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DESIGN EXAMINATION GUIDELINES

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This Guideline is prepared to reflect the practice of the IP Agency of Kosovo (the Agency) in examining the industrial design applications and relevant operations of the Agency with respect to the tasks and responsibilities set out in the Law.

This Guideline provides practical information on how design applications and requests should be examined by the Agency. The main aim of this guideline is to ensure a standardized and systematic approach that shall be adopted in examining the applications and dealing with requests thereof.

Explanations and information given in each Chapter of the Guideline are intended to serve as a base for practical use by the Agency in their procedures, as well as the applicants and users of the design registration system in Kosovo.

This guideline includes Chapters following the order of provisions related to the procedures in line with the relevant Legislation and Administrative Instructions, categorized in 7 main areas:

CHAPTER 1, provides general information on rules and procedures of application

CHAPTER 2, defines the content of the application, and the formal requirements and elements of an application

CHAPTER 3, deals with the formal examination procedures of design applications

CHAPTER 4, deals with the design registration procedures

CHAPTER 5, provides information on renewal and changes in the registered application

CHAPTER 6, deals with the invalidity proceedings of the registered design

CHAPTER 7, defines the procedures and elements of public information

Relevant articles for each item in the Chapters are noted with the indication such as:

- "LAW" for the articles in "LAW NO. 08/L-055 ON INDUSTRIAL DESIGN"
- "ADM. INS." for the articles in "ADMINISTRATIVE INSTRUCTION (MTI) NO. 12/2016 ON REGISTRATION OF THE INDUSTRIAL DESIGN"

It should be noted that information included in this Guideline serves as an explanatory means of the practices and procedures followed by the Agency in examining the applications and requests made by users. This Guideline should not, therefore, be seen as a binding text or an obligatory document for the procedures within the Agency.

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CHAPTER 1. Application procedure

1.1 Where and how to apply for industrial design

LAW. Article 27

ADM. INS. Article 4

Industrial design application must be filed in writing, with 2 copies directly at the Industrial Property Agency.

1.2 Who can file an application?

LAW. Article 12, 13

ADM. INS. Article 2.1.2, 2.1.6

An industrial design application may be filed by any natural or legal person. The application may be in the name of one person or several persons may be named as joint applicants.

Persons who are not citizens of or have no residency in Kosovo have the right to have industrial design protection. Foreign applicants shall be represented by authorized representatives.

1.3 Receipt of application

LAW. Article 40.1

ADM. INS. Article 4.1, 4.2

Upon receipt of the application, the date of receipt and application number shall be marked on the application documents by the Agency and a copy will be issued to the applicant.

In case of a multiple application, the receipt issued by the Agency shall specify the first design and the number of designs filed in the application.

1.4 Filing Date

LAW. Article 40.2.3

ADM. INS. Article 8.1, 8.2

Filing date is the date on which the application is submitted with the minimum requirements to receive a set date for protection of industrial design applied.

The Agency shall check the following requirements in order to set a filing date;

Checklist for the elements to set a filing date	Yes	No
Request for registration of the industrial design		
Information identifying the applicant or allowing the applicant to be contacted		
A representation of the design suitable for reproduction or, where applicable, a specimen*		
*If the object of the application is a two-dimensional design and the application contains a request for deferment of publication (see section) the representation of the design may be replaced by a specimen		

Actions to be taken by the Agency

- All requirements to set a filing date are satisfied		
Yes	The Agency accords the filing date and starts formal examination (see section 3.2)	
No	The agency notifies the applicant to remedy the deficiencies determined in the checklist above, within sixty (60) days from the date of receipt of the invitation.	
Are the deficiencies indicated in the invitation remedied within sixty (60) days		
Yes	The Agency accords the filing date as the date on which the deficiencies are remedied. The Agency notifies the applicant about the new filing date.	
No	The Agency rejects the application and notifies the applicant.	

Explanations:

- Request for registration of industrial design is made by filling the application form provided by the Agency. The application form itself constitutes the request for registration of the industrial design. However, the request may be filed with a written and signed document which shall be completed in the application form within the time period given by the Agency.
- Details of applicant(s) provided in the application form meet the requirement for the information that identifies the applicant, also, contact information of applicant(s) is necessary for communication and recording the right holder.
- The representation of design suitable for reproduction that clearly demonstrates the industrial design. If the object of the application is a two-dimensional design and the application contains a request for deferment of publication, the representation of the design may be replaced by a specimen.

CHAPTER 2. Content of the application

The application for registration of industrial design shall be filed in the form prepared by the Agency.

2.1.1 Request for registration

LAW. Article 28.1.1

ADM. INS. Article 2.1.1

The request for registration of the industrial design is given by the completion of “APPLICATION FOR INDUSTRIAL DESIGN REGISTRATION”.

Application form constitutes a formal requirement, however if the documents filed contain an implicit indication that an attempt is being made to file an application for registration of industrial design, this can be regarded as having been complied with.

2.1.2 Applicant's details

LAW. Article 28.1.2

ADM. INS. Article 2.1.2

The applicant's name and address should be entered in the Form. An applicant may be a natural or legal person. The form must contain sufficient information to enable the Agency to contact the applicant.

Contact information to meet the requirement will be considered as one of the following:

- Name and address of the applicant's representative
- Fax number
- Phone number

When the application is filed by more than one applicant, the requirement must be satisfied for each applicant.

- In case of more than one applicant, a written statement indicating the joint representative shall be submitted as an attachment to the application form.

The Agency considers the entitlement of the person named as applicant to apply for registration of industrial design.

The Agency checks the information given in the form as to the details of the applicant.

When an application filed which does not provide the applicant's name and address, the

applicant must be notified of the failure, and the Agency may refuse the application if the applicant fails to file their name and address within two months of such a notification.

1.3 Representing the design

LAW. Article 28.1.3

ADM. INS. Article 2.1.3, Article 6,7

The representation of the design, attached to the application, shall consist in a graphic or photographic reproduction of the design, either in black and white or in colour.

If the application concerns a two-dimensional design and contains a request for deferment of publication, the representation of the design may be replaced by the specimen thereof. However, the representation of the two-dimensional design for which the specimen is provided, shall be submitted before the publication of the registration.

2.1.4 Indication of product(s)

LAW. Article 28.2.1

ADM. INS. Article 2.1.4, Article 5.3

An indication of the product in which the design is intended to be incorporated or to which is intended to be applied, shall be given in the application form.

2.1.5 Representative details

LAW. Article 28.2.2, 28.2.3

ADM. INS. Article 2.1.5, 2.1.6

If the applicant has appointed a representative, name and contact details should be provided in the application form.

If the representative has more than one business address or if there are two or more representatives with different business addresses, the application shall indicate which address shall be used as the contact address. If such indication is not made, only the first-mentioned address shall be taken into account as a contact address. If there is more than one applicant, the application may indicate the appointment of one applicant or representative as common representative;

The Agency checks the requirement for representative as to whether:

- The applicant who does not have residence or headquarters in the territory of Kosovo is represented by an authorized representative
- The applicant who has residence and headquarters in Kosovo has appointed an authorized representative
- The applicant is represented by any of the employees or by a representative who has no obligation to be registered in the Representatives Registry,

2.1.6 Priority right

LAW. Article 32, 33

ADM. INS. Article 2.1.7

Applicant may claim the priority of a previous application. The following elements should be indicated on the application form to claim a priority right:

- Date of first application
- Number of first application
- Name of the state where the first application has been submitted

the Agency checks the claim for priority right as to whether:

- The date of first application is correct
- The file number is supplied and it is correct
- The state is correct

2.1.7 Exhibition priority

LAW. Article 34

ADM. INS. Article 2.1.8

Applicant may claim exhibition priority. In this case, priority claim shall be indicated on the application form with the information mentioned below:

- Name of exhibition
- Opening and closing date of exhibition
- Date of the first day of the exhibit

In this case, the certificate on exhibition at the international exhibition must be annexed to the application form.

The certificate shall be issued by the competent authority declaring that the design is actually presented at the place of exhibition. The certificate shall include the opening and closing dates of the exhibition and state the date and place of the display of the design in the exhibition.

The certificate shall include sufficient information about the design to identify that exhibited design is the same with the one applied for registration.

2.1.8 Description

LAW. Article 28.3.1

ADM. INS. Article 2.2.1

The application form may contain a single description per design. Description of the design is not a mandatory element for industrial design registration.

The description shall not exceed 100 words and explain only the appearing features of the design or the specimen.

It shall not contain statements as to the purported novelty or individual character of the design or its technical value;

2.1.9 International classification

LAW. Article 28.3.3

ADM. INS. Article 2.2.2

The application form may contain an indication of the international classification of designs contained in the application, class or classes and the subclass or subclasses to which they belong in accordance with the Locarno Agreement. The Locarno Classification is an international classification for industrial designs.

2.1.10 Information on designer(s)

LAW. Article 28.3.4

ADM. INS. Article 2.2.3

Information on designer or the designers shall be cited in the application form. Details of the designer shall be:

- Name, surname
- Address,
- Tel, fax and e-mail

Designer(s) has the option to waive from the right to be mentioned as designer in the publication or register. In case of this waiver, a designer shall state that they do not want to be mentioned in the design register or publication, and attach this statement to the application form.

If the designer is the same as the applicant, this shall be indicated in the application form. Where there is more than one designer, and the applicants are the designers, this indication should be made for each designer on the application form.

