Current Tendencies in Industrial Design Protection

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FICPI
Introduction

- Why is ID a special kind of protection?
- How is ID protection changing?
- New technologies.
- Problems in ID protection around the world.
- Need for harmonization.
ID Protection

- Classical definition: “ID protects only the appearance of a product”

**Visible**  
Industrially applied to a product

**Aesthetic**

**EU**
“the appearance of the whole or a part of a product resulting from the features of...the product itself and/or its ornamentation.”

**UK**
features of shape, configuration, pattern or ornamentation applied to an article by any industrial process

**US**
“A design consists of the visual ornamental characteristics embodied in, or applied to, an article of manufacture”

**JP**
it is the shape, pattern or colors or any combination of these features in an article or part of an article, which have an aesthetic appearance
ID Protection

Novelty

Originality
(individual character for EU)

Industrial use

Prior publication is novelty destroying

Exception
Grace Period

Ornamental / non-obviousness (US.)
ID Protection

- Challenges:
  - Aesthetic features X Functional features
  - Handicraft

- Proposal and tendency:
  - New and original visible composition of lines, colors, shapes, etc
Application Requirements

- Model
- Drawing representation
- Description
- Claim
- Samples

Countries:
- US
- Japan
- Europe
Functional Features and Spare Parts

- ID protects only the appearance of a product, not its functional features.
  - Japan does not protect a design “composed only of shapes that are indispensable in securing the functions of an article.”
  - US does not protect the structural or utilitarian features.
  - Australia and South of Africa does not exclude designs with functional features.
  - EU does not protect the design dictated by functional features.

- Spare parts
  - Conditions for registration
Spare Parts

Head of non-shaving device

Design protected by Reckitt Benckiser Inc.
Functional Features and Spare Parts

- Harmonization and tendency
  - DI => appearance of the article

Appearance dictated by the technical function should not be considered a bar to registration
Regime of Protection and Substantive Examination

- **Systems:**
  - Copyright;
  - Registered *sui generis* design right;
  - Unregistered *sui generis* design right;
  - Patent.

HARMONIZATION → SUBSTANTIVE EXAMINATION

YES → NO
Term

- From 10 to 25 years
  - Australia: 10 years
  - Japan: 15 years
  - USA: 14 years
  - EU: 25 years

- Harmonization: 25 years with a 5-year renewal.
Cumulative Protection

- Tendency: copyright, *sui generis* protection/patent and trademark.

- No impact on harmonization: distinct and independent kinds of protection
Scope of Protection

- Protection to “article” is too broad and uncertain

- Harmonization: protection would only refer to a design or an adaptation for a class of articles according to Locarno Classification.
New Technologies

- Computer Images
  - GUI
  - Type fonts
  - Icons

- Harmonization: protection to new technologies.
New Technologies - Examples

GUI

Icon

Type fonts

Designs protected by Microsoft Inc.
Conclusion

- Harmonization is desirable:
  - FICPI Rome Symposium and Round Table
  - FICPI Submission to WIPO

- Definition
- Requirements
- Grace period
- Term
- Regime and examination
- Scope of protection
i Gracias!
Thank you!

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