



Study on the Admissibility of Internet Information as Legitimate Disclosure for Novelty Examinations

Comparative Catalogue of Phase 1

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Introduction

At the fourth ID5 Annual Meeting in November 2018, it was agreed by the Partner Offices to launch a new project titled “Study on the Admissibility of Internet Information as Legitimate Disclosure for Novelty Examinations” to be led by the co-leads of CNIPA and JPO.

The project consists of two phases.

Phase 1: Comparative studies of

- (1) the legal grounds and practical circumstances, and
- (2) judicial and appeals decisions

Phase 2: Upon agreement by the Partners, establishment of an ID5 recommendation

The present catalogue compiles the replies from the Partner Offices to the agreed questionnaire in Phase 1. The catalogue is expected to serve to deepen mutual understanding of the Partners’ current practices in handling design related Internet information and to become the basis for further work in Phase 2.

I. Legal grounds and practical circumstances of the use of Internet information at each Office

A. Current state of the use of Internet information

A-0.

Question: Please select the corresponding procedure(s) in which your Office conduct examination on novelty requirement for the purpose of protecting industrial designs. Also, please indicate the legal ground, i.e. provisions of the law and/or regulation applied in your country/region, on which conducting of the said procedure is based.

	Pre-grant novelty examination initiated by examiners	Post-grant invalidation procedure initiated by claimants/invalidity applicants	Post-grant review/reexamination procedure	Post-grant procedure of making evaluation reports (non-binding expert's opinion)
CNIPA	✓ Patent Law of the People's Republic of China Article23.1, Article23.4	✓ Patent Law of the People's Republic of China Article23.1, Article23.2, Article23.4	✓ Patent Law of the People's Republic of China Article23.1, Article23.4	✓ Patent Law of the People's Republic of China Article23.1, Article23.2, Article23.4
EUIPO		✓ Article 4(1), Article 5(1), Article 25(1)(b) of Community Design Regulation (EC) No 6/2002 of 12 December 2001.		
JPO	✓ Articles 3(1), 16 and 17 of the Design Act	✓ Article 48(1) of the Design Act		
KIPO	✓ Design Protection Act Article 33(1)	✓ Design Protection Act Article 33(1)	✓ Design Protection Act Article 33(1)	
USPTO	✓ 35 U.S.C. 102 (*)	✓ 35 U.S.C 302; 35 U.S.C. 311; 35 U.S.C. 321.	✓ 35 U.S.C. 251; 35 U.S.C. 257; 35 U.S.C. 302; 35 U.S.C. 321;	

	Note
JPO	Request for a trial against examiner's decision of refusal (Article 46 of the Design Act) is also a relevant procedure to this question.
USPTO	35 U.S.C. 102 is the relevant provision for "novelty" however the USPTO also examines for other requirements such as non-obviousness under 35 U.S.C. 103, written description under 35 U.S.C. 112 etc.

[Search on the novelty of designs]

A-1.

Question: Please select the corresponding procedure(s) for which examiners of your Office conduct prior design search including Internet information.

	Pre-grant novelty examination initiated by examiners (ex-officio detection of reasons for refusal)	Post-grant invalidation procedure initiated by claimants/invalidity applicants (ex-officio detection of reasons for invalidation)	Post-grant review/reexamination procedure (ex-officio detection of reasons for refusal/invalidation)	Post-grant procedure of making evaluation reports (non-binding expert's opinion)	No searches are conducted by examiners.
CNIPA	✓			✓	
EUIPO					✓
JPO	✓	✓			
KIPO	✓	✓	✓		
USPTO	✓	(*)	✓		

	Note
JPO	Request for a trial against examiner's decision of refusal (Article 46 of the Design Act) is also a relevant procedure to this question.
USPTO	*We did not check this box because we understand this is referencing post grant procedures, e.g., inter parte review, where examiners do not play a role.

A-2.

Question: In relation to the procedure referred to in A-1, please select the tool(s) which the examiners of your Office use when conducting a search of Internet information.

	In-house design database(*1) of your Office	In-house URL database(*2) of your Office	Databases of official bulletins provided by IP offices and WIPO through the Internet	Commercial database(s) provided online
CNIPA			✓	✓
EUIPO				
JPO	✓		✓	
KIPO	✓		✓	
USPTO			✓	✓

*1 Any database unique to your Office, in which independently collected Internet information (image data of designs) is stored together with the information of specific dates of publication/acquisition.

*2 Any database unique to your Office, in which independently collected useful URL information (only) is stored.

	E-commerce platform	Social networking sites	Professional forum	Internet search engines (Google, Yahoo, Baidu, etc.)
CNIPA	✓	✓	✓	✓
EUIPO				
JPO	✓	✓		✓
KIPO	✓	✓	✓	✓
USPTO	✓	✓	✓	✓

A-3.

Question: For how many cases did the examiners of your Office actually make citation of Internet information within the total citation* in relation to the following procedures in 2018?

(* Including publications issued on paper or recording medium, or any other types of disclosure other than the Internet)

	As evidences to prosecute reasons for refusal in the process of pre-grant novelty examination of design applications (*):		As prior designs in the process of making evaluation reports of registered/patented designs:	
	Internet information:	Total citation:	Internet information:	Total citation:
CNIPA	P	P	P	P
EUIPO	-	-	-	-
JPO	Approx. 700	Approx. 2,600	-	-
KIPO	1,263	2,035	-	-
USPTO	-	-	-	-

(* Excluding post-grant invalidation procedure)

	Note
EUIPO	No such data available. No searches are conducted by examiners.
JPO	The JPO design examiners also make citation of Internet information as evidences to prosecute reasons for refusal as to the creative difficulty requirement (Art. 3(2) of the Design Act).
USPTO	USPTO does not keep statistics on this particular information.

A-4.

Question: What is the recent trend (e.g. recent three years) in the citation of Internet information by examiners of your Office as compared to non-Internet information?

	The number/ratio of Internet information has been increasing.	The number/ratio of Internet information has been decreasing.	No particular changes have been seen in the number/ratio.
CNIPA	✓		
EUIPO			
JPO	✓		
KIPO	✓		
USPTO			

	Note
EUIPO	No such data available. No searches are conducted by examiners.
USPTO	USPTO does not keep statistics on this particular information.

A-5. A-6.

Question: Regarding question A-3, how many citations were made from the in-house database* of your office or made based on an ad hoc Internet search**?
 (*Any database unique to your Office, in which independently collected Internet information is stored in advance together with the information of specific dates of publication/acquisition.)
 (**Any search conducted by actually connecting to the Internet and using Internet search engines, etc.)

	As evidences to prosecute reasons for refusal in the process of pre-grant novelty examination of design applications (*):		As prior designs in the process of making evaluation reports of registered/patented designs:	
	in-house database	ad hoc Internet search	in-house database	ad hoc Internet search
CNIPA	-	P	-	P
EUIPO	-	-	-	-
JPO	-	-	-	-
KIPO	-	-	-	-
USPTO	-	-	-	-

(* Excluding post-grant invalidation procedure)

	Note
CNIPA	No in-house database
EUIPO	No such data available. No searches are conducted by examiners.
JPO	Because of the complexity of actual operation, distinctive numbers could not be obtained.
KIPO	N/A (KIPO does not collect this information)
USPTO	USPTO does not keep statistics on this particular information.

[Procedures for requesting invalidation of design registrations/ patents]

A-7.

Question: Out of the total number of invalidation trial cases at your Office (only designs), which were newly filed with or for which decisions were made in 2018, how many cases or what percentage were those for which Internet information was used as evidence for requesting invalidation?