If the Agency determines any failure or deficiency in the above-mentioned elements, this should be notified to the applicant in the deficiency letter, together with the other ones, accordingly.

2.1.11 Fees

LAW. Article 28.6, 28.7

The application shall be subject to payment of registration and publication fee. The evidence for payment of the relevant fees shall be attached to the application.

Checklist

The content of the application and the annexes shall be indicated on the relevant part of the application form.

The Agency checks the elements of the application form and documents in the checklist given below.

The checklist provides a practical and standardized way of controlling the formal requirements for an industrial design application through following a step-by-step approach in determining if the formal requirements have been fulfilled.

Total number of designs is not indicated on the application form	
Applicant's details	
Information about the applicant(s) is missing.	
Contact information is missing <ul style="list-style-type: none"> - Name and address of the applicant's representative (if appointed) - Fax number - Phone number. 	

Information about other applicants is missing (if there is more than one applicant)	
Written statement indicating the joint representative of the applicants is missing	
Representative details	
A representative is appointed, however information about representative is missing <ul style="list-style-type: none"> - Name and surname/entity - Full address - Telephone, fax, e-mail) 	
Representative is not authorized	
The applicant has no residence nor headquarters in the territory of Kosovo and is not represented by an authorized representative	
Amount of fees	
Basic amount to be paid is not indicated on the application form	
Additional amount (if required) to be paid is not indicated in the application form	
Total amount is not indicated in the application form	
Evidence of payment is not attached to the application form	
Indication of product(s)	
An indication of the product in which the design is intended to be incorporated or to which is intended to be applied, is not given in the application form.	
International classification	
The Locarno Classification is not indicated (not mandatory)	
Information on designer	
Information on designer(s) is missing <ul style="list-style-type: none"> - Name, surname - Address, - Tel, fax and e-mail 	
There is no indication in the application form, that the designer is the applicant. (If the designer is the applicant at the same time). If there is more than one designer, this indication should be made for each designer on the application form.	
The statement of the designer waiving the right to be mentioned is missing. (if this is indicated on the application form)	
Information on priority right	

A priority right is claimed, but the information on priority right is missing.	
Information on priority right is missing or incorrect	
- Date of first application	
- Number of first application	
- Name of the state where the first application has been submitted	
Exhibition priority	
An exhibition priority is claimed, but the information on exhibition priority right is missing.	
Information on exhibition priority is missing or incorrect	
- Name of exhibition	
- Opening and closing date of exhibition	
- Date of the first day of the exhibit	
An exhibition priority is claimed, but the certificate on exhibition is not submitted.	
Description of the design	
Description of the design is missing (not mandatory)	
Deferment of publication	
Deferment of publication is requested	
Period for deferment is not indicated	
Period for deferment exceeds 12 months (from the date of filing, or priority if any)	
Is the representation of the design replaced by specimen* (for two dimensional designs only)?	
*The representation of the design suitable for reproduction shall be provided before the publication.	
Separated application	
Application is separated from a previous application	
- Number of previous applications is not indicated on the form	
- Date of previous application is not indicated on the form	
Signature	
Signature or stamp of the applicant is missing	

Signature or stamp of the representative is missing (if representative is appointed)	
Attachments to the application	
The representation of design is not attached to the application form (see Section 1.4)	
Certified copy of priority documents is not submitted (if priority right is claimed in the application)	
Authorization for representative is not submitted (if a representative is appointed)	
Declaration on the joint representative of applicants is not submitted	
Certification on exhibition at the international exhibition is not submitted (if exhibition priority is claimed)	
Declaration of designer on not to be mentioned in the register (if marked on the form)	
Proof of payment for fees is not submitted	
*Specimen of design(s) is not submitted	

In controlling the elements in the checklist, if any missing element or part has been determined, the Agency shall note the deficiencies in the invitation letter to the applicant, to be remedied within sixty (60) days from the receipt of the letter.

The invitation letter shall include any other deficiencies in the content or format of other documents set out in other Chapters of this Guideline, if determined as such.

2.2 Multiple applications

LAW. Article 29

An industrial design application may contain more than one design. There is no limitation for the number of designs in one multiple application, however the designs must, meet the 'unity of class' requirement.

Representation of each design contained in a multiple application must be provided and an indication given of the product in which the design is intended to be incorporated or to be applied must be given.

The number of the designs contained in the application shall be noted on the application form.

Applicants must number the designs contained in a multiple application consecutively, using Arabic numerals

2.2.1 Requirements for multiple applications

LAW. Article 29.1, 29.2, 29.3

If the application contains more than one design, all products in which the design is intended to be incorporated or to which it is intended to be applied, must be in the same class of the Locarno Classification.

This requirement shall not apply to the designs relating to ornamentation. Ornamentation is a decorative element capable of being applied to the surface of a variety of products. It can take the form of a pattern, including a moulding, engraving or carving in which the design stands out from a flat surface.

2.2.2 Additional fees

LAW. Article 29.4

The multiple applications shall be subject to payment of additional fees for registration and publication.

2.3 Division of multiple applications

LAW. Article 30

ADM. INS. Article 3

If a multiple application is filed and if the products (in which the design is intended to be incorporated or to which it is intended to be applied) don't belong to the same class of the Locarno Classification, the applicant shall divide the multiple application into separate applications containing the products that belong to same class.

2.4 Classification and indication of products

ADM. INS. Article 5.1, 5.2

Indication of product or the classification don't affect the scope of protection of the registered design. Design rights confer on its holder the exclusive right to use the relevant design in all types of products, and not only in the product indicated in the application.

Classification serves exclusively for administrative purposes, in particular allowing third parties to search the design databases.

2.4.1 Classification

ADM. INS. Article 5.1, 5.2

Classification serves exclusively for administrative purposes. Applicants themselves do not have to classify the products in which their design is intended to be incorporated or to which it is intended to be applied. This is, however, recommended in order to speed up the registration procedure.

2.4.2 Indication of products

ADM. INS. Article 5.1, 5.2, 5.3

An industrial design application for registration must indicate the products in which the design is intended to be incorporated or to which it is intended to be applied.

The indication of products must be worded in such a way as to clearly indicate the nature of the products and to enable each product to be classified in only one class of the Locarno Classification, preferably using the terms appearing in the list of products set out therein.

2.5 Representing the design

LAW. Article 28.1.3

ADM. INS. Article 6

Design representation is the most important element for a design registration that defines the scope of protection of the design itself.

The purpose of the representation is to disclose the features of the design for which protection is sought. The graphic representation must solely demonstrate the design in order to determine with clarity and precision the subject matter of the protection

Different views showing the design from certain directions (perspective view(s), front view, top view, right side view, left side view, back view and bottom view), where necessary, should be provided so as to supplement to cover all features of the design.

For the purpose of filing a design, it is sufficient to file only one aspect view. However, other (non-traditional) types of view, in particular exploded views and sectional views cannot be filed on their own.

Sample of design representation is provided below to enable a better understanding for the requirements of a representation that is suitable for reproduction as required in the relevant provisions. The sample is excerpted from Design Guidelines of EUIPO.

RCD No 2 325 456-0001

1.1



1.2.



1.3



1.4



1.5



1.6



1.7



2.5.1 Requirements for design representation

ADM. INS. Article 6.1

The Agency checks the requirements for design representation listed below:

Representation is not placed in the section provided in the application form	
Representation is not placed on separate sheets as part of the application form (in case of separate sheets)	
The surface is not opaque white paper where the representation is pasted or printed	
The size of the separate sheet is not DIN A4 size (29,7 cm × 21 cm)	
The surface used in the A4 sheet is bigger than 26,2 x 17 cm.	
Margins of the page are under the minimum scales for left margin 2.5 cm	
The number of views is not indicated on the top of page (The applicant shall number each view using Arabic numerals.)	
The representation includes explanatory text, wording or symbols (other than the indication “top” or the name or address of the applicant, may be displayed thereon)	
The representation is not at a quality permitting all the details of the matter for which protection is sought to be clearly distinguished	
The size of the presentation is not suitable to be reduced or enlarged to a size no greater than 8 cm by 16 cm per view for entry in the Register and for publication in the Bulletin of the Agency.	
The graphic or photographic reproduction of the designs is not in a data format as to the quality of the images (where the application is filed by electronic means),	
The design is not reproduced on a neutral background	
The representation contains external drawings or correcting fluid on it	
Number of representations is no more than seven different views of the design	
One representation contains more than one view	

2.5.2 Numbering of representations

ADM. INS. Article 6.2, 6.3

Numbering format of representations shall be in two parts which are separated by a point:

- First part indicates the number of the design; and
- Second part indicates the number of each view of the design in a consecutive order.

For example, the number for the different views of the first design shall be indicated as; 1.1, 1.2, 1.3 etc. second design with different views as; 2.1, 2.2, 2.3.

One design can be illustrated with maximum 7 different views. The Agency may disregard for registration and publication any of the extra views. The Agency take the views in the consecutive order in which the views are numbered by the applicant.

2.5.3 Surface patterns

ADM. INS. Article 6.4

Where an application concerns a design that contains a repeating surface pattern, the representation of the design shall disclose the complete pattern and a sufficient portion of the repeating surface.

If additional views represent the pattern applied to one or more specific products for illustrative purposes, the applicant must make sure that the shape of such products is not claimed as part of design by using any method.

