



# ENVIRONMENTAL AND INTELLECTUAL PROPERTY RIGHTS

University of Ferrara  
ACADEMIC YEAR 2019/2020

Mr. Alessandro Bura











# DESIGN PROTECTION



## International level

Union Paris  
Convention of  
1883 (priority date  
and national  
treatment)

Hague Agreement  
(1925)



## European Level

EU  
Regulation  
6/2002 (2001)



## National level

Civil Code  
(Articles 2593-  
2594)

Industrial  
Property Code  
(Articles 31-34)

# ENHANCING DESIGN PROTECTION

whereas enhanced protection for industrial design not only promotes the contribution of individual designers to the sum of Community excellence in the field, but also encourages innovation and development of new products and investment in their production

(RCD 7<sup>th</sup> preamble)



# WHAT IS PROTECTED – ARTICLE 3 RCD

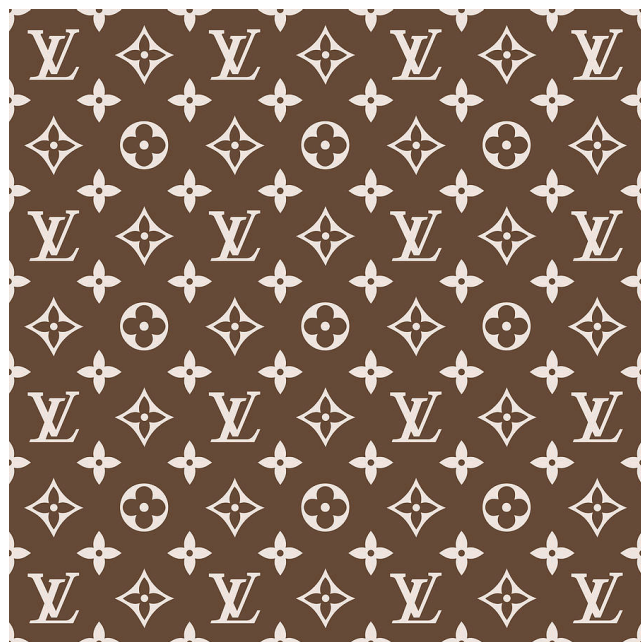
the **shape and appearance** of innovative products can enjoy strong protection if these have been registered (Article 3 RCD)





# OBJECTS OF PROTECTIONS

## TEXTURE/MATERIALS



## COLOURS



## PRODUCT'S SHAPE



# EXAMPLES OF DESIGN PROTECTION



**Packaging of products**

RCD 000785522-0001



**A product / set of  
products**

RCD 000465679-0016



**Composite products**

RCD 000408166-0001



**Parts of products**

RCD 229752-0001

# DESIGN APPLIED TO FUNCTIONAL OBJECTS

design focuses on the user,  
**combines aesthetic, economic  
and practical values** and is the  
way customers identify  
innovative brilliance ideas





# MAIN DISTINCTION

## Registered design

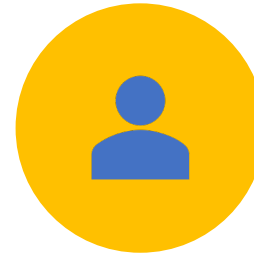
design protection  
for a maximum of  
25 years following  
the registration

VS.

## Not registered design

design can be  
protected within there  
years from their  
availability to the  
public for at least  
three years