	Answer
CNIPA	P
EUIPO	In 2018 360 decisions were taken in the cases related to Community design invalidity. There is no statistical data collected in relation to the information obtained from the internet used in those decisions, but from the practical experience it could be assumed that the percentage of cases for which such information was used as evidence for requesting invalidation would be at least 50%.
JPO	Out of total 15 invalidation trial cases received in 2018, Internet information was used as evidence in 6 cases (40%). Out of total 9 invalidation trial cases for which trial decision was rendered in 2018, no case (0%) used Internet information as evidence for the request for invalidation trial. (There was 1 case in which the panel issued a notice of reasons for refusal by citing Internet information as evidence and made decision of invalidation.)
KIPO	The number of invalidation trial cases in 2018 : 146 The number of cases for based on internet information : 112
USPTO	USPTO does not keep statistics on this particular information.

A-8.

Question: What is the recent trend (e.g. recent three years) in claimants' use of Internet information as evidence for requesting invalidation trials as compared to non-Internet information?

	The number/ratio of Internet information has been increasing.	The number/ratio of Internet information has been decreasing.	No particular changes have been seen in the number/ratio.
CNIPA	✓		
EUIPO	✓		
JPO	✓		
KIPO	✓		
USPTO			

	Note
USPTO	USPTO does not keep statistics on this particular information.

A-9.

Question: Please state your thoughts/opinions about the effectiveness/advantages and/or difficulties/problems/challenges in terms of the utilization of Internet information in the novelty examination procedure for industrial designs, if any.

	Answer
CNIPA	N/A
EUIPO	<p>Credibility of evidence originating from the internet is an important issue, in particular considering the relative easiness with which the information contained therein could be manipulated. In this respect, the Court of Justice of the European Union has clarified that the veracity of the information contained in the evidence originating from the internet should be presumed in the absence of any indications that it might have been manipulated (judgment of 27/02/2018, in case No T-166/15, Cases for mobile phones, EU:T:2018:100, § 90). However, in practical terms it might be difficult to show that certain information has been modified.</p> <p>Establishing the date of disclosure can be challenging. First, it is not always indicated in the internet resources. Second, evidence might show several dates. Third, evidence might show only part of the date (e.g. a year). Internet archiving services, such as 'WayBack Machine', might be very useful for inter alia establishing the date of disclosure. Nevertheless, their limitations should also be taken into account.</p> <p>Proving an exception to disclosure, i.e. that the circles specialized in the sector concerned operating in the European Union could not have reasonably become aware of the events of disclosure, might be a difficult task for the owner of the contested Community design. The Court of Justice has established that it must be shown that it was not actually possible for those circles to be aware of the events constituting disclosure of a design, whilst bearing in mind what can reasonably be required of those circles in terms of being aware of prior art (judgment of 14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 56).</p>
JPO	<p>The issue of credibility of the publication date of the Internet information (e.g., possibility of alteration/misinterpretation of the date) submitted by demandants in the request for invalidation trial should be handled, in principle, as the matter of giving or disproving evidence by interested parties. However, when opponent does not contest the point but the panel has doubts over the validity, the panel is often faced with a difficulty to make decision on the evaluation of the evidence or on whether to conduct an interrogation to urge submission of indirect evidence.</p>
KIPO	<ul style="list-style-type: none"> - Advantages: Examiners are possible to search new designs in which are not contained in-house DB. - Challenges: Searching skill of Internet information depends on the examiner; it would be a challenge to keep consistency of the quality of the design examination.
USPTO	USPTO does not keep statistics on this particular information.

B. Law and regulation that allow examiners to cite Internet information as grounds and/or references

[General requirements]

B-1.

Question: Please select legitimate means among the following, which can serve as a basis for determining novelty* of a claimed design under the law and/or regulation applied in your country/region.

(* Equivalent to the requirement for being “new” as provided for in Article 25(1) of the TRIPS Agreement)

	Designs that were publicly known		Designs that were described in a publication distributed:		Designs that were made publicly available through an electric telecommunication line, i.e. the Internet,:	
	in the territory of your country/region (*)	outside the territory of your country/region (*)	in the territory of your country/region	outside the territory of your country/region	in the territory of your country/region	outside the territory of your country/region
CNIPA	✓	✓	✓	✓	✓	✓
EUIPO	✓	✓	✓	✓	✓	✓
JPO	✓	✓	✓	✓	✓	✓
KIPO	✓	✓	✓	✓	✓	✓
USPTO	✓	✓	✓	✓	✓	✓

(* including publicly used designs)

	Note
EUIPO	In principle, disclosure can take place anywhere in the world, including in the internet, and can be made through any legitimate means.

B-2.

Question: Please provide the corresponding provision(s) of the law and/or regulation in your country/region, on which your answer to B-1 is based.

	Answer
CNIPA	<p>Patent Law of the People’s Republic of China Article23.1 Any design for which patent right may be granted shall not be a prior design, nor has any entity or individual filed before the date of filing with the patent administration department under the State Council an application relating to the identical design disclosed in patent documents announced after the date of filing.</p> <p>Patent Law of the People’s Republic of China Article23.2 Any design for which patent right may be granted shall significantly differ from prior design or combination of prior design features.</p>

	Patent Law of the People's Republic of China Article 23.4 The prior design referred to in this Law means any design known to the public before the date of filing in China or abroad.
EUIPO	Article 7 of Community Design Regulation (EC) No 6/2002 of 12 December 2001.
JPO	Article 3(1) of the Design Act
KIPO	Design Protection Act Article 33(Requirements for Design Registration) (1) A design usable for an industrial purpose is eligible for design registration, exempt: 1. A design publicly known or worked in the Republic of Korea or a foreign country before an application for design registration is filed; 2. A design described in a printed publication distributed in the Republic of Korea or a foreign country or made available for public use via telecommunications lines before an application for design registration is filed; 3. A design similar to any of the designs specified in subparagraph 1 or 2
USPTO	35 U.S.C. 102(a)(1)

[Legal implication concerning Internet information]

B-3.

Question: Does the law and/or regulation applied in the territory of your country/region have a specific provision to the effect that novelty of a design is hindered by Internet information?
If so, please provide the relevant provision(s).

	Answer	Provision(s):
CNIPA	NO	
EUIPO	NO	
JPO	YES	Article 3(1)(ii) of the Design Act
KIPO	YES	Design Protection Act Article 33(1)2
USPTO	NO	

B-4.

Question: If your answer to B-3 is "NO", how does your Office interpret and handle Internet information from the legal point of view? Please describe specific details including the relation with the statutory provision(s) of the law and/or regulation.

	Answer
CNIPA	Examination Guidelines, Chapter 5 of Part IV, 2. Prior Design According to Article 23. 4, the prior design refers to the design known to the public before the date of filing in China or abroad (or the priority date, where priority is claimed). The prior design includes designs that are made known to the public by publishing, public use or other means in China or abroad before the date of filing.

