



Convergence

Frequently Asked Questions (FAQ) on Common
Practice

CP 6. Graphic representations of designs

A. GENERAL QUESTIONS

1. Which Offices will be implementing the Common Practice?

BG, BX, CY, CZ, DE, DK, EE, ES, FR, GR, HR, IE, IS, IT, LT, LV, NO, PL, PT, RO, SI, SK, TR, UK and EUIPO.

The Common Communication on '*CP6 - Convergence on graphic representations of designs*' includes the final list of implementing offices.

2. Who are the members of the Working Group?

National/ regional Offices:

BG, BX, CY, CZ, DE, DK, EE, ES, FR, GR, HR, HU, IE, IT, LT, LV, PL, PT, RO, SE, SI, SK, UK and EUIPO (24 Offices).

Observers:

CH, IS, NO, TR and WIPO (5 Offices); APRAM and FICPI (2 User Associations).

3. Are there any non-participating Offices that will implement the Common Practice?

Participation in creation and implementation of the Common Practice is completely voluntary. The non-participating or non-implementing Offices can always join anytime in the future with the full support of the Convergence Programme Team.

Three EU IP offices, namely, AT, FI and MT have not participated in the project. However, this does not mean they cannot decide to adhere to the Common Practice at any moment in time.

The Common Communication on '*CP6 - Convergence on graphic representations of designs*' includes the final list of implementing offices.

4. Will the Common Practice differ from the existing practice?

At the outset of the project an initial comparative study was performed, which showed divergence between the participating offices or even the absence of any written guidance in respect of some of the topics included in the Common Practice. A single Common Practice

was developed, meaning that most of the offices that implement this Common Practice will consequently adapt their previous practice, to a lesser or greater extent (depending on what their previous practice was).

In parallel to the publication of the Common Communication on CP6, each implementing Office may publish additional information on the impact that the Common Practice will have on previous national practice.

5. Is the Project affecting the scope of protection of designs?

No. The aim of the Common Practice is to give guidance for the examination procedures only and be the reference for the EU National and Regional IP Offices, User Associations, applicants and representatives on how to use the appropriate disclaimers and types of views and how to represent designs in a neutral background. The scope of protection conferred by a registered design is defined by the applicable legal provisions of each National or Regional Office.

6. The Common Practice includes throughout the text some recommendations and requirements. What is the purpose of this differentiation between recommendations and requirements?

In general, there are cases where a requirement (compulsory) is more appropriate than a recommendation (guidance) and vice-versa. In some particular cases (e.g. combination of drawings with photographs), this differentiation in the text allows the Offices with legal constraints to fully implement the Common Practice and give a clear indication to their users on what the preferred harmonised approach is, whilst still complying with their national legislation.

7. Will the Common Practice have any impact on applications pending on the implementation date?

The Common Communication on ‘*CP6 - Convergence on graphic representations of designs*’ includes an overview of the proceedings affected by the Common Practice in each of the implementing offices.

Furthermore, each implementing office may provide additional information in this respect.

8. What was the involvement of users in the project?

Representatives of two User Associations (FICPI and APRAM) took part in the Working Group as observers from the very beginning of the project, having access to all the documents at all times. Moreover, they were always invited to provide their feedback.

The conclusions were published at several stages encouraging anyone to review the document, pass it to whomever they considered would have an opinion on it, and submit their feedback, with a view to guaranteeing that any concerns expressed could be considered and analysed by the Working Group.

All international User Associations were invited to participate in a special meeting held in June 2015 in Brussels. The draft Common Practice was presented to them and they gave their direct feedback on the principles. The meeting was attended by representatives from AIM, APRAM, ECTA, FICPI, GRUR, INTA, ITMA, MARQUES and UNION IP.

B. DISCLAIMERS:

9. Are verbal disclaimers included in the Objective 1: Disclaimers of the Common Practice?

No, verbal disclaimers are out of the scope of the project. This Common Practice only refers to the graphic representations of design applications and, therefore, only refers to the disclaimers that are 'visually' included in the representations. Furthermore, one of the General Recommendations for the correct use of visual disclaimers (3.1.3 (c)) is that the visual disclaimer be self-explanatory when seen in the context of the whole design, so that its interpretation does not depend on additional written information.

10. Does the Common Practice encourage the use of a particular type of visual disclaimer?

As mentioned in the general recommendations 3.1.3.a), **a representation showing only the claimed design is preferred**. However, to understand the features of the design for which protection is sought, it may be helpful to show the design in context. In such cases, the use of broken lines **is recommended** (see general recommendations 3.1.3 b) and c)). Only when broken lines cannot be used due to technical reasons (for example, when they are used to indicate stitching on clothing or patterns; or when photographs are used), other disclaimers can be used: colour shading, boundaries and blurring.

