



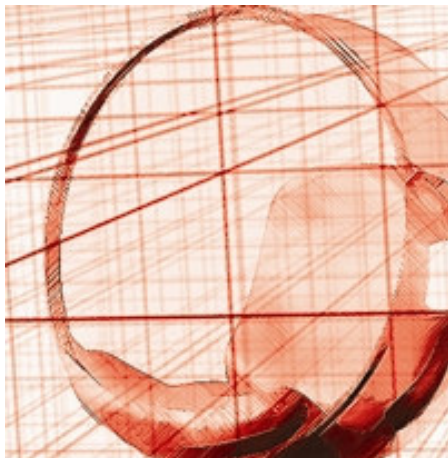
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## NEWSLETTER

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**For design registration only local novelty needs to be demonstrated. A new Circular Letter by the Registrar clarifies that it is now also possible to cite against the novelty of a design prior art published on the Internet.**



## Novelty of an Israeli Industrial Design

A recent Circular Letter of the Israeli Registrar of Patents, Trademarks and Designs, (MN69 dated December 24, 2008) provides an important clarification of the Registrar's approach to the question of novelty in examining the novelty of a design.

The Israeli Patents and Designs Ordinance provides in Section 30 that a design is registrable if it is "new or original that has not been previously published in Israel". Thus, as can be noted, in order for a design to be registrable only local novelty needs to be demonstrated. In the modern era, with the rapid expansion of the Internet, there is an open question as to the effect of a publication posted on the Internet outside of Israel, on novelty of a design in Israel.

The Registrar in his Circular Letter has now clarified what the Office's position on this issue will be. Noting that formerly the novelty was examined in light of prior publication in the Israeli register of designs, the Circular Letter clarifies that in light of the technological advances it is now possible to cite against the novelty of a design, not only publications of prior art that were made in Israel but also prior art published on the Internet. The Registrar noted that such citation requires evidence as to the date of the cited Internet publication, namely that it was available on the internet prior to the application date.

While the Circular Letter makes reference only to the application filing date in the context of the cutoff date for relevant, novelty-destroying Internet publications, it is conceivable that where Convention Priority is claimed, the cutoff date will be the priority date.

The Circular Letter further notes that examiners shall exert caution in citing Internet publications and will do so only if they are convinced as to the earlier publication date. Examples of websites that were given in the Circular Letter are publications on patent offices' websites, including that of the OHIM, USPTO, WIPO and others.

The acknowledgement by the Patent Office of publications on the Internet as publications in Israel raises the issue of accessibility, which is not elaborated in the Circular Letter other than by way of a flat statement that publications on the internet that are accessible to the Israeli public are deemed publications in Israel. The Circular Letter does not define the meaning of the word "accessible" as used in it. To wit, the Circular Letter does not change the law, which still requires merely local novelty. Thus, according to some case law, it is necessary to show that the publication on the Internet was accessible to the Israeli public before the determining date. Prima facie, according to the Registrar the websites of OHIM, USPTO, WIPO and others are deemed *a priori* accessible to the public in Israel. It remains to be seen whether Israeli courts will apply the same approach.

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