	<p>With regard to the time limit, means of disclosure, etc., of the prior design, Chapter 3 of Part II shall apply.</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.2 Means of Disclosure The means of disclosure of prior art includes disclosure by publications, disclosure by use, and disclosure by other means, without limitation on territory.</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.2.1 Disclosure by Publications Publications in the context of the Patent Law mean the independently existing disseminating carriers of technical or designing contents, which shall indicate or have other evidence to prove the date of public issue or publication.</p> <p>Publications of the above definition can be various printed or typed paper documents, such as patent documents, scientific and technological magazines and books, academic theses, specialized documents, textbooks, technical manuals, officially published proceedings or technical reports, newspapers, sample books, product catalogues, and advertisement brochures etc. They can also be audio or video materials made by electric, optic, magnetic, or photographic means, such as microfiches, films, negative films, videotapes, tapes, gramophone records, CD-ROMs, etc. Furthermore, they can be materials in other forms, such as those on the Internet or in other online databases.</p> <p>The determination of whether a document is a publication shall not be affected by the place or language of issue, the manner of acquisition, or its age. The amount of distribution, whether it has been read, or whether the applicant is aware of it is of no relevance either.</p> <p>As for the publications with the words "Internal Materials" or "Restricted Publication" or other similar wording, if they were really distributed in a restricted scope and required to be kept confidential, they are not regarded as publications in the context of the Patent Law. [...]</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.2.3 Disclosure by Other Means Disclosure by other means mainly refers to oral disclosure etc.. Examples include talking, reporting, speaking at symposium, broadcasting, televising, and cinematographing that make the technical contents known to the public....</p>
EUIPO	It is considered that Article 7 of Community Design Regulation (EC) No 6/2002 of 12 December 2001 which deals with disclosure of designs also includes those that take place on the Internet. Moreover, a disclosure of a design can be proven by any available means since Article 65 of Community Design Regulation (EC) No 6/2002 of 12 December 2001 does not establish an exhaustive list of possible evidence.
USPTO	The USPTO does not distinguish between Internet information and other information in terms of prior art. Applicability of prior art is controlled by date of publication and public availability, regardless of source.

C. Examination standards (practical rules) applicable to the citation of Internet information as evidences and references

[Evaluation of the admissibility of Internet information]

C-1.

Question: Among the following, please select the type(s) of Internet information that are treated as those that do not hinder novelty of a design under the law and/or regulation applied in the territory of your country/region.
If there are any relevant clauses in your examination guidelines, please also describe them.

	Internet information that is protected by passwords and can be accessed only after log-in to a relevant site following membership registration:		Internet information that can be accessed by only limited persons who are responsible for the confidentiality of the information	Encrypted Internet information that cannot be decrypted by the general public (unspecified persons)
	with a fee	without a fee		
CNIPA			✓	✓
EUIPO			✓	
JPO			✓	✓
KIPO			✓	
USPTO				

	Internet information that was made public only for a short period of time, which was not enough for the public to browse the information	Internet information that has a domain name of any country/region outside the territory of your country/region	Internet information that cannot be accessed from your country/region
CNIPA	✓		
EUIPO			✓
JPO	✓		
KIPO			
USPTO			

	Note
CNIPA	About the Option 5, CNIPA thinks that “public only for a short period of time” doesn’t necessarily cause “not enough for the public to browse the information”. CNIPA thinks that even being public only for a short period of time, if internet information itself could be browsed by the public and be preserved as evidence to be submitted, it may be treated as those that hinder novelty of a design. On the other hand, if internet information itself couldn’t be browsed by the public at all, then no matter it is made public for a short or long period of time, it is treated as those that do not hinder novelty of a design. Now we answer the question based on the latter understanding.

EUIPO	In principle, any type of information disclosed on the internet can destroy novelty, unless it is proved that this information could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned, operating within the European Union. Moreover, the design shall not be deemed to have been made available to the public for the sole reason that it has been disclosed to a third person under explicit or implicit conditions of confidentiality (Article 7(1) of Community Design Regulation (EC) No 6/2002 of 12 December 2001).
USPTO	All printed publications may be used as references. There is no per se rule regarding the type of internet information that is considered to be prior art, e.g. printed publication, within the meaning of 35 U.S.C. 102(a)(1). Whether access to Internet information is limited (e.g., protected by password, encrypted, etc.), is one factor in determining availability and accessibility as prior art under 35 102(a)(1). See discussion below in Examination guidelines.

	Examination Guidelines
CNIPA	According to the Examination guidelines, we classify Disclosure by Internet information as Disclosure by Publications, please refer to the answer to B-4.
EUIPO	<p>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. Such proof will allow the Invalidity Division to prima facie deem the design to have been made available. The holder of the contested RCD can refute this presumption by way of establishing, to the requisite legal standard, that the circumstances of the case could reasonably prevent those events from becoming known in the normal course of business to the circles specialised in the sector concerned (15/10/2015, T-251/14, Doors (parts of), EU:T:2015:780, § 26; 21/05/2015, T-22/13 & T-23/13, UMBRELLAS, EU:T:2015:310, § 26).</p> <p>The presumption set out in Article 7(1) CDR applies irrespective of where the events of disclosure took place. It is therefore not necessary that they take place within the European Union (21/05/2015, T-22/13 & T-23/13, UMBRELLAS, EU:T:2015:310, § 27). The question whether events of disclosure outside the European Union could reasonably have become known to persons forming part of those circles is a question of fact. The answer to that question has to be assessed by the Invalidity Division on the basis of the particular circumstances of each individual case (13/02/2014, C-479/12, Gartenmöbel, EU:C:2014:75, § 34).</p> <p>In the context of Article 7(1) CDR, what matters is whether the ‘circles specialised in the sector concerned’ have had an opportunity to have access to the design irrespective of the number that actually seized this opportunity and might have encountered the disclosed design. There is thus no quantitative threshold with regard to actual knowledge of the disclosure events (14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 73).</p> <p>It must be examined whether, on the basis of the facts to be adduced by the party challenging the disclosure, it is appropriate to consider that it was not actually possible for those circles to be aware of the events constituting disclosure, whilst bearing in mind what can reasonably be required of those circles in terms of being</p>

	<p>aware of prior art. Those facts may concern, for example, the composition of the specialised circles, their qualifications, customs and behaviour, the scope of their activities, their presence at events where designs are presented, the characteristics of the design at issue, such as its interdependency with other products or sectors, and the characteristics of the products into which the design at issue has been integrated, including the degree of technicality of the products concerned. In any event, a design cannot be deemed to be known in the normal course of business if the circles specialised in the sector concerned can become aware of it only by chance (14/03/2018, T-651/16, Footwear, EU:T:2018:137, § 56).</p> <p>Neither restricting access to a limited circle of people (e.g. by password protection) nor requiring payment for access (analogous to purchasing a book or subscribing to a journal) prevents a design on a web page from being found to have been disclosed. When assessing whether such a disclosure could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned and operating within the European Union, aspects such as accessibility and searchability of the web page can be taken into account.</p> <p>Disclosure of the Community design to a third person under explicit or implicit conditions of confidentiality will not be deemed to have been made available to the public (Article 7(1) CDR).</p>
JPO	<p>Part II Requirements for Design Registration</p> <p>Chapter II Novelty</p> <p>22.1.2.8 Handling of design information made available to the public through the Internet in examination</p> <p>In order to cite design information made available to the public through the Internet (hereinafter referred to as “electronic design information”) as a design that was made publicly available through an electric telecommunication line, the information must satisfy all of the following requirements.</p> <p>(1) The electronic design information to be cited was publicly available information prior to the filing of the application for design registration (→ 22.1.2.8.1)</p> <p>(2) The electronic design information to be cited was published with the same contents prior to the filing of the application for design registration (→ 22.1.2.8.2)</p> <p>22.1.2.8.1 The electronic design information to be cited was publicly available information prior to the filing of the application for design registration</p> <p>Information published on the Internet is normally information that is made publicly available, since it can be accessed by unspecified persons, and has the equivalent power to disseminate information as information described in a distributed publication.</p> <p>Even where a password is needed or a fee is charged for accessing the website, as long as the information is published on the Internet, its existence and location are disclosed to the general public, and it is accessible by unspecified persons, it can be regarded as information that is made publicly available.</p>