11. Is more than one type of visual disclaimer allowed in the same representation?

The combination of different types of visual disclaimers in the same representation of the design application is not foreseen in the Common Practice. However, in such cases, the requirements and recommendations for each type of visual disclaimer included in the Common Practice will still be applicable.

12. If an applicant files a design application using a type of visual disclaimer not included in the Common Practice, can the Offices apply the Common Practice principles by analogy?

In case an EU IP Office receives an application which includes a type of visual disclaimer not included in this Common Practice, each Office may choose to apply the principles of the Common Practice by analogy (e.g. General recommendation (3.1.3.) '*Correct use: the visual disclaimer must be clear and obvious from the representation of the design. There must be a clear distinction between the claimed and the disclaimed features*').

C. TYPES OF VIEWS

13. Does the Common Practice encourage the use of a particular type of view?

The Working Group considers that, in general, aspect views are the most appropriate views for disclosing the features of the design. However, as mentioned in the general recommendations (3.2.3.), it is the applicant's responsibility to disclose the features of the design as completely as possible and the applicant is free to provide complementary/additional views in order to best achieve that goal.

14. In relation with aspect views, is there any obligation to submit a specific number of views? Is the order relevant?

No. The applicant is free to file a certain number of views (subject to the maximum number of views allowed by each Office), without any specific order, each shown separately, as long as all of the features of the design can be clearly perceived. Therefore, the order established in the Common Practice document (3.2.4 a)) of "(...) *front view, top view, bottom view, right side view, left side view, back view and perspective view*" is not obligatory for the applicant.

15. In the case of exploded and sectional views, are the invisible parts shown in the representation protected?

According to the Directive 98/71/EC of 13 October 1998 on the legal protection of designs, only the component parts that remain visible during the normal use of a complex product are protected.

As mentioned in the Common Practice document (3.2.4 (d) and (f)), the suitability of using exploded or sectional views for representing the design is without prejudice to the limitations foreseen by the National or European Union law in respect of the protection of invisible or partially visible parts of a product when in use.

16. Why are snapshots included in the Common Practice?

This type of view is included in the Common Practice (3.2.4 (g)) in order to give a solution to the applicants that wish to file animated designs. The chapter provides guidance to examiners for interpreting in a harmonized way those applications while taking into account the available technological means for representing such designs. The scope of this project is limited only by the fact that it sets out to assist applicants on how best to reproduce these types of views for the purpose of applications procedures while being aware of the existing technological limitations.

17. Is the Common Practice promoting the combination of several means of visual representation (e.g. drawings and photographs)?

No. The Common Practice (3.2.4 (h)) strongly recommends using only one visual format (drawings or photographs). In order to be accepted, multiple representations must clearly and obviously relate to the same design and be consistent when comparing the features disclosed.

Furthermore, the Common Communication underlines the importance of not combining drawings with photographs to avoid disclosing aspects that could contribute to a different overall impression.

D. NEUTRAL BACKGROUND

18. Are additional elements included in the Neutral Background chapter?

No. In the beginning of the Project, an in-depth study of each legislation/practice of the EU IP Offices revealed that in some of the Offices the additional elements are not subsumed under the concept of Neutral Background. Therefore, it was concluded that the law separately contemplates the requirements of colours, contrast, shadows and, as a different issue, the presence of additional elements. In order to converge towards the same Common Principles under the Objective 3: Neutral Background (3.3), the topic of additional elements is out of scope of the project.

E. FORMAT OF VIEWS

19. Will the results of the benchmarking exercise study (annex 1 and annex 2) be updated regularly?

Yes. The results of the benchmarking exercise study will be updated each year. The Convergence Programme Team will communicate the specific update dates to the EU IP Offices.

F. EXAMPLES

20. What is the purpose of the examples and their respective Product Indications?

The examples included in the Common Practice aim at providing guidance to examiners and users by illustrating the principles of the document. The Product Indications under each example are only for informational purposes (for a better understanding of the represented designs).

21. Why does the Common Practice lack some acceptable/ unacceptable examples in some parts?

The examples included in the Common Practice, whether acceptable or not, aim at providing guidance to examiners and users. For some of the criteria, it was not possible to agree on

acceptable/unacceptable examples; or in other cases, it was considered by the Working Group not necessary to include additional examples.

22. What does “CP6 Example” mean?

The examples included in the Common Practice with the reference ‘CP6 Example’ are fictional examples created by the Working Group in order to illustrate the principles of the document.

23. Why doesn’t the Common Practice use examples of real design applications to illustrate cases that are unacceptable?

The Working Group avoided adding real applications/registrations of designs considered as unacceptable to the Common Practice document since their inclusion could be detrimental to the owners of those real designs.

www.tmdn.org

Convergence



European Union Intellectual Property Office

Avenida de Europa 4,

E-03008 Alicante, Spain

Tel +34 96 513 9100

Fax +34 96 513 1344

information@oami.europa.eu

www.oami.europa.eu