# REQUIREMENTS OF PROTECTION



**INDIVIDUAL  
CHARACTER**



**NOVELTY**



**NOT CONTRARY  
TO PUBLIC  
POLICY OR  
MORALITY**

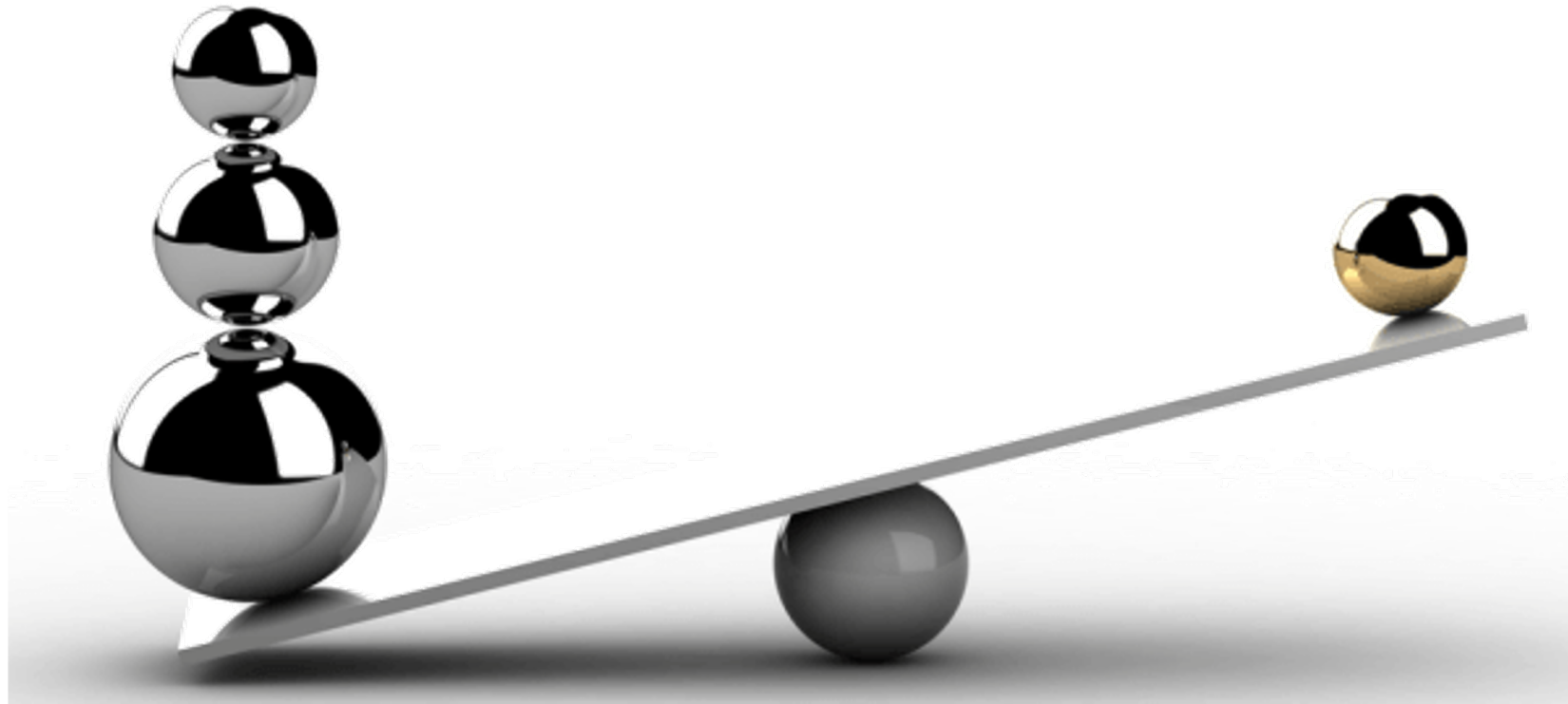


**VISIBLE  
COMPONENTS  
DURING NORMAL  
USE**

# INDIVIDUAL CHARACTER – ARTICLE 6 RDC

**different overall impression** to users by any design which has been made available to the public

in order to assess the individual character, **the degree of freedom** of the designer in developing the design shall be taken into consideration





# CASE R 1537/2016-3 – THIRD BOARD APPEAL

Even if the differences mentioned by the RCD holder were to exist they are hardly perceivable when the two registered designs are viewed side by side. In order to detect them, one would have to compare the two designs very closely