	<p>(1) Examples of electronic design information that is found to be information that is made publicly available</p> <ul style="list-style-type: none"> (i) Searchable information that is registered with a search engine or information whose existence and location are disclosed to the general public (for example, where a link to the information is provided on a website of a related academic society or in an online news article, etc. or the existence and location of the information are provided by means for communicating information to the general public such as a newspaper, magazine, etc.) (ii) Information that requires a password but can be accessed by unspecified persons by merely entering the password (in this case, whether or not a fee is charged for acquiring the password is irrelevant; if any person can acquire the password and access the information without discrimination by following some kind of procedure, it is information that is made publicly available) (iii) Information that is published on a charged website but can be accessed by unspecified persons by merely paying a fee (in this case, if any person can access the website without discrimination by paying a fee, it is information that is made publicly available) <p>(2) Examples of electronic design information that is not found to be information that is made publicly available</p> <p>Information published on the Internet is not regarded as being made publicly available if it falls under any of the following.</p> <ul style="list-style-type: none"> (i) Information that is published on the Internet, but since its address is not disclosed, cannot be accessed except accidentally (ii) Information that can only be accessed by members, etc. of a specific organization or company, and that is treated as confidential information (for example, an intra company system that can only be used by employees) (iii) Information of which contents are coded in a manner that normally cannot be deciphered (except for the case where any person can acquire a tool for deciphering the code by some kind of means, whether or not a fee is charged therefor) (iv) Information that has not been published for a period sufficient for the general public to see the information (for example, information that was published on the Internet for only a short time)
KIPO	<p>Examination Standards, Chapter 4.3. Novelty: Related to the Design Protection Act 33(1)</p> <ul style="list-style-type: none"> - A design in a state in which its contents can be known to unspecified individuals before its application for design registration shall be deemed as a publicly known design. - “Telecommunications lines” means a transmission line that can transmit and receive interactively by cable, wireless, ray and other electrical or magnetic ways. - “Made available for public use” means that a design can be viewed by an unspecified individual without the obligation of confidentiality
USPTO	<p>An electronic publication, including an online database or Internet publication (e.g. discussion group, forum, digital video, and social media post), is considered to be a “printed publication” within the meaning of 35 U.S.C. 102(a)(1) provided the publication was accessible to persons concerned with the art to which the</p>

	document relates. Although not related to design, in one case pages from a website were found to be prior art. In another case, a newsgroup posting constituted prior art as it was directed to those having ordinary skill in the art and was publicly accessible because the post was sufficiently disseminated.). For specific citations see MPEP 2128(II)(a).
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C-2.

Question: Among the following, please select the type(s) of Internet information that are highly unlikely changed/alterd in their information details, and thus that may be cited by examiners as of the date and time indicated in the said Internet information.

If there are any relevant clauses in your examination guidelines, please also describe them.

	Information of official bulletins issued by IP offices and WIPO retrieved through the Internet
CNIPA	✓
EUIPO	
JPO	✓
KIPO	
USPTO	

	Information appeared on the website of:				
	public organizations (government agencies)	international organizations (standardization organizations, etc.)	academic institutions (scientific societies, universities, etc.)	publishers or newspaper companies, which have issued printed publications for many years	private companies
CNIPA	✓	✓	✓	✓	✓
EUIPO					
JPO	✓	✓	✓	✓	
KIPO					
USPTO					

	Information:						
	on products/ goods appeared on E-commerce websites	appeared on:					
		web catalogues	personal blogs	SNSs	video-sharing websites	bulletin board system (BBS) sites on the Internet	wiki sites
CNIPA	✓			✓	✓	✓	
EUIPO							
JPO							
KIPO							

USPTO							
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	Note
CNIPA	The answers to Option 6-12 are based on general situations and the specific case should still be analyzed specifically.
EUIPO	No searches are conducted by examiners. However, when assessing the evidence submitted in support of an invalidity application, the veracity of the information provided therein is presumed unless there are indications that it might have been manipulated (judgment of the General Court of the European Union of 27/02/2018, Case No T-166/15, Cases for mobile phones, EU:T:2018:100, § 90).
KIPO	Internet information from any responsible contents/information provider
USPTO	There is no per se rule that any of the above information could not be cited on the basis that the Internet information could be changed/alterd. Whether the above Internet information can be cited by examiners is determined on a case by case basis. Any of the above types of information could be potentially cited by examiners depending on the date of the information and whether the information was sufficiently accessible.

	Examination Guidelines
CNIPA	We have no specific Examination guidelines to Internet information.
EUIPO	Publication of an earlier design in the bulletin of any intellectual property office worldwide constitutes an event of disclosure (27/10/2009, R 1267/2008-3, MONTRES, § 35 et seq; 07/07/2008, R 1516/2007-3, BIDONS, § 9). The same applies where the publication concerns the appearance of a product in relation with any other kind of intellectual property right. An example for trade marks would be the judgment of 16/12/2010, T-513/09, Ornamentación, EU:T:2010:541, § 20; and for patents the judgment of 15/10/2015, T-251/14, Doors (parts of), EU:T:2015:780, § 22.
JPO	<p>Part II Requirements for Design Registration</p> <p>Chapter II Novelty</p> <p>22.1.2.8.2 The electronic design information to be cited was published with the same contents prior to the filing of the application for design registration</p> <p>[...]</p> <p>(3) Examples of websites for which it is considered that there is very little doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication</p> <p>Such doubt is considered very little for electronic design information published on the following websites, because the contact information for inquiring about the information is normally clear.</p> <ul style="list-style-type: none"> (i) Website of a publishing company that has published printed publications, etc. for many years (website that publishes electronic information of a newspaper, magazine, etc.) (ii) Website of an academic institution (website of an academic society, university, etc.) (iii) Website of an international institution (website of such bodies as a standards organization) (iv) Website of a public institution (website of a ministry or agency)

	Information on these websites will not be cited, in principle, where there is no indication of the date and time of publication, but it may be cited if proof of the date and time of publication of the information on the website and of the contents of the information can be obtained from the person who has authority and responsibility over publication, preservation, etc. of the published electronic design information.
KIPO	Examination Standards, Chapter 4.3. Novelty : 2. A design shall be deemed lacking of novelty; 1) A design publicly known or worked 2) design described in a printed publication distributed or made available for public use via telecommunications lines before an application for design registration is filed
USPTO	A publicly displayed document where persons of ordinary skill in the art could see it and are not precluded from copying it can constitute a “printed publication,” even if it is not disseminated by the distribution of reproductions or copies and/or indexed in a library or database. The key inquiry is whether or not a reference (regardless of whether it is Internet information) has been made ‘publicly accessible.’” In resolving whether or not a temporarily displayed reference that was neither distributed nor indexed was nonetheless made sufficiently publicly accessible to count as a “printed publication” under pre-AIA 35 U.S.C. 102(b), the following factors should be considered: the length of time the display was exhibited, the expertise of the target audience, the existence (or lack thereof) of reasonable expectations that the material displayed would not be copied, and the simplicity or ease with which the material displayed could have been copied. For specific citations see MPEP 2128(II)(a).

C-3.

Question: From the following, please select the item(s) that can be regarded as the date and time of publication of the Internet information concerned for the purpose of citation by examiners.

If there are any relevant clauses in your examination guidelines, please also describe them.

	Date and time:			Indicated update history of specific Wiki sites
	notarized by certified timestamp	indicated as those of publication of news articles	indicated as those of posting of additional comments on a specific article or products/goods information	
CNIPA	✓	✓	✓	
EUIPO				
JPO	✓	✓		
KIPO				
USPTO	✓	✓		

	Information on the date and time of:		
	publication or updates of a web page, which is included in the source codes of that web page	photographing of a posted image, which is included in the property of that image file	the last update of a web page, which can be obtained by executing a JavaScript command* to indicate the last modified property of that page *javascript:alert(document.lastModified);
CNIPA			
EUIPO			
JPO			
KIPO			
USPTO			

	Search results obtained through an Internet search conducted by using search engines and designating specific time period as a search condition	Information on the date and time of:	
		publication or updates of another web page, which contains link information to the web page at issue (* The latter is the subject of citation.)	storage of a web page in an Internet archive site
CNIPA			✓
EUIPO			
JPO			
KIPO			
USPTO			✓

	Note
EUIPO	No searches are conducted by examiners. However, when assessing the evidence submitted in respect of a design invalidity application all of the aforementioned indications could serve for establishing the date of design disclosure.
JPO	As for those not selected above, examiners may also treat such date and time as the date and time of publication of the Internet information concerned on a case-by-case basis. For example, examiners may use Internet information whose date is unlikely altered in considering the characteristics of that specific website, or whose date is deemed highly credible as a result of comprehensive inspection of plural sources of related information. (See C-4)
KIPO	KIPO does not have guidelines or statistics regarding how examiners are verifying the admissibility of internet information. The methods of proving the admissibility of the internet information are varied by the examiners.