Sample representation for surface pattern is excerpted form Design Guidelines of EUIPO.

RCD 6 574 6950004

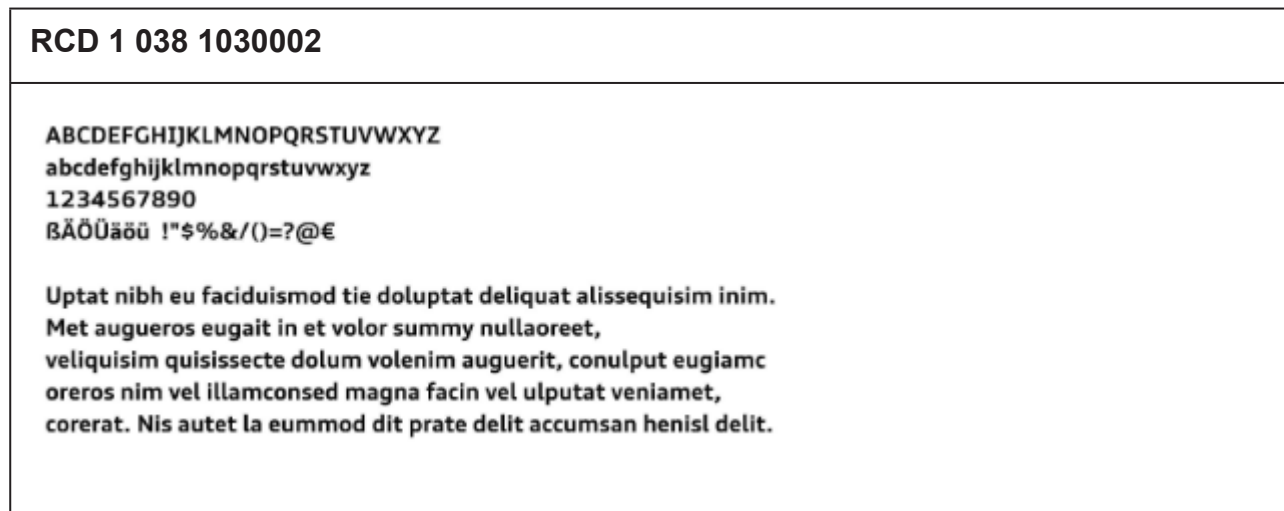


2.5.4 Typographic character designs

ADM. INS. Article 6.5

When an application concerns a design consisting of a typographic typeface, the representation of the design shall consist of a string of all the letters of the alphabet, in both upper and lower case, and of all the Arabic numerals, together with a text of five lines produced using that typeface, both letters and numerals being in the size 16- pitch font.

Sample representation for typographic character is excerpted from Design Guidelines of EUIPO.



2.5.6 Specimens

LAW. Article 28.1.3

ADM. INS. Article 7

The design representation can be replaced by a specimen of the design where:

- The application relates to a two-dimensional design; and
- The application contains a request for deferment

Applications for which a specimen is submitted must be sent together.

Specific requirements for specimens are as follows;

- The specimens shall not exceed 26,2 cm × 17 cm in size, 50 grams in weight or 3 mm in thickness.
 - o If the design concerns a repeating surface pattern, the specimen shall show the complete pattern and a sufficient portion of the repeating surface in length and width as provided.
- Specimen must not be of damageable material.
- Specimens that are perishable or dangerous to store shall not be filed.
- The specimen shall be filed in 5 (five) copies, in case of multiple applications, 5 (five) copies for each design.

A specimen is usually a sample of a piece of material such as textile, wallpaper, lace, leather, etc.

Where the applicant submits a specimen relating to an application that does not relate to a two-dimensional design or that does not contain a request for deferment, the specimen is not admissible. In that case, the date of filing will be determined by the date on which the Agency receives a suitable graphic or photographic reproduction of the design, provided the deficiency is remedied within sixty (60) days of receipt of the notification.

Where a representation of the design has been replaced by a specimen, the applicant must file a graphic or photographic reproduction of the design at the latest ninety (90) days before the 12-month deferment period expires, or at the latest ninety (90) days before the requested date of publication.

If the holder fails to file a graphic or photographic representation the Agency will issue a deficiency letter. If the holder fails to remedy the deficiency the design will be deemed from the outset not to have had the effects specified in the Regulation.

2.6 Request for deferment of publication

LAW. Article 45

ADM. INS. Article 13

Applicant may request deferment of publication for a period of maximum 12 months from the filing date, or the priority date if priority is claimed.

*If the object of the application is a two-dimensional design and the application contains a request for deferment of publication (see section) the representation of the design may be replaced by a specimen.

Actions to be taken by the Agency

Does the applicant request for deferment of publication	
No	The Agency publishes the registration (where all requirements are met)
Yes	The Agency publishes the registration with an indication that deferment of publication is requested
Are the deficiencies indicated in the invitation remedied within sixty (60) days	
the applicant shall, together with the request or not later than 90 (ninety) days before the expiry of the 1-year deferment period: - pay the publication fee	
Yes	The Agency accords the filing date as the date on which the deficiencies remedied. The Agency notifies the applicant about the new filing date.
No	The Agency rejects the application and notifies the applicant.

If the application contains a request for deferment of publication, the applicant shall, together with the request or not later than 90 (ninety) days before the expiry of the 1-year deferment period:

- Pay the publication fee
- Pay the additional publication fees (in the case of a multiple registration)
- File a representation of the design (if the representation of the design has been replaced by a specimen - this applies to all the designs contained in the multiple application for which publication is requested)
- Indicate which of the designs contained in the multiple application are to be published or which of the designs are to be surrendered, or, if the period of deferment has not yet expired, for which designs deferment is to be continued. (in the case of a multiple registration)

Where the holder requests publication before the expiry of the 1-year deferment period, he/she shall, at the latest 90 (ninety) days before the requested date of publication, shall pay the publication fee and additional fee, if any, before ninety (90) days before the expiry of 1 year deferment period.

- If the applicant fails to file the representation of the design(s) for which is replaced by specimens before 90 days before the publication,
 - o The agency invites the applicant to correct the deficiencies within 60 (sixty) days of receiving the invitation.
 - o If the applicant fails to comply with the requirement to file the representation, it shall be deemed that the registered design did not produce legal effects, and in case of a request for early publication, the request shall be deemed not to have been filed.
- If the holder fails to pay the publication fees, and additional fees if any,
 - o The agency invites the applicant to pay those fees together with the fees for late payment, which shall in no case expire the 1-year deferment period.
 - o If no payment has been made within that time limit, the agency shall notify the holder that the registered design from the outset did not have the legal effect.
 - o In case of multiple application, a payment is made within the time limit but is insufficient to cover all the fees payable, all the designs in respect of which the fees have not been paid shall be deemed from the outset not to have had the legal effects.
 - o In absence of any indication for determining which designs are intended to be covered, the agency shall take the designs in the numerical order in which they are represented
 - o All designs for which the additional publication fee has not been paid or has not been paid in full, shall be deemed from the outset not to have had the legal effects.

CHAPTER 3. Examination procedure

3.1 Filing date determination

LAW. Article 40

ADM. INS. Article 8

Filing date is the date on which the application is submitted with the minimum requirements to receive a date for protection of the industrial design applied for.

The Agency shall check the following requirements in order to accord a filing date;

Checklist for the elements to accord a filing date	Yes	No
Request for registration of the industrial design		
Information identifying the applicant or allowing the applicant to be contacted		
A representation of the design suitable for reproduction or, where applicable, a specimen*		

*If the object of the application is a two-dimensional design and the application contains a request for deferment of publication the representation of the design may be replaced by a specimen.

Actions to be taken by the Agency

- All requirements to accord a filing date is satisfied	
Yes	The Agency accords the filing date and starts formal examination (see section 3.2)
No	The agency notifies the applicant to remedy the deficiencies determined in the checklist above, within sixty (60) days from the date of receipt of the invitation.
Are the deficiencies indicated in the invitation remedied within sixty (60) days	
Yes	The Agency accords the filing date as the date on which the deficiencies remedied. The Agency notifies the applicant about the new filing date.
No	The Agency rejects the application and notifies the applicant.

3.2 Formal examination

LAW. Article 41.1, Article 29

ADM. INS. Article 8.3

Once the application has been accorded a filing date, the Agency shall examine whether the elements are submitted with the application, in compliance with the requirements listed in the checklist below:

Checklist for formal examination	Yes	No
The application contains all the elements and necessary attachments as required		
- Application form (request for the registration of industrial design) is submitted		
- The representation of design is submitted		
- Specimen(s) replacing the representation is submitted		
- Power of attorney is attached (if the application has been filed by a representative)		
- Certified copy of priority documents is attached (if priority right is claimed in the application)		
- Certification on exhibition at the international exhibition is attached (if exhibition priority is claimed)		
- Declaration on the joint representative of applicants is attached		
- Declaration of designer on not to be mentioned in documents (if marked on the form) is attached		
- Relevant fees are paid		
- In the case of a multiple application, the products in which the designs are intended to be incorporated or to which they are intended to be applied, belong to more than one class of the Locarno classification		

If the Agency, during the examination, establishes that any of the formal requirements listed in the checklist is not complied with, the steps defined below will be followed.

Actions to be taken by the Agency

- All requirements listed in the checklist in Section 3.2 are complied.	
Yes	The Agency compiles a decision for registration of designs.
No	The agency invites the applicant to remedy the deficiencies expressly indicated in the invitation, within sixty (60) days from the date of receipt of the invitation.