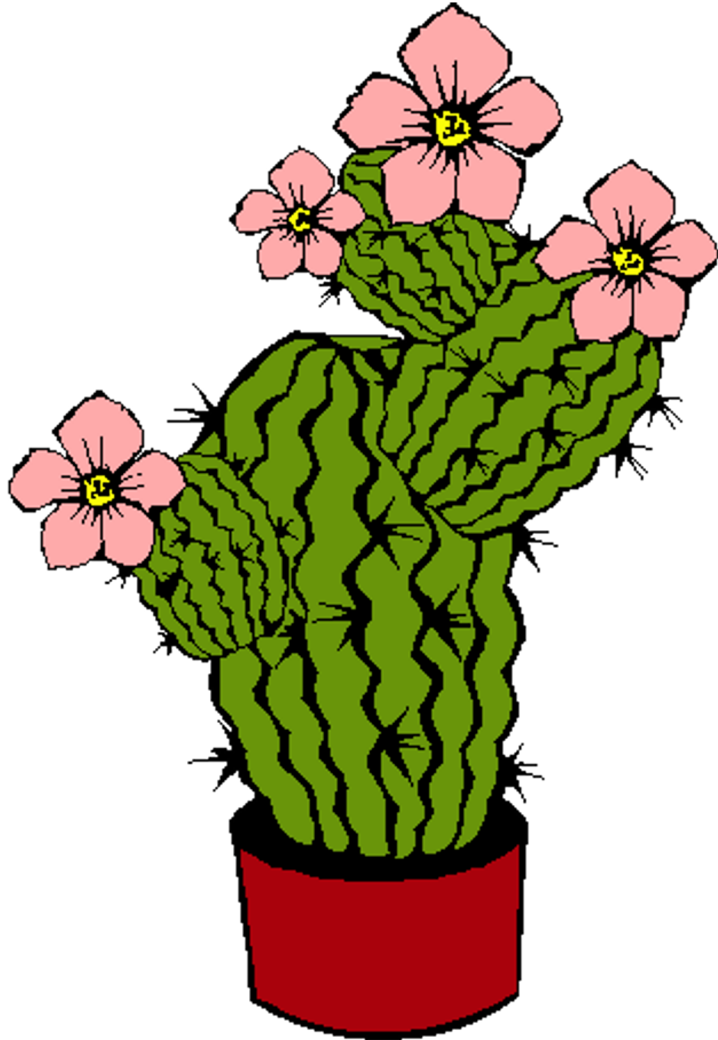
# FILING A DESIGN REGISTRATION AT EUIPO

Application shall contain:

- (a) a request for registration
- (b) information identifying the applicant
- (c) a representation of the design suitable for reproduction
- (d) indication of the products in which the design is intended to be incorporated or to which it is intended to be applied
- (e) the citation of the designer or of the team of designers



# MULTIPLE DESIGN APPLICATION



Several designs **may be combined in one multiple application** for registered Community designs only whether the products in which the designs are intended to be incorporated or to which they are intended to be applied all belong to the same class of the International Classification for Industrial Designs

# TOLOMEO LAMP - ARTEMIDE





# TOLOMEO LAMP DESIGN REGISTRATION



## RCD file information

[← Back to search results](#)



1 of 4



# 000282033-0009



Certificate



Print

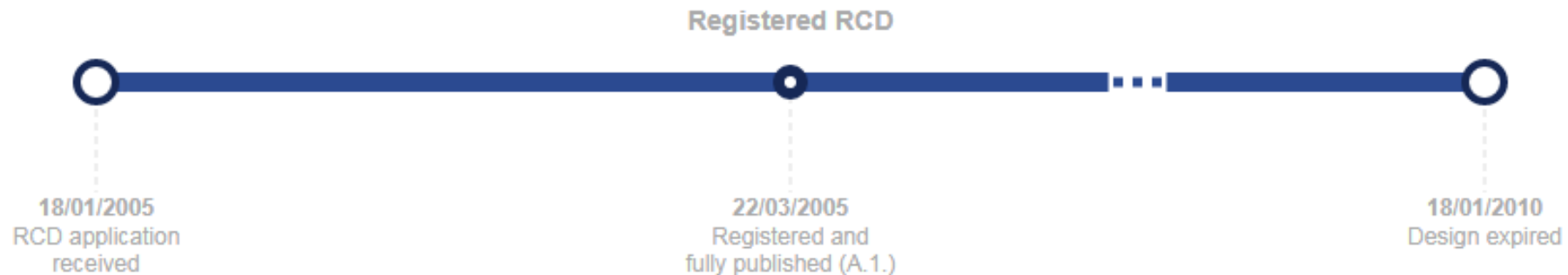
[Log in to access advanced functionalities](#)

[Log in](#)

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## Timeline



# TOLOMEO LAMP DESIGN REGISTRATION

## Design information

Design number	000282033-0009	Filing language	ITALIAN
Name		Second language	ENGLISH
Filing date	18/01/2005	Reference	CasoE-2571/04
Registration date	18/01/2005	Vienna Classification	
Expiry date	18/01/2010	Verbal element	
Design status	Design lapsed		

