

Intellectual Property and the Protection of Industrial Designs By Alistair Bugeja

Share

jcmwebs removed name Mon, 09/27/2010 - 19:57



Industrial Designs is one of the four main branches of Intellectual Property. Many products are neither inventive, nor satisfy the requirements of copyright works, but nevertheless have an aesthetic or functional value, and Industrial Designs is intended to fill this gap. Design can range from functional mechanical spare parts for aircrafts to aesthetic designs for instant coffee jugs. Considering the amount of work for research and development to produce and ultimately market the product, one quickly realises that there is a significant economic interest in the design itself, which ought to be protected.

Design rights are protected under Maltese law by virtue of the Patents and Designs Act, modelled on EC Directive 98/71/EC, and since Malta joined the EU, EC Regulation 6/2002 has direct effect. The Regulation creates a dual system of design protection, which benefits both registered designs registered through the Office of Harmonization for the Internal Market (OHIM) office in Alicante, Spain, and unregistered designs.

The OHIM will examine whether the formal requirements and the definition of design have been satisfied. Novelty and individual character will not be delved into. Yet third parties can bring invalidity proceedings before the Office if they consider that the design should not be registered. Appeals against a decision made by OHIM, such as a decision to refuse registration can be brought before the OHIM Boards of Appeal. A further appeal can then be brought before the European

Court of Justice, via the Court of First Instance and, ultimately before the Court of Justice itself. Invalidity can also be raised as a counterclaim before the national courts.

Once a community design is registered, it will be protected in all twenty-seven Member States. The obvious drawback is that, should the design be found to be invalid, the declaration of invalidity will also extend throughout the EU. The process of registration is relatively quick and inexpensive, to be easily accessible for small and medium enterprises and large companies alike. If an application is successful the term of protection will be granted for five years which start to run from the day the application was filed. The applicant has an option to renew this protection for one or more periods of five years each, up to a maximum of twenty-five years.

To complement the system of registration, the Regulation also created the community unregistered design rights. There are many instances where registration of the product will be costly and it will not have a long-term use such as in clothes fashion. Another advantage of unregistered design rights is that the manufacturer can test the market for the design first, before deciding whether to proceed with registration. The law provides for a three-year term of protection, which starts to run on the date when the design was first made available to the public. Infringement of the Community unregistered design right occurs in the same way as infringement of the registered right.

Since the introduction of the Registered Community Design in 2003, OHIM has registered more than 370,000 designs, of which only 42 come from Malta (equivalent to 0.01% of the registered designs coming from all Member States). This figure is quite low when compared to other countries, including non-EU States. One hopes that initiatives from the National Intellectual Property Office (which forms part of the Commerce Division in the Ministry for Competitiveness and Communications) continue to raise awareness of such rights in order to provide much needed protection for research and development which is carried out locally.