

2018 AIPPI World Congress - Cancún
Adopted Resolution
September 26, 2018

Resolution

2018 – Study Question (Designs)

Partial designs

Background:

- 1) Designs protecting the appearance of a whole product were discussed in AIPPI's Resolution on "Requirements for protection of designs" (Milan, 2016), hereafter referred to as the **Milan Resolution**. Partial designs, being a portion or portions of a whole product, were excluded from the Milan Resolution. The objective of this Resolution is to address such partial designs.
- 2) For the purpose of this Resolution:
 - **Product** is an object or article of manufacture;
 - **Design** means the overall visual appearance of a Product including any ornamentation;
 - **Partial Design** is a design for a portion or portions of a whole Product. In particular, a Partial Design is a design where less than the whole Product depicted is claimed. Where the claimed design is depicted and described as being a whole Product, that design is not regarded as a Partial Design for the purpose of this Resolution;
 - the **Claimed Part** of a Product is the part or parts of the Product which is claimed as a Partial Design;
 - the **Unclaimed Part** of a Product is the part or parts of the Product which is not claimed as a Partial Design;
 - the **Surrounding Context** of a prior design or an accused product is the part or parts of the prior design or accused product that do not correspond to the Claimed Part, i.e. they are outside the Partial Design; and

- ***Design Corpus*** refers to the relevant set of prior art which has been made available to the public.
- 3) This Resolution:
 - provides for uniform methods of defining the Claimed Part of Partial Designs graphically, by disclaimer or otherwise; and
 - addresses the role and relevance of the Unclaimed Part and the Surrounding Context.
 - 4) 40 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see links below).
 - 5) At the AIPPI World Congress in Cancun in September 2018, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

- 1) Design protection should be available, by way of registration, for Partial Designs. Such registered designs protect only the overall visual appearance (including ornamentation) of the Claimed Part.
- 2) The Claimed Part and Unclaimed Part of Partial Designs should be explicitly indicated, including using the following methods:
 - a) Graphic or photographic representations are preferred.
 - b) Visual disclaimers must be used to indicate the Unclaimed Part. The visual disclaimers must clearly indicate that protection is not being sought for the Unclaimed Part. A written description may optionally be used to clarify a visual disclaimer.
 - c) Visual disclaimers of the Unclaimed Part shall be shown consistently in all the views in which the Unclaimed Part appears.
 - d) Broken lines are the preferred form of visual disclaimer, and may be used to indicate the Unclaimed Part, with the Claimed Part indicated with continuous lines.
 - e) Alternatively, when broken lines are not used, for example due to technical reasons (such as, when they are used to indicate stitching on clothing or

patterns, or where photographs are used), other visual disclaimers can be used, including:

- (i) colour shading, whereby contrasting colour tones can be used to obscure the Unclaimed Part;
 - (ii) boundaries (e.g.: a distinct visual border such as a red outline) to indicate that only the portion inside that boundary forms the Claimed Part; and
 - (iii) blurring, whereby the Unclaimed Part is obscured.
- 3) In determining the nature and use, the Design Corpus, and the relevant observer of the Product to which the Partial Design is directed, consideration should be given to the Claimed Part and the Unclaimed Part. The validity and scope of protection of the Partial Design is assessed through the eyes of that relevant observer of that Product, considering exclusively the Claimed Part.
- 4) In the assessment of the overall impression created by a prior design (validity) and an accused product (infringement), the Surrounding Context need not be excluded.
- 5) The Milan Resolution shall apply to registered Partial Designs mutatis mutandis.

Links:

- [Study Guidelines](#)
- [Summary Report](#)
- [Reports of National and Regional Groups and Independent Members](#)