## Indication of the product, [\(DesignClass\)](#)

Locarno 26.05  
Values Lamps

English ▼

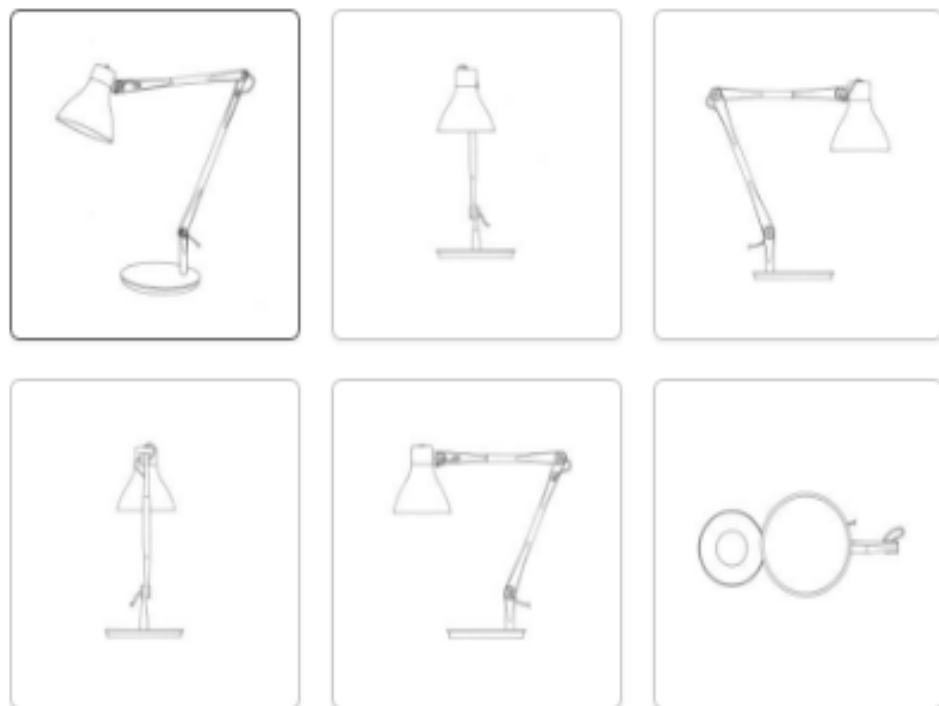
## Owners

ARTEMIDE S.p.A.

 vCard

# TOLOMEO LAMP DESIGN REGISTRATION LGV

## Graphic representation



1 / 2

1

2



# INFORMED USER

## Balance between

- an average consumer (trademarks) who needs not to have any specific knowledge, makes no direct comparison between the trade marks in conflict,
- and the sectoral expert, who is an expert with detailed technical expertise



The market of reference should also be assessed



# LEVEL OF ATTENTION OF THE INFORMED USER

Concerning the level of attention of this user, EJC highlights that “the qualifier ‘**informed**’ suggests that, without being a designer or a technical expert, the user **knows the various designs** which exist in the sector concerned, possesses a certain degree of knowledge with regard to the features which those designs normally include, and, as a result of his interest in the products concerned, shows a relatively high degree of attention when he uses them”



# CASE C-281/10 P – OCTOBER 20, 2011

## PEPSICO

the concept of the informed user may be understood as referring, **not to a user of average attention**, but to a particularly observant one, either because of his personal experience or his extensive knowledge of the sector in question

# INFORMED USER VS. GENERAL CONSUMER



Able to compare the designs side by side and, in contrast to the position in trade mark law, does not have to rely on an ‘imperfect recollection’

The informed user easily distinguished the designs at issue by reason of the two most significant differences between them, that is to say, first, the two additional concentric circles clearly visible on the surface of the contested design, and, second, the curved shape of the contested design as opposed to the complete flatness (apart from the brim) of the prior design

# PEPSICO CASE – NOT AVERAGE CONSUMER

In addition, PepsiCo submits that the informed user will not only consider the ‘most visible surfaces’ of a design and focus on ‘easily perceived’ elements (paragraph 83 of the judgment under appeal), but will have a chance to consider the design as a whole in more detail, and compare it to earlier designs, taking into account the designer’s freedom





# NOVELTY – ARTICLE 5 RDC

If no identical design has been made available to the public:

(a) in the case of an unregistered Community design, before the date on which the design for which protection is claimed has first been made available to the public;

(b) in the case of a registered Community design, before the date of filing of the application for registration of the design for which protection is claimed, or, if priority is claimed, the date of priority.

Designs shall be deemed to be identical if their features **differ only in immaterial details**



# DISCLOSURE OF A DESIGN

a design shall be deemed to have been made available to the public if it has been published following registration or otherwise, or exhibited, used in trade or otherwise disclosed before the date of its registration



# WHAT CAN BE PROTECTED



# TECHNICAL FUNCTION – ARTICLE 8 RCD

- no features solely dictated by its technical function;
- no features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function

