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2016 – Study Question (Designs)

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Requirements for protection of designs

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I. Current law and practice

- 1) Does your Group's current law provide for an intellectual property right (registered or patented) that specifically protects the outward appearance or ornamentation of an object or article of manufacture?

As set out in the Study Guidelines, copyrights and trademarks are not such rights in the context of this Study Question.

yes

Please explain:

In Poland protection of industrial designs is provided in the act of June 30, 2000 Industrial Property Law , (Articles 102 – 119) and the Regulation of the Prime Minister of 30 January 2002 on filling and processing industrial designs applications. Since 2004 Poland is a member state of European Union, so design protection in Poland can be granted in Poland on a basis of EU Council Regulation No 6/2002 of 12 December 2001 on Community designs. TRIPS is also directly applicable in Poland.

In this report of Polish National Group of AIPPI the domestic regulation emerging from provisions of Industrial Property Law of 2000 will be presented. It is basically the same as protection conferred by EU Council Regulation No 6/2002 of 12 December 2001.

- 2) If yes, what is this right called? (e.g. registered design, design patent, industrial design, industrial design patent)

References to design below are to be read as references to this right, irrespective of what it is called in your jurisdiction.

The right is called registered industrial design, or registered design.

- 3) What are the statutory requirements for such right? Please tick any relevant boxes and explain the basis and application of these requirements.

a) novelty

Novelty is regulated under the Article 103 of Industrial Property Law

An industrial design shall be considered new if, before the date according to which priority to obtain a right in registration is determined, no identical design has been made available to the public, i.e. used, exhibited or otherwise disclosed. Designs shall also be deemed to be identical with those made available to the public if their features differ only in not important details.

The designs shall not be deemed to have been made available to the public, if it could not have become known to the circles specialised in the sector, to which the design belongs. It should be mentioned that the following acts do not destroy novelty of design and design registration will be granted, if a design:

(i) has been disclosed to a third party under explicit or implicit conditions of confidentiality,

(ii) has been disclosed during 12-month period preceding the date according to which priority to obtain a right in registration is determined, by the designer, his successor in title or a third person with the right holder's consent, as well as if the disclosure has occurred as a consequence of an abuse in relation to the designer or his successor in title.

b) non-obviousness

c) inventive step

d) individual character

Individual character of the design is regulated under Article 104 of Industrial Property Law, which provides that an industrial design shall be considered to have individual character, if the overall impression it produces on the informed user differs from the overall impression produced on such a user by any design which has been made available before the date according to which priority is determined. When assessing individual character, the degree of freedom of the designer in developing the design shall be taken into consideration.

e) originality

f) aesthetic

g) ornamental

No definition of this feature is provided in the law.

h) other, namely ...

The lines, colours, shape, texture or materials of the product and its ornamentation. Any industrial or handicraft item, including, in particular, packaging, get-up, graphic symbols and typographic typefaces, but excluding computer programs, shall be considered to be a product.

4) Does your Group's current law deny design protection to a design with an appearance that is dictated solely by its function?

yes

Please explain:

This issue is regulated under Article 107 of Industrial Property Law.

5) If yes, what are the relevant factors to determine whether or not a design is deemed unprotectable as being functional? Please tick any relevant boxes and explain as applicable:

a) whether the overall appearance is dictated solely by its technical function

Article 107 of Industrial Property Law provides for that the right in registration of an industrial design shall not subsist in features of a product:

(i) which are solely dictated by its technical function

b) whether each portion of the overall appearance is dictated solely by its technical function

c) the availability of alternative appearances that can obtain the same functional result

d) the need to achieve the product's technical function was the only relevant factor when the design in question was selected

e) other, namely ...

6) Does your Group's current law deny design protection to any portions (e.g. a "feature", "element") of the overall design that are deemed functional?

yes

Please explain:

Under the article 107 of Industrial Property Law design protection is denied to features, which must necessarily be reproduced in their exact form and dimensions in order to permit the product to be mechanically connected to, or to interact with, another product. This provision shall be without prejudice to the registration of an industrial design serving the purpose of allowing multiple assembly or connection of mutually interchangeable products within a modular system.

7) If yes, what are the relevant factors to determine whether or not a portion is deemed functional? Please tick any relevant boxes and explain as applicable:

a) whether the overall appearance is dictated solely by its technical function

b) the availability of alternative appearances for the portion to obtain the same functional result

c) the need to achieve the product's technical function was the only relevant factor when the portion in question was selected

d) other, namely ...