Are the deficiencies indicated in the invitation remedied within sixty (60) days		
	Yes	The Agency makes a decision for registration of design
	No*	The application shall be considered withdrawn
*If any deficiency regarding the priority claim is determined and notified in the invitation letter, non-compliance of this deficiency shall only result in the loss of priority right		
Application contains more than one design		
	No	Formal examination shall be executed for one design (with the checklist above)
	Yes	The Agency checks further requirements listed below.
The products in which the designs are intended to be incorporated or to which they are intended to be applied belong to more than one class of the Locarno Classification		
	Yes	The requirement for unity of class is met.
	No	The Agency invites the applicant to divide the multiple application within sixty (60) days from the receipt of the invitation (in order to ensure compliance with the requirement for unity of class)
The applicant has complied with the request to divide the application within the time limit.		
	Yes	The Agency invites the applicant to pay the total amount of fees to be paid for the divided application(s) from multiple application, within sixty (60) days from the receipt of the invitation.
	No	The application shall be considered withdrawn
The applicant has paid the total amount for divided application(s)		
	Yes	The Agency accords the date of filing of the divided application(s) as the date of first multiple application
	No	The divided application shall be considered withdrawn.
There is an indication for determining which designs are intended to be covered by fees paid.		
	Yes	Designs indicated by the applicant shall be registered.
	No	The Agency shall take the designs in the numerical order in which they are represented in the application. Rest of the designs shall be considered as withdrawn.
Any deficiency regarding some of the designs contained in the multiple application is not remedied within the time limit.		
	Yes	Relevant designs shall be considered as withdrawn.
	No	Designs for which the deficiencies remedied shall be registered.

The Agency has the right to require applicants to file any additional documents necessary for examining the application, by notification in writing and set a deadline for disposing them when it is deemed necessary.

3.3 Examination for refusal grounds

LAW. Article 42

ADM. INS. Article 9

The Agency carries out an examination of the substantive requirements, which is limited to grounds for non-registrability.

An application will be refused if the design does not correspond to the definition set out in the Law, or if it is contrary to public policy or to accepted principles of morality.

3.3.1 Definition of design

LAW. Article 3.1.4, Article 42.1.1

ADM. INS. Article 9.1

For the purpose of protection of industrial design, the legislation defines the “Design” as; the outer appearance of the whole or of a part of product resulting from features of, shape, form, colour, lines, contours, texture or materials of the product itself or its ornaments.

A ‘product’ means any industrial or handicraft item, including the parts intended to be assembled into a complex product, packaging, graphic symbols and typographic typefaces, but excluding the computer programs.

In general, definition of design gives a broad meaning of subject matter to be protected under the law, however there might be cases to make a grounded decision whether the applied subject falls under the definition of design, together with the interpretation of product.

Most common issues experienced by the main offices, particularly the EUIPO, are listed as a non-exhaustive case of examples. Explanations and cases are extracted from Design Guidelines of the EUIPO;

- **Blueprints, plans for houses or other architectural plans and interior or landscape designs**

In case of an application for a design consisting of a blueprint does not disclose the appearance of a finished product such as a house. Therefore, blueprint itself does not correspond to the definition of design.

However, blueprints, plans for houses or other architectural plans and interior or landscape

designs (e.g., gardens) will be considered 'products' and will be accepted only with the corresponding indication of *other printed matter* in Class 19-08 of the Locarno Classification.

- **Colours per se and combinations of colours**

A single colour may of course be an element of a design, but on its own it does not comply with the definition of a design because it does not constitute the 'appearance of a product'.

Combinations of colours may be accepted if it can be ascertained from the contours of the representation that they relate to a product such as, for instance, a logo or a graphic symbol in Class 32 of the Locarno Classification.

- **Icons, graphic user interfaces and the like**

Designs of screen displays and icons, graphic user interfaces and other kinds of visible elements of a computer program are eligible for registration.

- **Mere verbal elements**

Mere words per se and sequences of letters (written in standard characters in black and white) do not comply with the definition of a design because they do not constitute the appearance of a product.

The use of fanciful characters and/or the inclusion of a figurative element, however, render(s) the design eligible for protection either as a logo/graphic symbol in Class 32 of the Locarno Classification or as the ornamental representation of a part of any product to which the design will be applied.

- **Music and sounds**

Music and sounds per se do not constitute the appearance of a product and, therefore, do not comply with the definition of a design.

However, the graphical representation of a musical composition, in the form of musical notation, would qualify as a design, if applied for as, for example, *other printed matter* in Class 19-08 or *graphic symbols* in Class 32 of the Locarno Classification.

- **Photographs**

A photograph per se constitutes the appearance of a product and, therefore, complies with the definition of a design, irrespective of what it discloses. The indication of the product can be *writing paper, cards for correspondence and announcements* in Class 19-01, *other printed matter* in Class 19-08 of the Locarno Classification, or any product to which the design will be applied.

- **Living organisms**

Living organisms are not 'products', that is, industrial or handcrafted items. A design that discloses the appearance of plants, flowers, fruits etc. in their natural state will, in principle, be refused.

Even if the shape at issue deviates from that of the common corresponding living organism, the design should be refused if nothing suggests prima facie that the shape is the result of a manual or industrial process.

However, no objection will be raised if it is apparent from the representation that the product does not show a living organism or if the indication of the product specifies that the product is artificial (see, in particular, Class 11-04 of the Locarno Classification).

- **Teaching materials**

Teaching materials such as graphs, charts, maps, etc. can be representations of products in Class 19-07 of the Locarno Classification.

- **Concepts**

A design application will be refused where the representation is of a product that is simply one example amongst many of what the applicant wishes to protect. An exclusive right cannot be granted to a 'non-specific' design that is capable of taking on a multitude of different appearances. This is the case where the subject matter of the application relates, inter alia, to a concept, an invention or a method for obtaining a product.

3.3.2 Contrary to public order and moral principles

LAW. Article 10, Article 42.1.1

ADM. INS. Article 9.1

Industrial designs that are contrary to public order or to accepted principles of morality are excluded from registration.

'Public policy' is the body of all legal rules that are necessary for the functioning of a democratic society and rule of law. The concept of accepted principles of morality refers to the fundamental moral values and standards to which a society adheres at a given time¹.

¹EUIPO Trade mark and Design guidelines

3.4 Withdrawal or correction of the errors

LAW. Article 40.7, 40.8

ADM. INS. Article 10

On the request of the applicant or the holder of the registered design, amendments shall be permitted on the name or the address of the applicant, or correction of any other technical error with a condition that the object of protection is not extended, and after the additional fee have been paid.

3.4.1 Request for withdrawal

ADM. INS. Article 10.1

The applicant or owner may at any time withdraw the design registration application or in cases of multiple application, withdraw some of the designs contained in the application.

3.4.2 Application for correction

ADM. INS. Article 10.2

An application for the correction of the application shall contain:

- The file number of the application;
- The name and the address of the applicant
- When the applicant has appointed a representative, the name and the business address of the representative
- Indication of the element of the application to be corrected and that element in its corrected version.

3.4.3 Correctable elements

ADM. INS. Article 10.3

Only the name and address of the applicant, errors of wording or of copying, or obvious mistakes may be corrected, at the request of the applicant and provided that such correction does not change the representation of the design.

3.4.3 Formal examination of application for correction

ADM. INS. Article 10.4

If the requirements for the correction of the application are not fulfilled, the Agency shall call upon the applicant to remedy the deficiencies within 60 (sixty) days of receiving the call, if applicant fails to remedy the deficiencies within 60 (sixty) days, the application shall be considered withdrawn.

CHAPTER 4. Registration of design

4.1 Registration procedure

LAW. Article 43

ADM. INS. Article 11

If the application fulfills requirements for registration of an industrial design according to the the formal and substantive examination listed in the previous sections,

- The Agency invites the applicant to pay the fee for registration within thirty (30) days from the date of receiving of the invitation
- If the registration fee is paid and the evidence is submitted within the given period, the Agency registers the design
- If the application contains a request for deferment of publication, the date of expiry of the deferment period shall be recorded in the Register.

4.2 Publication of registration

LAW. Article 44

ADM. INS. Article 12

All registered designs are published in the Bulletin. Publication of the registration shall contain:

- The name and address of the holder of the registered design
- Name and business address of the representative (if there are two or more representatives with different business addresses, only the address for service determined shall be published)
- The representation of the design (if the representation of the design is in colour, the publication shall be in colour)

- An indication that a description has been filed (if any)
- An indication of the products in which the design is intended to be incorporated or to which it is intended to be applied, preceded by the number of the relevant classes and subclasses of the Locarno classification;
- Name of the designer or team of designers;
- The date of filing and the file number and (in case of a multiple application, the file number of each design)
- Particulars of the claim of priority;
- Particulars of the claim of exhibition priority;
- The date and the registration number
- The date of the publication of the registration

4.3. Deferment of publication

LAW. Article 45

ADM. INS. Article 13

If the application contains a request for deferment of publication, the Agency shall check the requirements listed below before the publication;

Checklist for the request for deferment of publication

The applicant paid the publication fee, together with the request or not later than 90 (ninety) days before the expiry of the 1-year deferment period	
The applicant paid the additional publication fee (in the case of a multiple registration), together with the request or not later than 90 (ninety) days before the expiry of the 1-year deferment period	
The applicant filed a representation of the design (if the representation of the design has been replaced by a specimen - This applies to all the designs contained in the multiple application for which publication is requested)	
The applicant indicated which of the designs contained in the multiple application are to be published or which of the designs are to be surrendered, or, if the period of deferment has not yet expired, for which designs deferment is to be continued. (in the case of a multiple registration)	

Where the holder requests publication before the expiry of the 1-year deferment period, he/she shall, at the latest 90 (ninety) days before the requested date of publication, shall pay the publication fee and the additional fee, if any, before ninety (90) days before the expiry of 1 year deferment period.