	Examination Guidelines
CNIPA	Examination Guidelines, Chapter 5 of Part IV, 2. Prior Design According to Article 23. 4, the prior design refers to the design known to the public before the date of filing in China or abroad (or the priority date, where priority is claimed). The prior design includes designs that are made known to the public by publishing, public use or other means in China or abroad before the date of filing.

	<p>With regard to the time limit, means of disclosure, etc. ,of the prior design, Chapter 3 of Part II shall apply.</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.1 Temporal Demarcation</p> <p>As regards an invention or utility model application, the temporal demarcation of prior art is its filing date or the priority date where applicable. Broadly speaking, all of the technical contents disclosed before the filing date are within the scope of prior art; however, those disclosed on the filing date are not.</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.2.1 Disclosure by Publications</p> <p>[...]</p> <p>The printing date of a publication is regarded as the date of disclosure, except where the date of disclosure can be evidenced otherwise. Where only a specific month or year is indicated as the printing date, the last day of the month or year shall be regarded as the date of disclosure.</p> <p>If the examiner doubts the date of disclosure of a publication, he may invite the person who submitted the publication to furnish evidence.</p> <p>Examination Guidelines, Chapter3 of Part II, 2.1.2.3 Disclosure by Other Means</p> <p>...For contents of talking, reporting, or speaking at symposium, the date of action shall be regarded as the date of disclosure. For contents of broadcasting, televising, or cinematographing that can be received by the public, the date of broadcast or showing shall be regarded as the date of disclosure.</p>
EUIPO	<p>A global examination of the items of evidence relating to the same earlier design implies that these items must be assessed in the light of each other. Even if some items of evidence are not conclusive of an event of disclosure in themselves, they may contribute to establishing the event of disclosure when examined in combination with other items (09/03/2012, T-450/08, Phials, EU:T:2012:117, § 25, 30-45).</p> <p>In order to prove the event of disclosure, the evidence must specify the date of publication independently of the date of filing or the date of registration. Whether or not the publication takes place before registration or after is irrelevant (15/04/2013, R 442/2011-3, Skirting boards, § 24).</p> <p>Moreover, it is enough that the date of publication can be identified by the mention of the relevant INID code (internationally agreed numbers for the identification of (bibliographic) data) (14/11/2006, ICD 2 061).</p> <p>It is enough that the disclosure took place at a point in time that can be identified with reasonable certainty prior to the filing date or priority date of the contested Community design even if the exact date of disclosure is unknown (14/06/2011, T-68/10, Watches, EU:T:2011:269, § 31-32).</p> <p>The nature of the internet can make it difficult to establish the actual date on which information was in fact published. For instance, not all web pages mention the date when they were launched. In addition, websites are easily updated, yet most do not provide any archive of previously displayed material, nor do they display records that enable members of the public to establish precisely what was published and when.</p> <p>In this context, the date of disclosure on the internet will be considered reliable in</p>

	<p>particular where:</p> <ul style="list-style-type: none"> the website provides time stamp information relating to the history of modifications applied to a file or web page (for example, as available for Wikipedia or as automatically appended to content, e.g. forum messages and blogs); or indexing dates are given to the web page by search engines; or a screenshot of a web page bears a given date; or information relating to the updates of a web page is available from an internet archiving service such as the 'Wayback Machine' (02/07/2015, R 25/2014-3, SOFT DRINK BOTTLE, § 29).
JPO	-
KIPO	-
USPTO	For the unchecked boxes, there is no per se rule regarding whether the identified items "can be regarded as the date and time of publication of the Internet information concerned for the purpose of citation by examiners." Whether the date/time can be used by examiners depends on whether the specific Internet information concerned was publicly available as of that date/time. Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted.

C-4.

Question: Please select possible action(s) that examiners of your Office may take, where there is some doubt whether the details of Internet information on the date indicated in that information were the same as those browsed by the examiner on the date he/she actually made an Internet search. If there are any relevant clauses in your examination guidelines, please also describe them.

	To make inquiries of the person(s) responsible for managing the web page at issue	To obtain supporting information by using:	
		Internet archive sites	multiple information sources
CNIPA		✓	✓
EUIPO			
JPO	✓	✓	✓
KIPO	✓	✓	✓
USPTO		✓	✓

	Note
EUIPO	No searches are conducted by examiners. When assessing the evidence submitted in respect of a design invalidity application examiners will verify on their own motion the veracity of information provided.
KIPO	The examiner needs to refer the internet information only if the date and the publication of the internet information are clear as the proof of earlier publication before the relevant application. If there is some doubt about the admissibility of the internet information, there is low possibility to be chosen as a prior design.

	Examination Guidelines
CNIPA	We have no specific Examination guidelines to Internet information.
EUIPO	<p>The Invalidity Division will carry out an overall assessment of such evidence by taking account of all the relevant factors in the particular case. An event of disclosure cannot be proven by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient disclosure of the earlier design (09/03/2012, T-450/08, Phials, EU:T:2012:117, § 21-24).</p> <p>A global examination of the items of evidence relating to the same earlier design implies that these items must be assessed in the light of each other. Even if some items of evidence are not conclusive of an event of disclosure in themselves, they may contribute to establishing the event of disclosure when examined in combination with other items (09/03/2012, T-450/08, Phials, EU:T:2012:117, § 25, 30-45).</p> <p>The Invalidity Division is not required to determine through assumptions and deductions which earlier designs among those represented in the applicant's documentary evidence may be relevant where the applicant does not provide further specifications in this respect.</p>
JPO	<p>Part II Requirements for Design Registration Chapter II Novelty 22.1.2.8.2 The electronic design information to be cited was published with the same contents prior to the filing of the application for design registration (1) Matter of the date and time of publication^(Note) of the electronic design information to be cited and alteration of the contents thereof</p> <p>Since information published on the Internet is easy to alter, there is always the question of whether the electronic design information to be cited was published with the same contents at the indicated date and time of publication.</p> <p>Even if the indicated date and time of publication of the electronic design information to be cited was prior to the filing of the application for design registration when the examiner discovered the electronic design information, the possibility that such indication itself has been altered cannot be fully eliminated.</p> <p>(Note) With regard to the indication of the date and time of publication, the time in the country or region where the information on the Internet was published on the website is converted into Japan time to make the determination.</p> <p>(2) Response to the matter of the date and time of publication of the electronic design information to be cited and alteration of the contents thereof</p> <p>With regard to a website for which there is very little doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication, the information is cited by presuming that</p>

	<p>the contents that were published at the time when the examiner accessed the information are those that were published at the date and time of publication indicated on the website.</p> <p>Where there is doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication, whether or not the information can be cited will be investigated.</p> <p>Information will not be cited if it is published on a website that is unlikely to clear the doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication.</p> <p>[...]</p> <p>(4) Response to the case where there is doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication</p> <p>Where the examiner determines that there is such doubt with regard to the electronic design information to be cited, the examiner will inquire with the contact point indicated in the contact information, etc. about whether or not the information has been altered, and examine such doubt.</p> <p>If the doubt is not cleared as a result of examination, the information will not be cited.</p> <p>(5) Handling of a website that is unlikely to clear the doubt that the electronic design information to be cited was published with the same contents at the indicated date and time of publication</p> <p>Information published on a website for which contact information is unknown and which does not indicate the date and time of publication of the information will not be cited because the doubt is unlikely to be cleared.</p>
KIPO	Examination Procedures on Reference Design Citation for Websites (Enforcement :June 15, 2018 / Internal use only)
USPTO	<p>For the unchecked box, the examiner could make an inquiry of the applicant, for example, in situations where the applicant is the person(s) responsible for managing the web page at issue.</p> <p>As explained at MPEP 2128(II)(B), prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted. Absent evidence, e.g., supporting information by using Internet archive sites, of the date that the disclosure was publicly posted, if the publication itself does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a)(1). However, it may be relied upon to provide evidence regarding the state of the art. Examiners may ask the Scientific and Technical Information Center to find the earliest date of publication or posting (see MPEP 901.06(a)(IV)(G)).</p>

C-5.

