

EU vs US designs

A registered Community Design (“RCD”) is a cost effective way of getting design protection in all member countries of the European Union. But how do they compare with US design patents? The table below summarises some key similarities and differences.

	EU RCD	US Design Patent
What can be protected?	Must: <ul style="list-style-type: none"> - be new - have individual character - not be dictated by technical function 	Must be: <ul style="list-style-type: none"> - Non-obvious - Non-functional - an article of manufacture (Scope is narrower than EU)
Term of protection	Up to 25 years from filing (renewable every five years)	15 years from grant (no renewal fees)
Grace period	12 months – self/malicious disclosure	12 months – self/malicious disclosure
Priority period	6 months	6 months
Examination	Formal examination only – design will be registered if all formal requirements are met – takes a few months maximum	Substantive and formal examination – up to 18 months
Publication	Shortly after allowance Can be deferred for up to 30 months from filing	Once design is granted
Unregistered Design right available?	Yes – lasts for 3 years from first disclosure of the design in the European Community	No

Due to there being no formal examination by the European Intellectual Property Office, European RCDs are generally cheaper and easier to obtain than US design patents. Even including renewal fees, the cost per EU country per year works out at less than US \$3!

The USPTO has stricter drawings requirements than the EUIPO (see our handout on Design Drawings for more information on EU requirements).

By its very nature, an RCD is a unitary right and stands or falls for all EU member states. It can be enforced via a Community Design Court and pan-EU relief is available in the case of an infringement.

At Barker Brettell, we have a large group dedicated to designs and copyright, made up of a mix of patent and trade mark attorneys. Please contact designs@barkerbrettell.co.uk if we can be of any assistance.