Actions to be taken by the Agency

Did the applicant file the representation of the design(s) for which is replaced by specimens before 90 days before the publication?	
Yes	The Agency checks other requirements before publication (fee or additional fees)
No	The Agency invites the applicant to correct the deficiencies within 60 (sixty) days of receiving the invitation.
Are the deficiencies indicated in the invitation remedied within sixty (60) days	
Yes	The Agency checks other requirements before publication (fee or additional fees)
No	It shall be deemed that the registered design did not produce legal effects, and in case of a request for early publication, the request shall be deemed not to have been filed.
Did the holder pay the publication fees, and additional fees if any (together with the request or not later than 90 (ninety) days before the expiry of the 1-year deferment period)	
Yes	The Agency publishes the registration
No	The Agency invites the applicant to pay those fees together with the fees for late payment, which shall in no case expire the 1-year deferment period.
In case of multiple application, a payment is made within the time limit but is insufficient to cover all the fees payable, all the designs in respect of which the fees have not been paid shall be deemed from the outset not to have had the legal effects.	
In absence of any indication for determining which designs are intended to be covered, the Agency shall take the designs in the numerical order in which they are represented	
All designs for which the additional publication fee has not been paid or has not been paid in full, shall be deemed from the outset not to have had the legal effects.	

4.4 Publication after deferment period

ADM. INS. Article 14

If the requirements for deferred publication is complied, at the expiry of the period for deferment or in the case of a request for earlier publication, the Agency should:

- Publish the registered design in the Bulletin, with the INID codes and with an indication of the fact that the application contained a request for deferment of publication and a specimen filed attached to the application
- Make available for public information any file relating to the design;
- Open to public information all the entries in the Register.

4.5 Design certificate

LAW. Article 46

ADM. INS. Article 15

At the request of an industrial design holder and after the payment of the required fee, the Agency shall issue a certificate on industrial design.

4.5.1 Content of certificate

ADM. INS. Article 15.1

Registration certificate shall contain the following information with corresponding INID codes:

- The number of the industrial design,
- Filing date of the application,
- Registration date of the design,
- Date of publication of the design,
- Data regarding the deferment of the publication;
- Full details for the holder;
- Representation of the design;
- Indication of product in which the design is to be incorporated or to be applied
- Classes according to Locarno classification;
- Full details of the designer;
- Data for the right to priority.

4.5.2 Payable fees

ADM. INS. Article 15.3

Issuance of certificates shall take place upon payment of the fee. The holder may request that certified copy of the certificate of industrial design be supplied to him/her upon payment of a fee.

4.6 Corrections in the register

ADM. INS. Article 16

A change of the name or address of the holder which is not the consequence of a transfer of the registered design shall, at the request of the holder, be recorded in the Register.

4.6.1 Corrections by holder's request

ADM. INS. Article 16

An application for a change of the name or address of the holder shall contain:

- The registration number of the design
- The name and the address of the holder as recorded in the Register
- The indication of the name and address of the holder
- Where the holder has appointed a representative, the name and business address of the representative, in accordance with Article 2 subparagraph 1.5 of this Administrative Instruction.

The request for a change in the name or address of the holder shall be subject to payment of relevant fees. A single request may contain more than one registration of the same holder.

If the Agency determines that the requirements for correction are not fulfilled, the holder shall be communicated to remedy the deficiency within 60 (sixty) days. If the deficiency is not remedied within 60 (sixty) days, the application for correction shall be deemed withdrawn.

4.6.2 Corrections by Agency

ADM. INS. Article 17

Where the registration of a design or the publication of the registration contains a mistake or error attributable to the Agency, the Agency shall correct the error or mistake of its own motion or at the request of the holder. This shall not be subject of fees payable. The Agency shall publish the corrections made.

4.7 Search on novelty of design

LAW. Article 39



At the request of an interested party, the Agency shall carry out a novelty search of registered designs in Kosovo. The request is subject to payment of the required fee.

A novelty search for the purposes of identifying prior designs is not conducted as part of the design registration process. Therefore, the Agency will not undertake a search for prior designs, and will not make a decision of a refusal based on grounds of novelty or individual character.

Novelty and individual character are requirement for protection; therefore, the applicant has the responsibility to consider and identify such characteristics in a design before seeking to register it.

A design is considered to be new if no identical design has been made available to the public before the date of filing of the application for registration or, the date of priority if priority right is claimed. Designs shall be considered to be identical if their features differ only in immaterial details.

A sample novelty case is excerpted from Design Guidelines of EUIPO, in order to illustrate the novelty criteria.

Contested RCD No 5 269-0001 (view No 2)	Earlier design (invented example)
	

CHAPTER 5. Renewal and changes in the registration

5.1 Renewal of registration

LAW. Article 49

ADM. INS. Article 18

Term of protection of a registered industrial design is five years from the date of filing of the application. Registration may be renewed for five-years period, up to twenty-five (25) years starting from the filing date.

The renewal of the registration begins on the next day of the expiry date of the previous period of protection. Renewal of registration shall be registered and published in the Bulletin.

5.1.1 Request for renewal

LAW. Article 49.1

ADM. INS. Article 18.1

Request for renewal together with the payment of fees payable, must be submitted within a period of twelve (12) months which ends on the last date of the month in which protection is finished.

If this fails, then the request may be submitted within a period of six (6) months after the expiration of the protection, with payment of additional fees for this period.

Request for renewal of registration shall contain:

- Full details of the person requesting renewal;
- Registration number;
- An indication that renewal is requested for all the designs covered by a multiple registration or, if the renewal is not requested for all such designs, an indication of those designs for which renewal is requested.
- Fees payable for renewal of registration shall consist of:
 - o renewal fee, which, in cases where several designs are covered by a multiple registration, shall be proportionate to the number of designs covered by the renewal;
 - o the additional fee for late payment of the renewal fee or late submission of the request for renewal.

The Agency checks the requirements for renewal and, If the request for renewal is filed within the time limits, but the other conditions for renewal are not complied, the Agency shall inform the applicant of the deficiencies.

The term of registration expires:

- Where an application for renewal is not submitted or is submitted after expiry of the time limit, or
- If the fees are not paid or are paid only after expiry of the relevant time limit, or
- If the deficiencies are not remedied within the time limit specified by the Agency,

Upon the determination of expired registration, the Agency shall notify the holder accordingly.

In the case of a multiple registration, where the fees paid are insufficient to cover all the designs for which renewal is requested, such a determination shall be made only after the Agency has established which designs the amount paid is intended to cover.

In the absence of information for determining which designs are intended to be covered, the Agency shall take the designs in the numerical order to determine the expired designs with regard to all designs for which the renewal fees have not been paid or have not been paid in full.

The Agency shall cancel the design from the Register with effect from the day following the date on which the existing registration expired.

A single application for renewal may be submitted for two or more designs, whether or not part of the same multiple registration, upon payment of the required fees for each of the designs, provided that the holders or the representatives are the same in each case.

5.2 Entry of changes in the register

5.2.1 Transfer

LAW. Article 21

ADM. INS. Article 19

The holder of industrial design may transfer his rights related to industrial design to other persons. The transfer may be complete or partial.

The transfer shall be recorded in the register and published in the Bulletin of Agency at the request of any of the parties.

The registration of transfer of rights must be evidenced by a contract for the transfer of rights or a certified statement to the competent authority on the transfer of rights and signed by both parties. The transfer shall only have effect to third parties after the entry in the register.

A single application for registration of a transfer may be submitted for two or more registered designs, provided that the registered holder and the successor in title are the same in each case.

Application for registration of a transfer for Industrial Design shall contain:

- Registration number of the registered design
- Full details of the new holder
- Indication of designs to which the transfer relates (when not all of the designs covered by a multiple registration are included in the transfer)
- Documents duly establishing the transfer
- The name and business address of the representative (when applicable) of the new holder
- Payment proof of payable fees
 - o If the fee is not paid or is not paid in full, the Agency shall notify the applicant accordingly.

The Agency shall accept the documents listed below as the necessary proofs for the transfer:

- Application for registration of the transfer, signed by the registered holder or his/her representative and by the successor in title or his/her representative

- Application, if submitted by the successor in title, is accompanied by a declaration, signed by the registered holder or his/her representative, that he/she agrees to the registration of the successor in title
- Application is accompanied by a completed transfer form or document, signed by the registered holder or his/her representative and by the successor in title or his/her representative.

If the Agency determines any deficiency with the request for registration of transfer, Agency shall invite the applicant to remedy the deficiencies within 60 (sixty) days. If the deficiencies are not remedied within 60 (sixty) days, the application for registration of transfer shall be considered withdrawn.

The transfer shall be recorded in the files kept by the Agency concerning the design application.

