



Copyright/Design – Option 2

Explanatory Note for proposed Study Question – Cancun 2018

Partial designs – full protection?

An “industrial design” or “design patent” typically protects the outward appearance or ornamentation of an object or article of manufacture. AIPPI's Resolution on "Requirements for protection of designs" (Milan, 2016) concerns the definition of and the requirements for the protection of designs, with a focus on the role of functionality.

The protection of "partial designs" was outside the scope of that Resolution. A partial design is a design in respect of only a portion or portions of a product, eg a design registration directed at protection of the handle of a pan rather than the whole pan including the handle.

Recognising that partial design protection is of practical and economic significance, a panel session at the AIPPI Congress in Sydney in 2017 will discuss this topic. It is hoped that this will provide preparatory work for a Resolution to be adopted at AIPPI's Congress in Cancun in 2018. The ultimate goal is to achieve a set of resolutions that will assist AIPPI in further promoting international harmonization of design protection.

This possible Study Question would focus on partial designs and whether a part or portion of a product can be the subject of independent design protection, and if so, the requirements for and scope of such design protection. Issues may include the manner in which a partial design must be described or depicted in order to be eligible for protection; differences, if any, between the way in which a standard design application and an application for a partial design should be examined; the level of any originality or novelty that must be displayed; the appropriate test for infringement; whether concurrent protection for a whole design and a portion thereof should be available; and whether a partial design must be visible to the human eye during the life of the product embodying such design.

Another area not addressed by the Milan Resolution is whether a “must fit/must match” exemption from protection should apply, ie where the design for the portion of the object is dictated by the need to fit with other parts. This may or may not be in the context of repair.

There may be other appropriate restrictions on the registrability of partial designs or the exclusive rights given by registration. This possible Study Question would also explore whether there are other means to secure appropriate protection for the outward appearance or ornamentation of part or parts (only) of an object or article of manufacture, in the event protection for partial designs is not available.