



Submission date: 29th June 2016

2016 – Study Question (Designs)

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Requirements for protection of designs

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Date	29-06-2016

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:

Law No. 82 of 2002 concerning Protection of Intellectual Property (“Intellectual Property Law”) recognizes and protects designs that are defined as any composition of lines or any three-dimensional form whether or not associated with colors provided that such composition or form gives a special appearance that can be characterized as novel and is industrially applicable

- 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.

Intellectual Property Law calls the right described in Question 1 “industrial designs and models”.

- 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

b) non-obviousness

c) inventive step

d) individual character

e) originality

f) aesthetic

g) ornamental

h) other, namely ...

1) Industrial applicability

2) The design cannot include any religious slogans or symbols, stamps or flags of Egypt or other foreign states, or the use of which may violate public order or public morality (Article 124)

3) Designs cannot be identical, similar or closely resemble a registered trademark or a well-known mark (Article 124).

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:

Article 124 of the Intellectual Property Law states that it is not permissible to register an industrial design or model that is usually required for technical or functional considerations for the product.

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

If the overall appearance of the design is dictated solely by its technical function, it does not involve any novelty or creativity. It may also prevent others whose products have the same functionality to use the same design.

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

We are of the opinion that this leads to the same concern arising out of (a) above.

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?

no

Please explain:

The sole limitation regarding functionality is the limitation mentioned in Article 124 which applies to the design as a whole not portions of it. It is noted that the Trademarks and Industrial Model and Designs Administration ("Administration") can order the applicant to amend the design in order to comply with the requirement of Article 124. In event applicant does not amend the application accordingly, the application is considered relinquished.

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

The law does not provide sufficient criteria or guidelines, leaving the Administration and courts with wide discretion

g) other, namely ...

Intellectual Property Law does not give that much of information on the criteria of deciding whether a design has a functional consideration. The Administration has broad discretion in this regard. However, the decision of the Administration to refuse registration of a design must be justified and the Intellectual Property Law grants the applicant the opportunity to file a complaint against such decision. If the Complaints Committee refuses the complaint, the applicant can raise the matter for litigation before Administrative Court.

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"

The definition of a design may be amended to clarify in further detail its elements, thereby reducing uncertainty to holders of IPRs.

b) the requirements for protection of a design

The definition of a design may be amended to clarify in further detail its elements, thereby reducing uncertainty to holders of IPRs.

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

There is considerable lack of information about the criteria of novelty and functionality of a design. Law No. 132 of 1949 concerning registration of industrial designs – which was repealed and replaced by the current Intellectual Property Law of 2002 – did not include or address novelty and non-functionality as requirements for designs. These are new requirements imposed by the Intellectual Property Law of 2002. Therefore, there is still insufficient judicial precedents, jurisprudence and administrative practices to detail these requirements.

10) Are there any other policy considerations and/or proposals for improvement to your current law falling within the scope of this Study Question?

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:

Harmonisation in all three areas is desired. As the guidelines show, there are several differences between different jurisdictions and this is not beneficial to rightholders.

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?

yes

Please explain:

Owners of industrial design with cross-border business will benefit from harmonization of the definition of industrial design

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

Industrial design

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

An industrial design worthy of protection should be novel

b) non-obviousness

It should involve some creativity

c) inventive step

d) individual character

It should have an individual character that helps promote the underlying product

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?

yes

Please explain:

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?

yes

Please explain:

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)

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

Egyptian Intellectual Property Law recognizes and protects designs that are defined as any composition of lines or any three-dimensional form whether or not associated with colors provided that such composition or form gives special appearance that can be characterized as novel and industrially applicable. The law requires: novelty, individual character, originality, ornamental, industrial applicability, and that the design does not include an religious or state symbols or otherwise violate public order or morality or is otherwise similar or losely resemble a registered or well-known trademark. Designs solely dictated by functional consdiertions are not registrable. The law does not provide sufficient guidelines regarding the criteria for deciding whether a design has a functional consideration, therefore the Administration as well as courts have wide discretion. It is therefore recommended that the law be amended to clarify issues of novelty and functionality. International harmonisation is desirable for the definition of a design, the requirements for its protection, and the treatment of functionality; that is to provide adequate protection and epectation for owners of industrial designs with cross-border businesses