Question: With regard to the citation of Internet information, does your Office have any specific examination standards for the quality of images suitable for citation? If so, please describe the standards.

	Answer	Examination standards:
CNIPA	NO	
EUIPO	YES	Examination guidelines: Where the quality of the representation of the earlier design does not enable a comparison with the contested design, this does not amount to a disclosure for the purpose of Article 7(1) CDR (10/03/2008, R 586/2007-3, Barbecues, § 22 et seq.).
JPO	YES	Part II Requirements for Design Registration Chapter II Novelty 22.1.2.9 Design published on the Internet as electronic design information Equivalent to a design described in a publication, a design published on the Internet as electronic design information can be used as information that serves as the basis for determination of novelty if it has been sufficiently represented to a comparable level when determining whether or not the design in an application for design registration is identical or similar to the design published on the Internet. (See 22.1.2.6 “Design described in a publication” above)
KIPO	YES	Examination Procedures on Reference Design Citation for Websites (Enforcement :June 15, 2018 / Internal use only) : This guideline is aimed at establishing the citation criteria for reference design citation of online shopping malls and bulletin boards when design examination is carried out, with the ultimate goal of improving the quality of design examination.
USPTO	NO	

[Form of citation of Internet information]

C-6.

Question: Among the following, please select the information that examiners of your Office provide for applicants in their letters/reports when citing Internet information.

	To the effect that the information source was the Internet	Name of the person who published/posted the Internet information	Title of the web page on which the Internet information appeared	Information to specify the place/location of the graphic image of the cited design within the web page
CNIPA	✓		✓	✓
EUIPO				
JPO	✓	✓	✓	✓
KIPO	✓		✓	✓
USPTO				

	Date on which:		Indication of the URL of the web page,:		Graphic image of the cited design (*2)	Specific operation step to access the graphic image in a special state (*3)
	the Internet information was published/posted	the examiner browsed the Internet information	which includes multi-byte characters (e.g. Japanese characters)	in which multi-byte letters have been encoded (*1)		
CNIPA	✓	✓	✓	✓	✓	✓
EUIPO						
JPO	✓	✓	✓	✓	✓	✓
KIPO	✓	✓	✓	✓	✓	
USPTO						

*1 Examiners state in their letters the URL information displayed in the browser. Only one of the two types (mentioned above) is stated.

*2 Except for Hague applications.

*3 e.g. Instructions to enlarge the image for the citation of an enlarged pop-up image.

	Note
EUIPO	No searches are conducted by examiners.
USPTO	<p>As discussed at MPEP 707.05(e)(IV), the USPTO follows the format recommended by World Intellectual Property Organization (WIPO) Standard ST.14, "Recommendation for the Inclusion of References Cited in Patent Documents."</p> <p>The format is as similar as possible to the format used for paper documents of the same type, but with the addition of the following information in the locations indicated, where appropriate:</p> <p>(A) the type of electronic medium provided in square brackets [] after the title of the publication or the designation of the host document, e.g., [online], [CD-ROM],</p>

	<p>[disk], [magnetic tape]. If desired, the type of publication (e.g., monograph, serial, database, electronic mail, computer program, bulletin board) may also be specified in the type of medium designator;</p> <p>(B) the date when the document was retrieved from the electronic media in square brackets following after the date of publication, e.g., [retrieved on March 4, 1998], [retrieved on 1998-03-04]. The four-digit year must always be given.</p> <p>(C) identification of the source of the document using the words “Retrieved from” and its address where applicable. This item will precede the citation of the relevant passages.</p> <p>(D) reference to the unique Digital Object Identifier (DOI) number, or other unique identification number, if known.</p> <p>(E) if considered necessary, the standard identifier and number assigned to the item, e.g., ISBN 2-7654-0537-9, ISSN 1045-1064. It should be noted that these numbers may differ for the same title in the printed and electronic versions.</p> <p>(F) where multiple renderings of the same document are published (e.g., PDF and HTML), an indication of the format (e.g., paper, PDF) and the location of the cited document.</p> <p>(G) use paragraph numbers, sentence numbers and line numbers (if available) to describe the specific location of the cited material within an electronic document.</p> <p>(H) claim numbers, figure numbers, chemical formula numbers, mathematical formula numbers, table heading numbers, gene sequence numbers, and computer program listing numbers if available.</p> <p>(I) specific headings within the document structure such as Best Mode of Performing the Invention or Industrial Applicability can be indicated if page, paragraph, and line numbers are not available in a cited patent document in electronic format.</p> <p>(J) specific passages of the text can be indicated if the format of the document includes pagination or an equivalent internal referencing system, or by the first and last words of the passage cited.</p>
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C-7.

Question: Does your Office make copies of the Internet information cited by examiners and maintain them within the Office? If so, please answer the way to store such information.

	Answer	Way to store the information		
		To store screenshots in the form of:		To put necessary information into the in-house database
		printed paper documents	electronic data	
CNIPA	NO			
EUIPO				
JPO	YES	✓	✓	✓
KIPO	YES		✓	
USPTO	YES			

	Note
EUIPO	No searches are conducted by examiners.
USPTO	Copies of the Internet information cited by examiners is maintained in the Image File Wrapper of the application.

C-8.

Question: In addition to the matters stated above, are there any points that examiners of your Office pay attention when making citation of Internet information?

	Answer
CNIPA	N/A
EUIPO	No searches are conducted by examiners.
JPO	N/A
KIPO	[Prohibition of Notification Date Presumption] When either the posting date or the reference design photo is missing, it is possible to collect the relevant design manufacturer, model name, and product information to comprehensively cite multiple data that can be recognized as the relevant design notification date. However, presumption is not permissible.
USPTO	No

C-9.

Question: Please share sample cases of examiner letters/reports, in which Internet information was cited (ones that show the actual form of citation of Internet information).

	Answer
CNIPA	See Annex CN-C-9.
EUIPO	No searches are conducted by examiners.
JPO	See Annex JP-C-9.

