



## Study Question

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Sarah MATHESON, Reporter General  
Jonathan P. OSHA and Anne Marie VERSCHUUR, Deputy Reporters General  
Yusuke INUI, Ari LAAKKONEN and Ralph NACK, Assistants to the Reporter General

### Partial designs

Responsible Reporter(s): Yusuke INUI and Ari LAAKKONEN

National/Regional Group	Estonia
Contributors name(s)	Urmas KAULER
e-Mail contact	kauler@turvaja.ee

#### I. Current law and practice

**Please answer all questions in Part I on the basis of your Group's current law and practice.**

**1** Is protection given to Partial Designs, and if so, are the laws for the protection of Partial Designs different to the laws for the protection of designs generally? If YES, please explain.

Yes

Please Explain

Partial designs are capable of protection in Estonia. There are Industrial Design Protection Act for the protection of industrial designs generally in Estonia and some provisions in the Industrial Design Protection Regulation regarding the representation of Partial Designs. Furthermore, in Estonia legal protection is not granted to an industrial design which is a spare part or component which is not visible upon normal use when assembled in the product .

**2** How are Partial Designs specified, described and/or graphically depicted?

Parts of the industrial design shown in the reproduction to which protection is not sought must be represented by dotted or broken lines. A single magnified view is acceptable provided that the magnified part is already visible in one of the other submitted views and it is presented in a separate single view .

**2.a** Is there a visual indication, e.g. by dotted or dashed lines, or shading or colouring, of those components that are not included in the Partial Design, i.e. of the Unclaimed Part?

Yes

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Please Explain

Parts of the industrial design shown in the reproduction to which protection is not sought must be represented by dotted or broken lines. A single magnified view is acceptable provided that the magnified part is already visible in one of the other submitted views and it is presented in a separate single view .

**2.b** Is there a written description of the Product, of which the Partial Design forms part?

Yes

Please Explain

A registration application may be accompanied by a description disclosing the subject matter of the industrial design. However, reproduction itself must not contain titles, descriptive text or dimensional markings. Reproduction may only depict the protected industrial design, it must not contain any foreign objects or illustrative examples of the use of the industrial design .

**2.c** Can verbal disclaimers be used?\*

*\*Verbal disclaimers may be used in Brazil. For example, in the case of a handle for a pan, the entire pan is shown but the applicant may indicate in writing that protection is sought only for the handle.*

No

Please Explain

A verbal disclaimer may be used in the description disclosing the subject matter of the industrial design, but is alone not sufficient, as in such case parts of the industrial design shown in the reproduction to which protection is not sought must be also represented by dotted or dashed lines.

**3** Can a Partial Design forming part of a Product X be infringed by the use of the same Partial Design on a Product Y? If so, please explain any required link or nexus between X and Y.

Yes

Please Explain

However, the current law does not provide a clear answer to this question.

**4** Can a Partial Design forming part of a Product X be considered not novel in view of the same Partial Design in prior Product Y? If so, please explain any required link or nexus between X and Y.

No

Please Explain

However, the current law does not provide a clear answer to this question.

**5** Please explain if your Group's laws take into account elements outside the scope of the Partial Design (i.e. the Unclaimed Part) when considering the application of Design Constraints, such as must fit / must match exceptions.

The current law does not provide a clear answer to this question.

## II. Policy considerations and proposals for improvements of your Group's current law

**6** Are there aspects of your Group's current law or practice relating to Partial Designs that could be improved? If YES, please explain.

Yes

Please Explain

The current law and practice in this regard is very poor. The current law needs to be improved especially for the purposes of determining infringement and novelty of the Partial Design.

**7** Is the way of specifying, describing or depicting Partial Designs satisfactory?

No

Please Explain

There are a number of permissible ways to exclude certain features from the scope of protection afforded to a registered design, but Estonian law is limited by dotted or broken lines only. Although dotted or broken lines are the preferred disclaimer, they cannot always be used due to technical reasons. Furthermore, the applicant may need to provide complementary/additional views in order to further disclose the features of the design.

**8** Should the Unclaimed Part influence the protection of the parts of the design that are claimed? Please explain why or why not.

Yes

Please Explain

All features of the design as a whole must be considered, including the Unclaimed Part. The Unclaimed Part can be used to interpret the product that embodies the Partial Design or the relationship between the environment surrounding the claimed portion and the claimed portion itself.

**9** Should Design Constraints restrict the subsistence and scope of protection of Partial Designs? Please explain why or why not.

Yes

Please Explain

Design Constraints should restrict the subsistence and scope of protection of Partial Designs. However, this aspect must be determined on a case-by-case basis.

**10** Should the assessment of whether a design is for a portion of a whole Product, i.e. that design is a Partial Design, take into account:

**0.a** the design as shown and any Unclaimed Part; and/or

Yes

Please Explain

**Both aspects need to be taken into account .**

**0.b** whether the Product is normally sold separately?

Yes

Please Explain

**Both aspects need to be taken into account .**

**11** Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

No

Please Explain

### III. Proposals for harmonisation

***Please consult with relevant in-house / industry members of your Group in responding to Part III.***

**12** Should a Partial Design be registrable as an independent design?

**13** Is harmonisation of the law of Partial Designs desirable?

***If YES, please respond to the following questions without regard to your Group's current law or practice.***

***Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.***

**14** Please propose a suitable framework for specifying, describing and/or graphically depicting (a) the Partial Design and (b) the Unclaimed Part.

**15** Taking the example of a Partial Design for a handle for a pan, and an accused product consisting of a sieve with the same handle, the:

- Unclaimed Part (UP) of the Partial Design is the pan without the handle;
- Surrounding Context (SC) is the part of the accused product without the protected Partial Design, i.e. the sieve without the handle,

Please explain whether differences between the SC and UP should be relevant when considering the overall impressions of the accused product and the Partial Design, in the following circumstances. In each case, please briefly explain why.

**5.a** SC is the same as UP

**5.b** SC is not the same as UP, but SC and UP relate to products that are used in the same way

**5.c** SC is not the same as UP, but SC and UP relate to products that look the same

**5.d** SC is not the same as UP, but SC and UP relate to products that categorised in the same way when registering designs

**5.e** SC is not the same as UP, and SC and UP are entirely unconnected.

**16** In light of your answers to Question 15, please propose appropriate rules specifying whether and how the Unclaimed Part should be taken into account when analysing the overall impression of a Partial Design for both individual character and infringement.

**17** Please propose appropriate rules specifying whether and how Design Constraints arising from the Unclaimed Part should affect a Partial Design. In particular, please explain whether and how must fit / must match Design Constraints affect Partial Designs.

**18** Please comment on any additional issues concerning any aspect of Partial Designs you consider relevant to this Study Question.

**19** Please indicate which industry sector views are included in your Group's answers to Part III.