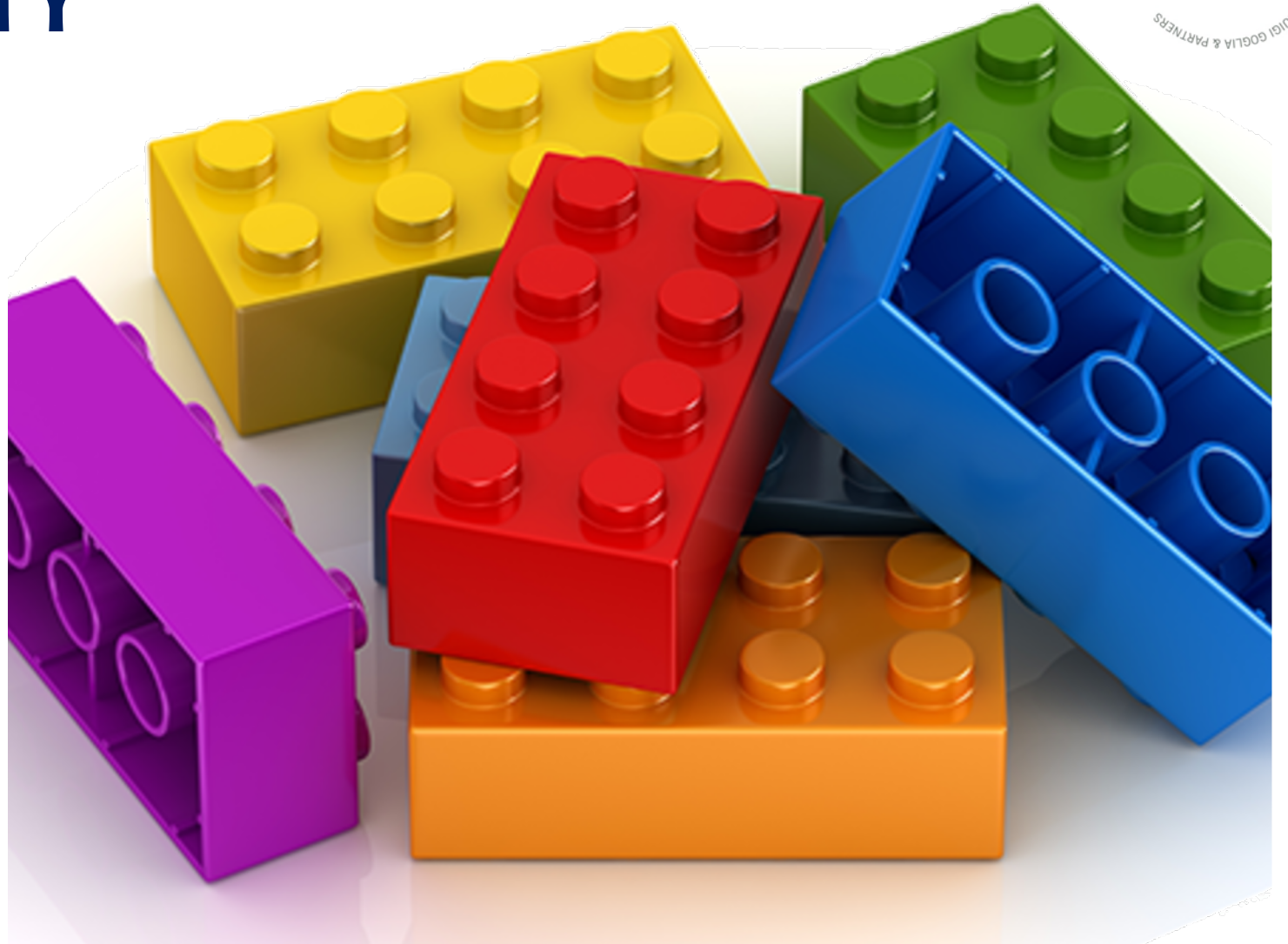




# INTEROPERABILITY

interoperability of products of different makes should not be hindered by extending protection to the design of mechanical fittings

interconnections shapes are excluded from protections



# VISIBILITY OF PART OF COMPLEX PRODUCTS

protection should not be extended to those component parts which are not visible during normal use of a product, nor to those features of such part which are not visible when the part is mounted



# EXCLUSIVE RIGHTS GRANTED

exclusive right to use the design  
prevent any third party not having  
his consent from using it.

the making, offering, putting on the  
market, importing, exporting or  
using of a product in which the  
design is incorporated or to which it  
is applied, or stocking such a product  
for those purposes;

5 years protection extendable up to  
**25 years.**



# INFRINGEMENT

The infringing product does not produce on the informed user a different overall impression.

In assessing the scope of protection, the degree of freedom of the designer in developing his design shall be taken into consideration

# INFRINGEMENT

# PANTON CHAIR . COPYRIGHT PROTECTION

Its aesthetic value prevails over functionality. It also anticipated the pop art aesthetic characters of sixties. It has also been included within several art exhibitions (Court of Milan, Nov. 28, 2006)





# TRADE DRESS IN USA

Encompasses:  
product's design  
packaging  
colour  
other distinguishing non  
functional element of  
appearance



**Thank you for your attention!**

**Alessandro Bura**

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