

Feedback form for comments on the draft Guidelines for Examination of Design Invalidation Applications

User Association/National Office	INTA (International Trademark Association)
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Contributor (name & position)	INTA Designs Committee
Linguistic version the comments refer to	EN <input checked="" type="checkbox"/> DE <input type="checkbox"/> ES <input type="checkbox"/> FR <input type="checkbox"/> IT <input type="checkbox"/>
Part/Section/Chapter of the Guidelines the comment(s) refer to	2.3
Page of the document	6
Issue(s) you wish to comment on	Amend the paragraph as shown below.
Suggestion for text	The applicant's argument could be that the earlier design forms an obstacle to the novelty of the contested Community design given the similar overall impression it produces on the informed user.

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Part/Section/Chapter of the Guidelines the comment(s) refer to	3.9.2
Page of the document	12
Issue(s) you wish to comment on	Amend the paragraph as shown below.
Suggestion for text	The examination of the substantiation will be done based on the data contained in the database of the Office.

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Part/Section/Chapter of the Guidelines the comment(s) refer to	3.9.3
Page of the document	12
Issue(s) you wish to comment on	Amend the paragraph as shown below.
Suggestion for text	An application based on more than one ground of invalidity is admissible if the requirements regarding admissibility are satisfied for at least one of those grounds.

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Part/Section/Chapter of the Guidelines the comment(s) refer to	4.1.6.2
Page of the document	20
Issue(s) you wish to comment on	<p>Of the paragraph:</p> <ul style="list-style-type: none"> • where a number of applications for a declaration of invalidity have been filed relating to the same Community design, and where a preliminary examination reveals that the Community design may be invalid on the basis of one of these applications. The Invalidity Division will deal with this application first and it may suspend the other invalidity proceedings (Article 32(2) CDIR). <p>1. Amend typo as shown in read below</p> <p>2. Article 32(2) simply says “If a preliminary examination of one or more applications reveals that the registered Community design may be invalid, the Office may suspend the other invalidity proceedings.”</p>

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	The existing wording suggests that the subject application will always be dealt with first – presumably this cannot always be the case if it was not the first application to be filed?
Suggestion for text	where a number of applications for a declaration of invalidity have been filed relating to the same Community design, and where a preliminary examination reveals that the Community design may be invalid on the basis of one of those applications.

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.5.1.1
Page of the document	27
Issue(s) you wish to comment on	Amend the paragraphs as shown below.
Suggestion for text	Under Article 7(1) CDR, the invalidity applicant relying on an earlier design has to prove the event of disclosure, for instance in publications, at exhibitions, in trade or on the internet (see paragraphs 5.5.1.3-5.5.1.5 below).

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.5.1.8
Page of the document	31

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Issue(s) you wish to comment on	Amend text by inserting commas as shown below
Suggestion for text	A priority claim is, however, valid if the Community design and the previous application for a design right or a utility model differ only in immaterial details.

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.5.2.1
Page of the document	33
Issue(s) you wish to comment on	Amend text by inserting commas as shown below.
Suggestion for text	These representations must, however, relate to one and the same earlier design (judgment of 22/06/2010, T-153/08, Communication equipment, § 25-30).

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.6; 5.7.4
Page of the document	42, 44
Issue(s) you wish to comment on	<p>Of the paragraph:</p> <p>“The Invalidity Division will assume that the prior design is valid unless the holder submits proof that a decision that has become final declared the prior design invalid before the adoption of the decision (see by analogy, judgment of 29/03/2011, C-96/09 P, Bud, EU:C:2011:189, § 94-95) (see paragraph 4.1.6.2 above, Suspension).”</p> <p>1-Replace the wording as shown below to make it clear which decision is being referred to.</p>

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	2. Make the same change to the similar wording which appears in the other Parts referred to above.
Suggestion for text	The Invalidation Division will assume that the prior design is valid unless the holder submits proof that a decision that has become final declared the prior design invalid before a final decision on the application for invalidity of the contested Community design (see by analogy, judgment of 29/03/2011, C-96/09 P, Bud, EU:C:2011:189, § 94-95) (see paragraph 4.1.6.2 above, Suspension).

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.7.3; 5.8.1; 5.9.1
Page of the document	43, 44, 46
Issue(s) you wish to comment on	Of the paragraph: “Apart from the elements mentioned above under paragraphs 3.5 and 3.9.2, pursuant to Article 28(1)(b)(vi) CDIR an application must contain:” 1. Since paragraph 3.5 does not refer to the contents of the application, but rather the locus standi of the applicant, amend the wording as shown below. 2. Make the same change to the similar wording which appears in the other Parts referred to above
Suggestion for text	Apart from complying with the criteria under paragraph 3.5 above and inclusion of the elements mentioned above under paragraph 3.9.2 , pursuant to Article 28(1)(b)(vi) CDIR an application must contain:

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Part/Section/Chapter of the Guidelines the comment(s) refer to	5.10
Page of the document	46
Issue(s) you wish to comment on	

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	Amend text by inserting commas as shown below.
Suggestion for text	The request must include the amended form. The proposed amended form may consist of an amended representation of the Community design from which some features are removed or making clear by means, inter alia, of broken lines that protection is not sought in respect of such features.