KIPO	See Annex KR-C-9.
USPTO	<p>The following examples of citations to Internet information show the actual form of citation of Internet information and are provided at MPEP 707.05(e)(IV).</p> <p>Examples 1-4: Documents retrieved from online databases outside the Internet</p> <p>Example 1: SU 1511467 A (BRYAN MECH) 1989-09-30 (abstract) World Patents Index [database online]. Derwent Publications, Ltd. [retrieved on 1998-02-24]. Retrieved from: Questel. DW9016, Accession No. 90-121923.</p> <p>Example 2: DONG, XR. 'Analysis of patients of multiple injuries with AIS-ISS and its clinical significance in the evaluation of the emergency managements', Chung Hua Wai Ko Tsa Chih, May 1993, Vol. 31, No. 5, pages 301-302. (abstract) Medline [online]: United States National Library of Medicine [retrieved on 24 February 1998]. Retrieved from: Dialog . Medline Accession no. 94155687, Dialog Accession No. 07736604.</p> <p>Example 3: JENSEN, BP. 'Multilayer printed circuits: production and application II'. Elektronik, June-July 1976, No. 6-7, pages 8, 10,12,14,16. (abstract) INSPEC [online]. London, U.K.: Institute of Electrical Engineers [retrieved on 1998-02-24]. Retrieved from: STN International, USA. Accession No. 76:956632.</p> <p>Example 4: JP 3002404 (Tamura Toru) 1991-03-13 (abstract). [online] [retrieved on 1998-09-02]. Retrieved from: EPOQUE PAJ Database.</p> <p>Examples 5-18: Documents retrieved from the Internet</p> <p>Example 5: (Electronic patent document – not page based) WO 2004/091307 A2 (ADVANCED BIONUTRITON CORP) 2004-10-28, paragraphs [0068], [0069]; examples 2, 6. GB 2,432,062 A (GE INSPECTION TECHNOLOGY LP) 2007.05.09, Detailed Description, third paragraph beginning 'Referring to Figure 2'.</p> <p>Example 6: (Electronically registered Intellectual Property – other than patent documents) HU D9900111 Industrial Design Application, (HADJDUTEJ TEJIPARI RT, DEBRECEN) 2007-07-19, [database online], [retrieved on 1999-10-26] Retrieved from the Industrial Design Database of the Hungarian Patent Office using Internet <URL: http://elajstrom.hpo.hu/?lang=EN></p> <p>Example 7: (Entire Work – Book or Report) WALLACE, S, and BAGHERZADEH, N. Multiple Branch and Block Prediction. Third International Symposium on High-Performance Computer Architecture [online], February 1997 [retrieved on 2007-07-18]. Retrieved from the Internet:< URL: http://ieeexplore.ieee.org/xpl/freeabs_all.jsp?tp=&arnumber=569645&isnumber=12370> <DOI:10.1109/HPCA.1977.569645>. >.</p> <p>Example 8: (Part of Work – chapter or equivalent designation) National Research Council, Board on Agriculture, Committee on Animal Nutrition,</p>

Subcommittee on Beef Cattle Nutrition. Nutrient Requirements of Beef Cattle [online]. 7th revised edition. Washington, DC: National Academy Press, 1996 [retrieved on 2007-07-19]. Retrieved from the Internet:< URL: http://books.nap.edu/openbook.php?record_id=9791&page=24> Chapter 3, page 24, table 3-1, ISBN-10: 0-309-06934-3.

Example 9:

(Electronic Serial – articles or other contributions)

AJTAI, Miklos,. Generating Hard Instances of Lattice Problems. Electronic Colloquium on Computational Complexity, Report TR96-007 [serialonline], [retrieved on 1996-01-30]. Retrieved from the Internet <URL: <http://eccc.hpi-web.de/pub/eccc/reports/1996/TR96-007/index.html>>

Example 10:

OWEN, RW et al. Olive-oil consumption and health: the possible role of antioxidants. Lancet Oncology, Vol 1, No. 2, 1 October 2000, pp. 107-112 [online], [retrieved on 2007-07-18]. Retrieved from the Internet <URL: <http://www.ingentaconnect.com/content/els/14702045/2000/00000001/00000002/art0001>> <DOI: 10.1016/S1470-2045(00)00015-2>

Example 11:

(Electronic bulletin boards, message systems, discussion lists, and forums – Entire System)

BIOMET-L (A forum for the Bureau of Biometrics of New York) [online]. Albany (NY): Bureau of Biometrics, New York State Health Department, July, 1990 [retrieved 1998-02-24]. Retrieved from the Internet: <listserv@health.state.ny.us>, message: subscribe BIOMET-L your real name.

Example 12:

(Electronic bulletin boards, message systems, discussion lists, and forums – Contributions)

PARKER, Elliott. 'Re: citing electronic journals'. In PACS-L (Public Access Computer Systems Forum) [online]. Houston (TX): University of Houston Libraries, November 24, 1989; 13:29:35 CST [retrieved on 1998-02-24]. Retrieved from the Internet: <URL:telnet://bruser@a.cni.org>.

Example 13:

(Electronic mail)

'Plumb design of a visual thesaurus'. The Scout Report [online]. 1998, vol. 5 no. 3 [retrieved on 1998-05-18]. Retrieved from Internet electronic mail: <listserv@cs.wisc.edu>, subscribe message: info scout-report. Retrieved from the Internet: <URL: <http://scout.wisc.edu/Reports/ScoutReport/1998/scout-980515.html#13>> ISSN: 1092-3861\cf15.

Example 14:

(Product Manual/Catalogue or other information obtained from a website)

Corebuilder 3500 Layer 3 High-function Switch. Datasheet [online]. 3Com Corporation, 1997 [retrieved on 1998-02-24]. Retrieved from the Internet: <URL: www.3com.com/products/dsheets/400347.html>.

Examples 15 and 16: Documents retrieved from CD-ROM products

Example 15:

JP 0800085 A (TORAY IND INC), (abstract), 1996-05-31. In: Patent Abstracts of

	<p>Japan [CD-ROM].</p> <p>Example 16: HAYASHIDA, O et al.: Specific molecular recognition by chiral cage-type cyclophanes having leucine, valine, and alanine residues. : Tetrahedron 1955, Vol. 51 (31), p. 8423-36. In: Chemical Abstracts [CD-ROM]. CAS Abstract</p> <p>Examples 17 and 18: Social Media</p> <p>Example 17: (Twitter) Twitter post entitled "There's more than one way to enjoy waffles." 1 page, posted Aug. 24, 2017 by user "@uspto". Retrieved from Internet: <https://twitter.com/uspto/status/900721931477032964>.</p> <p>Example 18: (YouTube) Screen captures from YouTube video clip entitled "Widget Video Demonstration," 6 pages, uploaded on March 17, 2014 by user "jdoe1". Retrieved from Internet: <http://www.youtube.com/widgetdemo>.</p>
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D. Applicants' use of Internet information

[Requests for invalidation of design registrations/patents based on Internet information]

D-1.

Question: With regard to the use of Internet information in the procedures for invalidation of design registrations/patents, what sort of evidence may be provided by demandants/applicants?

	Screenshot(s) of Internet information on which graphic images of a published design are posted (documentary evidence)	Information to certify the date and time of publication (documentary evidence)
CNIPA	✓	✓
EUIPO	✓	✓
JPO	✓	✓
KIPO	✓	✓
USPTO	✓	✓

	Supplementary physical evidence (Please specify)	Supplementary personal evidence (Please specify)
CNIPA		
EUIPO	✓	✓
JPO	✓ - Actual products appeared in the Internet information - Drawings, photos, audiotapes or videotapes	✓ - Verbal evidence provided by the creator of the Internet information - Verbal evidence provided by the person responsible for the maintenance/management of the Internet information
KIPO		
USPTO	(*)	(*)

	Note
EUIPO	In principle, any type of evidence maybe provided. Article 65 of Community Design Regulation (EC) No 6/2002 of 12 December 2001 does not contain an exhaustive list of acceptable evidence.
USPTO	(*) A demandant/applicant may be permitted to provide some other form of evidence but we are not clear on what you had in mind for these items and depending on the specific circumstances the evidence may be considered.)

D-2.

Question: Does your Office publish any guidance on submittable evidence or judgment standards for the use of Internet information in the procedures for invalidation of design registrations/patents? If so, please specify the details.

