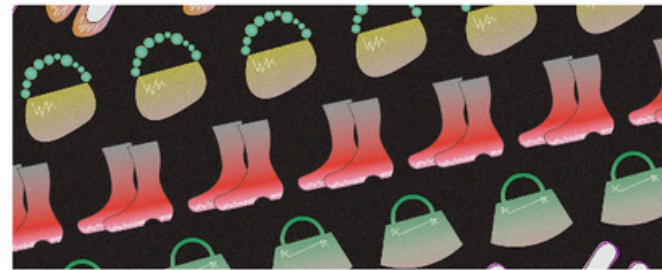
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External Sources



1Granary - IP laws explained for designers



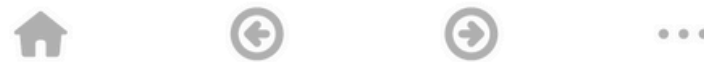
Gov.UK - New Designers: the future is there for the taki...



Designwanted - How (and why) to protect your innovat...



Murgitroyd - How are Fashion Designs protected by Int...



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Helena
Emerging designer

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A safe space for emerging designers to ask about intellectual property. See our [privacy & safety policy](#).



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Free Intellectual Property Support

All small and medium-sized enterprises (SMEs) established in the EU and the European Economic Area can access information and advice on the EUIPO website free of charge and may submit their application here:

[CLICK HERE](#)

Before applying for the aid, companies are advised to check whether they meet the requirements to be considered an SME by completing the questionnaire based on the European Commission's recommendation.

[CLICK HERE](#)