5.2.2 License

LAW. Article 22

ADM. INS. Article 20

The holder of industrial design right may issue exclusive or non-exclusive license for using of the right of the design fully or partially, for the whole territory of Kosovo or a part of it.

The right for usage of the industrial design is acquired based on the licensing contract and has effect on third parties after the registration of the license in the Register. The licensing contract shall be in written form and signed by the contracting parties.

The license is registered after the request for that is made by the owner of the design or of the person who acquired the license, provided that the copy of contract for the license is provided to the Agency. The registration of the license shall be published in the Bulletin.

5.2.3 Special provisions

ADM. INS. Article 21

A license for a registered design shall be recorded in the Register as one of the following types of license, on request of one of the parties involved in licensing contract:

- An exclusive license
- A sublicense where this is permitted by a licensee whose license is recorded in the register
- A territorially limited license if it is granted for a part of the territory of Kosovo
- A temporary license if it is granted for a limited period of time

5.2.4 Cancellation of license

ADM. INS. Article 22

A registration of license shall be cancelled at the request of one of the persons concerned with that registration.

The application shall contain:

- Registration number of the registered design, or in the case of a multiple registration, the number of each design; and
- Details of the right whose registration is to be cancelled.
- Payment proof of payable fees (request from a competent national authority for cancellation of an entry where a registered design is involved execution or insolvency proceedings shall not be subject to payment of a fee)
- Documents stating that the registered right no longer exists or by a statement by the licensee or the holder of another right to the effect that he/she consents to cancellation of the registration.

Where the requirements for cancellation of the registration are not satisfied, the Agency shall notify the applicant to remedy the deficiencies. If the deficiencies are not remedied within 60 (sixty) days of receipt of the notification by the Agency, application for cancellation of the registration shall be considered withdrawn.

5.2.5 Rights in rem

LAW. Article 23

ADM. INS. Article 20.6

An industrial design right may be subject of a pledge. Upon request of the parties involved in the pledge, the Agency shall record the pledge in the Register and publish in the Bulletin.

The court which applies pledge as ex officio shall inform the Agency to implement the pledge towards design with the purpose of entry in the register and published in the bulletin of the Agency.

The pledge effects the third parties only after entry in the registry. Registration of pledge is published in the Bulletin.

5.2.6 Execution

LAW. Article 24

ADM. INS. Article 20.6

An industrial design may be subject of execution procedure. The competent authority which decides on execution must immediately notify the Agency regarding the execution for the purpose of record in the register and be published in the Bulletin.

5.2.7 Bankruptcy

LAW. Article 25

ADM. INS. Article 20.6

When the industrial design right is involved in bankruptcy proceedings, the competent body shall immediately notify the Agency regarding proceedings on insolvency and with the purpose of entering the data in the register and be published in the Bulletin.

5.2.8 Changes for multiple registration

LAW. Article 29.3

ADM. INS. Article 20.3

Licenses, rights in rem, the procedure of execution and insolvency proceedings shall be recorded in the files kept by the Agency concerning the design application.

In the case of a multiple registration, each registered design may, separately from the others, be licensed, be the subject to a right in rem, levy of execution or insolvency proceedings.

CHAPTER 6. Waiver and invalidity

6.1 Waiver of design right

LAW. Article 52

ADM. INS. Article 23.1

Right holder may waive from the design right. Request for waiver shall be done through a written declaration by the holder to the Agency. The declaration shall have legal effects after being entered in the register.

In case of waiver of an industrial design right which is subject to deferment of publication, it shall be assessed that the design did not have the effects specified in the Law.

The holder may partially waive from the design under the condition that its amended form complies with the requirements for protection and the identity of the design is retained.

A declaration of waiver of the design right shall contain:

- Registration number of the registered design
- Name and address of the holder
- Data on the representatives, the name and address of the business of the representative
- An indication of the designs for which the waiver is declared or the designs which are to remain registered (where waiver is declared only for some of the designs contained in a multiple registration)
- Where the registered design is partially waived, a representation of the amended design

If a third-party right is recorded in the Register, it shall be sufficient to proof the agreement of that third party with a signed declaration of consent to the waiver.

If a license is registered, the holder shall prove that the licensee has been informed about the waiver of the right. The Agency shall enter the waiver into the register within 90 (ninety) days after the submission of this proof, or immediately if the proof has already been submitted with the request for waiver.

If the application regarding the right to a design registered is in a proceeding before a court, a declaration of consent of the person who submitted the waiver of design, signed by the applicant or his representative, shall be sufficient evidence of agreement with the person who has waived the design.

If the requirements for a waiver have not been met, the Agency shall communicate the deficiencies of the application. If the deficiencies are not remedied within a period of 60 (sixty) days from the receipt of the communication, the declaration of waiver shall be considered withdrawn and is not recorded in the Register.

6.2 Invalidity Application

LAW. Article 54

ADM. INS. Article 24

The request for invalidity announcement of the design shall be submitted in written request to the Agency.

Request for declaration of invalidity of the design may be submitted during the protection period. The request may be filed even after the termination of effect of the design, if the applicant evidences that the procedures on violation of the design have been initiated, or if applicant has initiated the court procedure to prove that he has not in any case, violated the relevant industrial design.

Request for declaration of invalidity shall be subject to payment of relevant fee.

6.2.1 Requirements for invalidity application

ADM. INS. Article 24.1

Application for invalidation must contain:

- Registration number of the design for which invalidity is requested
- Full details of the holder of the design right
- Statement of the grounds on which the application for invalidation is based
- The representation and particulars identifying the prior design on which the application for a declaration of invalidity is based and showing that the applicant is entitled to invoke the earlier design as a ground for invalidity
- The representation and specifics identifying the distinctive sign or the work protected by copyright on which the application for a declaration of invalidity is based and particulars showing that the applicant is the holder of the earlier right
- The representation and particulars indicating that the application is filed by such person or entity whose rights have been violated
- Indications and reproduction of earlier designs that can form an obstacle to the novelty or individual character of the registered design, and documents proving the existence of those earlier designs
- An indication of the facts based on the evidence and arguments presented
- Full details of the application for invalidity
- If the applicant has appointed a representative, the name and business address of the representative
- In addition, in case of an application for invalidation of industrial design, particulars showing that the application is made by a person or persons duly entitled
- Proof of payment for payable fees

The Agency shall inform the holder that an application for invalidation has been filed.

6.2.2 Grounds for invalidity

LAW. Article 53

Any interested party may apply at the Agency for declaration of invalidity of an industrial design with the grounds listed below:

6.2.2.1 The Agency, through a decision, announces the design as full or partial invalid if: the design does not correspond to the definition of design in accordance with the Law.

6.2.2.2 The Agency, through a decision, announces the design as full or partial invalid if the design does not meet the protection requirements of novelty and individual character

The novelty and individual character of a design must be examined on its filing date or, on its date of priority, in the light of the relevant earlier designs, which have been made available to the public. The design must be compared individually with earlier designs.

Novelty and individual character of a design cannot be defeated by combining features taken from a number of earlier designs, but by one or more earlier designs, taken individually. A combination of already disclosed features is therefore eligible for protection as a design, provided the combination, as a whole, is novel and has individual character.

In principle, all the features of conflicting designs must be taken into consideration when examining novelty and individual character. The contested design is the point of reference when assessing novelty and individual character in the comparison with the earlier design. Novelty and individual character have to be assessed solely on the basis of the features disclosed in the contested design.

Consequently, if the contested design reproduces only certain aspect views, for instance the front view, a comparison is only made with the corresponding view of the earlier design. Any additional aspect views disclosed by the earlier design, such as the rear view, are disregarded.

A sample case excerpted from Design Guidelines of EUIPO illustrates that the designs compared in terms of novelty and declared invalid. This invalidity decision concerns registered Community design which is declared invalid because it is not new over the prior design submitted by the invalidity applicant.



