

Design Rights

The term "design" is used to refer to the visual appearance of industrial or handicraft products. The features of appearance which are relevant may be the shape of the product or part of the product, or may be decoration on the surface of the article. For example, the shape of the traditional "Coca-Cola" bottle or of the studs on a "Lego" brick are design features of the first type, while a floral decoration on a teacup or the pattern of a carpet are design features of the second type.

In the United Kingdom, there are four types of protection which may be relevant.

Registered Designs

A Registered Design is a right granted by the Patent Office which gives the proprietor the exclusive right to make products incorporating the design for a term of years. A Registered Design is infringed by anyone making or selling products which are identical or closely similar in appearance, regardless of whether or not this occurred because of actual copying.

A Registered Design can only be validly granted for a design which has "individual character". This should exclude from the Registered Design system those articles which are entirely lacking in any aesthetic appeal or are completely commonplace.

The maximum term of a Registered Design is 25 years, provided that renewal fees are paid at intervals of 5 years.

Registered Design rights can only be acquired by lodging an official application at the Patent Office, and the design must be new at the date of application. However, in assessing novelty the Patent Office will disregard any disclosure by the design proprietor up to one year before the application is filed. It is therefore possible to publicise the design before applying for registration, but it is prudent to apply to register at an early date.

UK Unregistered Design Right

This is a right to bring legal action to prevent copying of features of shape or configuration of industrially produced articles. It arises automatically when a design is created, and does not require any form of official application or registration. However, this right only exists if the designer meets certain nationality requirements.

Unregistered Design Right is of a relatively narrow nature. It protects only against actual copying and is not infringed by independent creation of a similar design. Its life is only 10 years from the first marketing of the design, and during the second half of that term any person can have a compulsory licence on payment of reasonable royalties.

There are also exclusions which deny Unregistered Design Right protection to features which are required to allow the article to interfit with or match the shape of another article with which it is used; this generally precludes Unregistered Design Right protection for spare parts.

There are no aesthetic requirements for Unregistered Design Right protection: it is available for entirely functional and utilitarian articles.

Unregistered Design Right also protects "semiconductor topographies", that is the structure of integrated circuits and masks and the like used for their production.

EU Unregistered Design Right

With effect from 6 March 2002, there is another Unregistered Design Right throughout the EU (including the UK). This also arises automatically and gives protection against actual copying.

It differs from the UK national right in that the term of protection is only three years, and it applies to features of both shape and decoration. Only designs having novelty and individual character qualify for this protection.

Other countries

All countries have some system equivalent to Registered Designs in the UK, but the details vary considerably. In the EU the life of the protection is 25 years, as in the UK, but in many other countries the protection is shorter than here, often 10 years in total. There is an International Convention which allows a foreign Registered Design application to be filed up to six months from a UK application but

retaining the benefit of the original UK application date.

In most countries outside the EU, the appearance of an article is either protected by Registered Design or is unprotected, but in some countries it is possible to prevent "slavish copying" under laws of unfair competition. There is protection for semiconductor topographies in most major countries (including USA and Japan) but this generally requires some form of registration.