8) What is the effect on the scope of protection of a design with one or more functional portions? Please tick any relevant boxes and explain as applicable:

a) any portions deemed functional will not be taken into account when assessing infringement

b) any portions deemed functional will not be taken into account when assessing validity

c) any portions deemed functional will not be taken into account separately when assessing infringement, but can play a role in the overall comparison

d) any portions deemed functional will not be taken into account separately when assessing validity, but may play a role in the overall comparison

e) no effect (e.g. so long as the overall appearance is not dictated solely by its technical function, all portions of the design are included in the scope of protection, irrespective as to whether any portions may be functional)

f) the Group's current law is unsettled

g) other, namely ...

II. Policy considerations and possible improvements to your current law

9) How can the following aspects of your Group's current law be improved, if at all?

a) the definition or meaning of a "design"

b) the requirements for protection of a design

c) the treatment of functionality in the sense described in paragraph 14) of the Study Guidelines or aspects of such functionality

10) Are there any other policy considerations and/or proposals for improvement to your current law falling

within the scope of this Study Question?

no

Please explain:

The Polish National Group does not see the necessity of changing current Polish domestic law regulating industrial design.

III. Proposals for harmonisation

11) Does your Group consider that harmonisation in the three areas in question 9) above is desirable?

If yes to some but not all of those three areas, please state in relation to which of the areas your Group considers harmonisation is desirable.

If yes in relation to any of those areas, please respond to the following questions without regard to your Group's current law.

Even if no in relation to any of those areas, please address the following questions to the extent your Group considers your Group's current law could be improved.

yes

Please explain:

Harmonization of design protection is desired, as it make easier to obtain protection and enforce design protection in different jurisdictions. In European Union harmonization of design protection already took place, as there is one EU design regulation valid in all member states.

12) Should there be harmonisation of the definition of an intellectual property right that specifically protects the outward appearance or ornamentation of an object or article of manufacture?

no

Please explain:

The motion "the outward appearance or ornamentation of an object or article of manufacture" seems to be clear enough, so there is no need to provide complicated definition. It should be taken into account, that the definition of terms "the outward appearance or ornamentation of an object or article of manufacture" cannot be made alone, as industrial design has to have individual character, so the definition should over both these aspects.

13) If so, what should that right be called?

14) What should the requirements for such right be? Please tick any relevant boxes and explain the basis and application of these requirements:

a) novelty

b) non-obviousness

c)

- inventive step
 - d) individual character
 - e) originality
 - f) aesthetic
 - g) ornamental
 - h) other, namely ...
- 15) Should design protection be denied to a design with an appearance that is dictated solely by its function?
- 16) If yes, what should the relevant factors be to determine whether or not a design is deemed unprotectable as being functional? Please tick any relevant boxes and explain as applicable:
- a) whether the overall appearance is dictated solely by its technical function
 - b) whether each portion of the overall appearance is dictated solely by its technical function
 - c) the availability of alternative appearances that can obtain the same functional result
 - d) the need to achieve the product's technical function was the only relevant factor when the design in question was selected
 - e) other, namely ...
- 17) Should design protection be denied to any portions (e.g. a "feature", "element") of the overall design that are deemed functional?
- 18) If yes, what should the relevant factors be to determine whether a portion of a design is functional? Please tick any relevant boxes and explain as applicable:
- a) whether the overall appearance is dictated solely by its technical function
 - b) the availability of alternative appearances for the portion to obtain the same functional result
 - c) the need to achieve the product's technical function was the only relevant factor when the portion in question was selected
 - d) other, namely ...

19) What should the effect be on the scope of protection of a design with one or more functional portions? Please tick any relevant boxes and explain as applicable:

a) any portions deemed functional will not be taken into account when assessing infringement

b) any portions deemed functional will not be taken into account when assessing validity

c) any portions deemed functional will not be taken into account separately when assessing infringement, but can play a role in the overall comparison

d) any portions deemed functional will not be taken into account separately when assessing validity, but may play a role in the overall comparison

e) no effect (e.g. so long as the overall appearance is not dictated solely by its technical function, all portions of the design are included in the scope of protection, irrespective as to whether any portions may be functional)

Features excluded from registration as industrial design should have no effect at all in assessing validity or enforcement of the design.

f) the Group's current law is unsettled

g) other, namely ...

20) If your answer to question 11) is no, is it your Group's view that a (registered or patented) intellectual property right that specifically protects the outward appearance or ornamentation of an object or article of manufacture should not be available at all?

21) If yes, why?

22) If your answer to question 11) is no in relation to some but not all of the three areas set out in question 9) above, please state why your Group does not consider that harmonisation in that area(s) is desirable.

23) Please comment on any additional issues concerning any aspect of the definition and requirements for protection of designs, or the role of functionality, you consider relevant to this Study Question.

Please indicate which industry sector views are included in part “**III. Proposals for harmonization**” of this form:

Summary