Prior Design

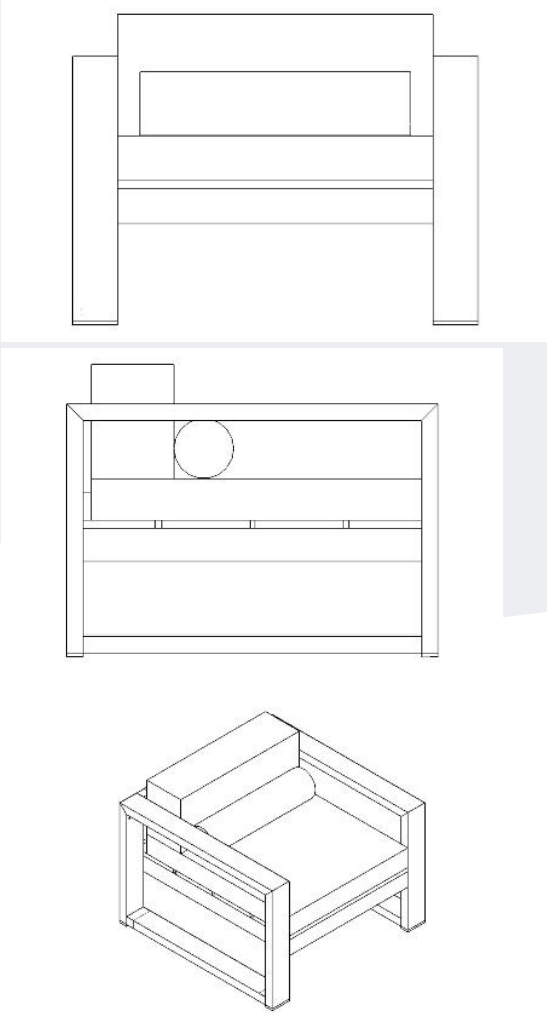
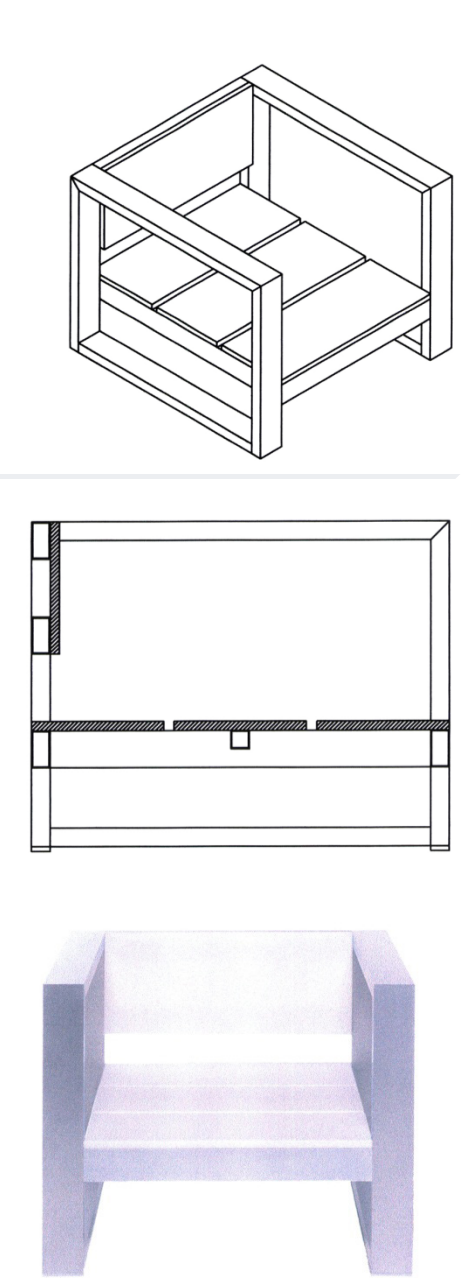


Contested Design

Individual character:

A design will be considered to have individual character if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design that has been made available to the public before the date of filing of the application for registration or, if a priority is claimed, the date of priority. In assessing individual character, the degree of freedom of the designer in developing the design will be taken into consideration.

Another sample case excerpted from Design Guidelines of EUIPO illustrates that the designs compared in terms of individual character and declared invalid. This invalidity decision concerns registered Community design which is declared invalid because it lacked individual character.

Contested RCD No 1 512 633-0003	Earlier RCD No 52 113-0001
	

6.2.2.3 The Agency, through a decision, announces the design as full or partial invalid if the applicant or holder of the registered design is not entitled to the design.

Design may be declared invalid if, by virtue of a court decision, the right holder is not entitled to the design.

Request for invalidity of the industrial design on the ground that the right holder is not entitled to the design, may be requested only by person who has the right on the industrial design.

6.2.2.4 The Agency, through a decision, announces the design as full or partial invalid if the design is in conflict with a prior design which has been made available to public after the date of application or in cases when the priority is claimed, after the received priority date, the design shall be protected from the date which existed before the registration of registered design in Kosovo or before application for such a right.

A design will be declared invalid if it is in conflict with a prior design that has been made available to the public after the date of filing of the application or, if priority is claimed, the date of priority of the design, and which is protected from a date prior to the said date by a registered design in Kosovo.

6.2.2.5 The Agency, through a decision, announces the design as full or partial invalid if any distinctive sign is used in the next design, and the right holder of this distinctive sign has the right to prohibit such use.

Declaration of invalidity of the industrial design on the ground defined in this item may be requested only by the applicant or the holder of the distinctive sign. The notion of a 'distinctive sign' encompasses registered trade marks.

The applicant must establish only that it has a right to prohibit use of the subsequent design. It cannot be required to establish that such right has been exercised; in other words, that the applicant has actually been able to prohibit such use.

The notion of 'use in a subsequent design' does not necessarily presuppose a full and detailed reproduction of the earlier distinctive sign in a subsequent design. Even though the design may lack certain features of the earlier distinctive sign or may have different additional features, this may constitute 'use' of that sign, particularly where the features omitted or added are of secondary importance and are unlikely to be noticed by the relevant public. It is sufficient that the design and the earlier distinctive sign to have similarities.

Where a design includes a distinctive sign without any disclaimer making clear that protection is not sought in respect of such feature, it will be considered that the design makes use of the earlier distinctive sign even if the latter is represented in only one of the views.

6.2.2.6 The Agency, through a decision, announces the design as full or partially invalid if the design constitutes an unauthorized use of a work protected under the Copyright Law.

Declaration of invalidity of the industrial design on the ground defined in this item may be requested only by the applicant or the holder of the copyright:

- particulars showing that the applicant acquired the rights to the work protected under the copyright law relied on before the filing date or the priority date of the
- particulars showing that the applicant satisfies the necessary conditions, in accordance with that law, to have the design invalidated or its use prohibited by virtue of its earlier right

6.2.2.7 The Agency, through a decision, announces the design as full or partial invalid if the design constitutes an unauthorized use of any of the items listed in Article 6ter of the Paris Convention, or of badges, emblems or escutcheons and different graffiti other than those covered by Article 6ter of the Paris Convention which are of particular public interest in of Kosovo.

Declaration of invalidity of the industrial design on the ground defined in this item may be requested only by the person or the subject whose rights have been infringed by usage.

A design will be declared invalid if it constitutes an improper use of any of the items listed in Article 6ter of the Paris Convention, or of badges, emblems and escutcheons other than those covered by the said Article 6ter that are of particular public interest in Kosovo.

The items covered by Article 6ter are the following:

- Armorial bearings, flags, other emblems, official signs and hallmarks that belong to states and have been communicated to WIPO, although, in the case of flags, such communication is not mandatory;
- Armorial bearings, flags, other emblems, abbreviations and names of international intergovernmental organisations that have been communicated to WIPO, with the exception of those already the subject of international agreements for ensuring their protection (see, for example, the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces of 12/08/1949, Article 44 of which protects the emblems of the Red Cross on a white ground, the words 'Red Cross' or 'Geneva Cross', and analogous emblems).

6.2.3 Formal examination of application for invalidity

LAW. Article 55.2

ADM. INS. Article 25

The Agency checks the formal requirements of the invalidity application.

If the Agency determines a deficiency in the application for invalidity and/or the relevant fee is not paid, the applicant shall be informed and invited to remedy the deficiencies within two months from the receipt of the communication.

If deficiencies are not remedied and/or the relevant fee is not paid within the time limit, the application shall be deemed as inadmissible and withdrawn. This decision shall be communicated to the applicant for invalidity.

6.2.4 Review of application for invalidity

LAW. Article 55

The Agency reviews the application for invalidity of the industrial design. If the application for invalidation complies with the formal requirements, the Agency shall notify the holder to submit his/her observation within 60 (sixty) days of receipt of the notification.

If the holder does not provide any observations, the Agency may base its decision on the evidence provided by the relevant part requesting the invalidity of design. Any observations filed by the holder must be communicated to the complainant, who may be invited by the Agency to give a reply within 60 (sixty) days from the date of the call.

After completion of the procedure for receiving the grounds and observations from the parties, the Agency shall examine whether the grounds submitted with the request prevent the protection of industrial design within the scope of determined by the Law.

If the requirements for invalidity announcement of the design are not met in accordance with the relevant Articles of the Law, the Agency through a decision, rejects the request for invalidity.

If the grounds submitted in the request for invalidity prevents the protection of the industrial design, the Agency shall, together with the observations of the holder, decide on invalidity of the design and communicate the decision to the parties involved in the proceedings.

6.2.5 Participation of an alleged infringer

LAW. Article 56

ADM. INS. Article 27

If the request for invalidation of registered industrial design, presented during the protection period and until Agency has not yet made a decision, a third person who testifies against the person who initiated the court proceedings because of the violation of this design as well as the applicant for invalidity announcement, can join as a party to the announcement of invalidity procedures with the request submitted at the Agency.

Request to join the invalidity proceedings shall also be applicable in cases of any third party who proves that the right holder of the industrial design has requested that they cease an alleged infringement of the design and the third party has started the procedure to prove that they had not infringed the industrial design.

The request to join as a party shall be submitted in written request and shall include the causes of the request. The request shall not be reviewed until the specified fees have been paid.

6.2.6 Decision on invalidity

LAW. Article 57

If a design is declared invalid by the decision of the Agency, all legal effects derived from design registration should be invalid as from the beginning of the industrial design right.

6.2.7 Complaints against decisions of the Agency

LAW. Article 50

The decisions of the Agency can be appealed by the holder or the parties involved in the proceedings for invalidity. The decision shall be appealed within thirty (30) days from the receipt of the decision.

The appeal shall be reviewed by the Commission of Complaints within thirty days (30) from the receipt of the decision.

The Commission of Complaints shall be established upon the decision of the Minister.

A claim may be submitted at competent court against the decision of the Commission of Complaints within thirty days (30) from the receipt of the decision.