	Answer	Information on guidance and judgment standards (URL, item number(s), etc.):
CNIPA	YES	<p>Examination Guidelines, Chapter 8 of Part IV, 5.1 Publication Time of Evidence on Internet</p> <p>The earliest time when the public can find the information on the Internet is the publication time of the information, usually the issuance time of the information on the Internet is deemed as the publication time of the information.</p>
EUIPO	YES	<p>Guidelines for Examination of Registered Community Designs; Examination of Design Invalidity Applications (5.5.1.5 Disclosures derived from the internet):</p> <p>https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/law_and_practice/designs_practice_manual/WP_Designs_2018/examination_of_design_invalidity_applications_en.pdf</p> <p>Common practice on Criteria for assessing disclosure of designs on the Internet (draft version):</p> <p>https://www.tmdn.org/network/documents/10181/636406/3rd_Draft_CP10_Common_Practice.pdf/3be701aa-e82a-4c32-a75d-667010d79e88</p>
JPO	YES	<p>There is an explanation about the submission of evidence containing information on the Internet in the JPO web article “Statement in the Description of Evidence” published in Japanese at http://www.ipu.go.jp/system/trial_appeal/shubetu-tokkyo-igi/syoko_setsumeisyo.html</p> <p>“Points to note on procedures concerning evidence When the evidence is information etc. on the Internet, please output the URL and the output date together with the information. In the cases where the URL and the output date cannot be stated in the output material, please also attach the output material of the webpage (if any) from which the information was downloaded. When it is necessary to give evidence that the subject patent was publicly known before filing the application, please clarify that the information had been posted before the filing date of the patent concerned. (Where there is any other evidence such as books that could specify their date of publication, please give priority to them as evidence to present.)”</p> <p>* See also D-3.</p> <p>Although specific explanation on Internet information is not stated, general points to note in providing evidence appears in the “Manual for Trial and Appeal Proceedings”.</p> <p>https://www.ipu.go.jp/system/trial_appeal/shubetu-tokkyo-igi/document/syoko_setsumeisyo/34-01.pdf</p>

		Manual for Trial and Appeal Proceedings 34-01 “Inspection of Documents and Important Points Concerning Producing Evidence” 4. Documents (6) Use of Witness Interrogation, etc. For cases where the original copy cannot be submitted, or when the document is not one of the documents listed below, a request for witness interrogation may also be made in order to clarify the creation or certification contents of the document. a. Printed publication whose distribution date is obvious b. Official documents certified by the government/public offices that are responsible for certifying documents c. Formal certificates issued by a university or a research institute that is well equipped with facilities and has various expert engineers d. Formal certificate for medical effectiveness issued by a hospital when it is obvious that the medical drug is used at the hospital for medical treatment
KIPO	NO	
USPTO	YES	The USPTO does not publish any guidance on submittable evidence or judgment standards for the use of Internet information in the procedures for invalidation of design registrations/patents, other than the guidance mentioned in several of our responses within Section C of this document.

D-3.

Question: Please share sample cases of evidence provided by demandants/applicants, in which Internet information was cited (ones that show the actual form of citation of Internet information).

	Answer
CNIPA	See Annex CN-D-3-1,D-3-2 and D-3-3.
EUIPO	See Annex EU-D-3.
JPO	See Annex JP-D-3.
KIPO	The information is confidential.
USPTO	Demandants/applicants may cite Internet information in the same manner as discussed in our answer to C-9. The Patent Trial and Appeal Board (PTAB) does not require a strict citation format for an Applicant, Petitioner or Requester regarding format for citation of these publications, provided the source and asserted publication date are clear. However, the PTAB does require the party to submit a copy of all non-patent publications. See 37 C.F.R. §§ 1.98(b)(5) and (d) (IDS), 1.290(c)(3) and (e)(4) (TP submission), 1.291 (c)(1)(iv) and (c)(3) (protest), 1.510(b)(4) (ex parte reexam), 1.605 and 1.610(b)(7) (supplemental examination), 42.63 (Form of evidence for trial practice).

[Certification for the benefits of grace period by using Internet information]

D-4.

Question: Under the law and/or regulation applied in the territory of your country/region, can applicants receive benefits of grace period for the disclosure of a design on the Internet?

	Answer	Note
CNIPA	NO	
EUIPO	YES	
JPO	YES	
KIPO	YES	
USPTO	YES	The USPTO does not distinguish between the disclosure of a design on the Internet and other disclosures of a design for purposes of receiving the benefit of the grace period.

D-5.

Question: Where applicants need to submit certification so as to receive benefits of grace period under the law and/or regulation applied in the territory of your country/region, does your Office publish any guidance on the way of preparing proper certification or related judgment standards?

	Answer	Information on guidance and judgment standards (URL, item number(s), etc.):
CNIPA	NO	
EUIPO	NO	
JPO	YES	Examination Guidelines Part III Exception to Lack of Novelty https://www.jpo.go.jp/e/news/public/previous/document/draft_revision_170217/0300.pdf
KIPO	YES	1) Applicants can refer to Chapter 4.4, Exception to lack of novelty, of the Examination Standards. 2) Design Protection Guide Book (Korean, page25) https://www.designmap.or.kr:10443/ipf/lpDtFrM.jsp
USPTO	NO	The USPTO does not publish any guidance specific to preparing proper certification or related judgment standards for receiving the benefit of the grace period. However, the USPTO provides guidance at MPEP 2153 on prior art exceptions based on grace period inventor or inventor-originated disclosures (as provided for under AIA 35 U.S.C. 102(b)(1)(A)).

D-6.

Question: Please share sample cases of certification submitted by applicants, in which Internet information was cited (ones that show the actual form of citation of Internet information).

	Answer
CNIPA	No actual case
EUIPO	
JPO	See Annex JP-D-6
KIPO	There is no defined form for the certification. The supporting document shall include (1) notice date (posted date), (2) source of publication (url), (3) who made the publication, and (4) reference design image
USPTO	See D-3.

II. Judicial and appeals decisions concerning the use of Internet information

E-1.

Question: If there are any precedents or remarkable cases of judicial or administrative (appeals) decisions that affirmed the admissibility of Internet information with regard to a design application or a registered/patented design under the legislation of your country/region, please describe the outline of the cases and the reasons for the decisions.

	Answer
CNIPA	The content of this part of the questionnaire falls beyond the responsibility of our office and cannot be obtained.
EUIPO	See Annex EU-E-1-1 and EU-E-1-2
JPO	See Annex JP-E-1-1 and JP-E-1-2.
KIPO	See Annex KR-E-1
USPTO	We are not aware of any precedents or remarkable cases that would be responsive to E-1

E-2.

Question: If there are any precedents or remarkable cases of judicial or administrative (appeals) decisions that denied the admissibility of Internet information with regard to a design application or a registered/patented design under the legislation of your country/region, please describe the outline of the cases and the reasons for the decisions.

	Answer
CNIPA	The content of this part of the questionnaire falls beyond the responsibility of our office and cannot be obtained.
EUIPO	See Annex EU-E-2
JPO	No relevant cases were found.
KIPO	See Annex KR-E-2
USPTO	We are not aware of any precedents or remarkable cases that would be responsive to E-2

E-3.

Question: If there are any other precedents or remarkable cases of judicial or administrative (appeals) decisions that indicate guiding principles for the admissibility or citation of Internet information in the field of intellectual property, please describe the outline of the cases and the reasons for the decisions.

	Answer
CNIPA	The content of this part of the questionnaire falls beyond the responsibility of our

	office and cannot be obtained.
EUIPO	
JPO	See Annex JP-E-3-1 and JP-E-3-2.
KIPO	See Annex KR-E-3
USPTO	We are not aware of any precedents or remarkable cases that would be responsive to E-3

[Annex follows]