CHAPTER 7 Information of the public

7.1 Design Register

LAW. Article 36

ADM. INS. Article 29, 30

The Register is open to the public and any person has the right to request access to the Register. Access to the Register is not subject to payable fees.

Before publishing the design registration or when a registered industrial design is subject to deferred publication, inspection of files is possible only in exceptional cases.

Regarding the registration for which an application for renewal of time limit of publication has been filed, the public will be provided with the information as follows:

- Access to the Register by persons other than the holder must be limited to only
 - o The name of the holder,
 - o The name of any agent,
 - o Filing date and registration,
 - o Application file number and
 - o A mention that the publication is deferred;
- As for the extracts, as well as letters from the Register (except where the request is made by the owner or his / her representative) shall contain only

- The name of the owner,
- The name of any representatives,
- The date of submission and registration,
- Application number and
- A mention that publication has been deferred,

The Register contains all particulars related to design applications and registered designs; and the 'files' contain all correspondence and decisions relating to those designs.

Design Register and publication is kept electronically and the Register shall contain the following information:

- The date of registration publication;
- The file number of the application and the file number of each individual design included in a multiple application;
- Registration publication date;
- The name, the address and the nationality of the applicant and the State in which they are domiciled or have their seat or establishment;
- The name and business address of the representative, where there is more than one representative, only the name and business address of the first named representative, where an association of representatives is appointed, only the name and address of the association shall be recorded;
- The representation of the design;
- An indication of the products by their names, preceded by the numbers of the classes and subclasses of the International Classification, and grouped accordingly;
- Particulars of claims of priority;
- Particulars of claims of exhibition priority;
- The citation of the designer or of the team of designers, or a statement that the designer or the team of designers has waived the right to be cited;
- Date of design registration in the Registry and registration number;
- A mention of any request for deferment of publication, specifying the expiration date of the period of deferment;
- A mention that a specimen was filed
- A mention that a description was filed

In addition to the entries set out in paragraph 2 of this Article, the Register shall contain the following entries, each accompanied by the date of recording such entry:

- Changes in the name, the address or the nationality of the holder or in the State in which they are domiciled or have their seat or establishment;
- Changes in name or business address of the representative;
- When a new representative is appointed, the name and business address of that representative;
- A mention that a multiple application or registration has been divided into separate applications or registrations;
- The notice of an amendment to the design;

- Corrections of mistakes and errors;
- A mention that entitlement proceedings have been instituted under Article 71 paragraph 1 of the Law on Industrial Design;
- The final decision or other termination of proceedings and a change of ownership in accordance with this decision;
- Transfers;
- Issuance or transfer of a license and, in specific cases including the type of license;
- Establishment or transfer of a right in rem and the nature of the right in rem;
- Execution proceedings;
- Insolvency proceedings;
- Renewal of registration and the date from which it takes effect;
- A note determining the expiry of registration;
- A declaration from the owner of full or partial waiver;
- Date and content of the decision on the application for invalidation or other interruption of procedures;
- Specifications that the registered design is considered from the beginning not to have produced legal effects;
- Cancellation of a registered representative in accordance with subparagraph 2.5 of this Article;
- Modification or de-registration from the Register of the items mentioned in subparagraphs 3.10, 3.11, 3.12 and 3.13. Of this Article.

The holder must be notified of any changes in the Register. The Agency shall issue extracts from the Register upon request, following the payment of a fee.

7.2 Bulletin

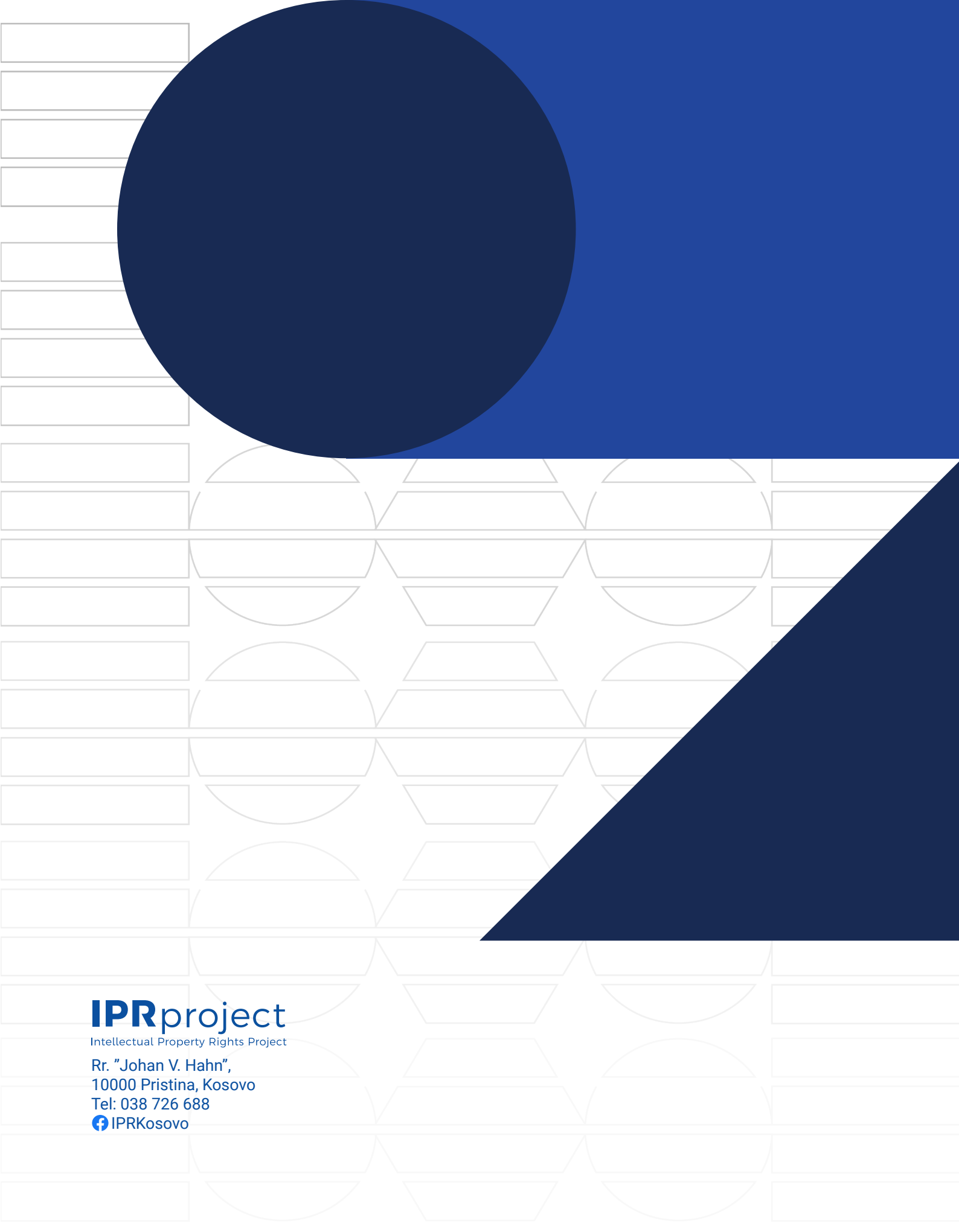
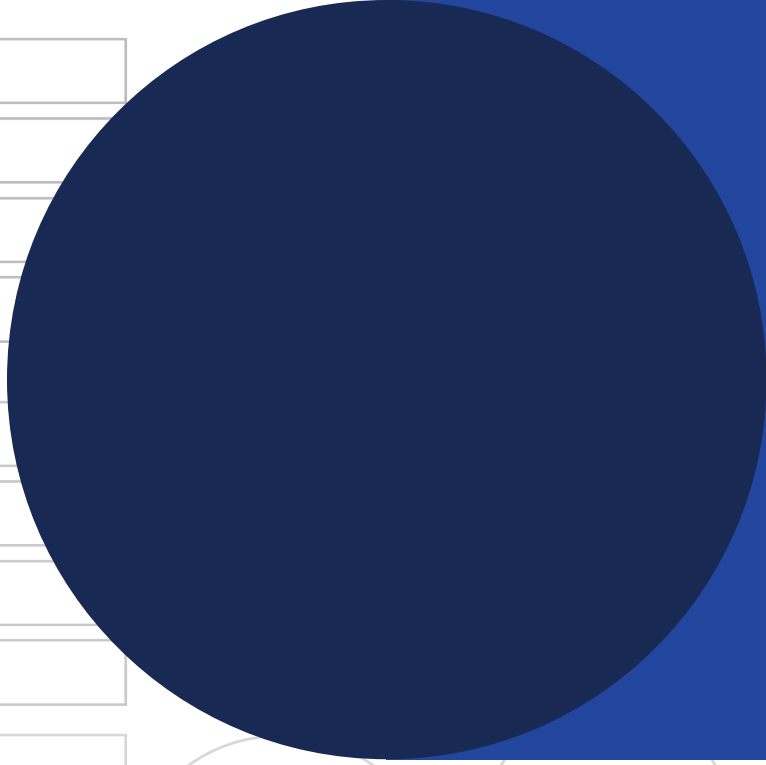
LAW. Article 37

ADM. INS. Article 31

The Agency determines the number and manner of publication of the Bulletin. The Bulletin shall contain publication of registrations and entries made in the Register, as well as other particulars relating to registration of designs.

When the particulars are published in the Bulletin of the Agency, the date of publication of the bulletin shall be taken as the date of publication of the particulars data.






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