1st International Congress and Exhibition on
Sustainability in Music, Art,
Textile and Fashion (ICESMATF 2023)
January, 26-27 Madrid, SPAIN

Sui Generis Systems Protection for Design: Cumulation, Partial Cumulation and Demarcation of Legal Regimes

Senior Lecturer Olga Ipatova,
Brest State Technical University, Belarus

Abstract

The use of design decisions is regulated in most countries by sui generis legislation (special legislation), which is associated with the uniqueness of the legal design of an industrial design, its "incompatibility" with the established legal classification of intellectual property objects: inventions and utility models protect the technical side of the product, copyright and related rights - a form of expression of thought. The emergence of a special sui generis protection regime for industrial design, embodying aesthetic and utilitarian principles, is due to the similarity of industrial designs with works of art (copyright objects) and trademarks and, as a result, "mixing", "intersection" of copyright and industrial property.

Currently, in the world legal order, there are three systems for the correlation of copyright and patent forms of protection for designs: cumulative protection, partial cumulative protection, and delimitation of protection regimes. Speaking about the patent form of protection, we need to look more broadly - to talk about the protection of industrial property rights, including both the trademark regime and the regime of protection against unfair competition.

The position of supporters of the partial operation of design protection regimes (partial cumulation) is based on the thesis that full copyright protection is not required, inappropriate and harmful for a number of reasons. First, despite the lack of full copyright protection, the power of copyright is sufficient to support an ever-growing design industry. Secondly, current design laws also provide some protection for design decisions. Thirdly, copyright is incompatible with industry (mass production) because of the doctrine of utilitarian (useful) things and the difficulty of distinguishing original works from non-original ones. The fourth reason is that ensuring full copyright protection will lead to more litigation, more fear of creativity, and more business value.

Because of this, an intermediate option - a system for the protection of special industrial designs with partial cumulation - is currently the most acceptable for most legal orders. This special design protection system only protects designs that are "exceptionally original". This level of protection and the high threshold for legal liability for infringement will encourage designers to be more innovative.

Such a sui generis system would remove only a small, exclusive class of industrial designs from the public domain. All these factors will only promote competition, reduce the range of opportunities for abuse of the right - the claims of authors for violation of their right to inviolability and the right to processing. Such a high threshold does not invalidate the protection system, as it aims to protect against products that could potentially damage the market for original designs due to confusion that could result from copying. Only a small, limited number of designs deserve protection under the sui generis industrial designs system. Otherwise, a legal basis will be created for numerous lawsuits that will increase prices for manufactured products.

Key words: sui generis law of design, copyright, trademark, industrial property, cumulation of legal regimes, partial cumulation of legal regimes, demarcation of legal regimes.

Introduction

Design is the driving force behind the world's largest industries. This industry stimulates the economy and provides employment for millions of people. This area is very productive in terms of profit and creative output, despite the fact that designs have a relatively low degree of copyright protection.

In a competitive environment, the design of products, the interior of a store, a website or a mobile application is a key moment, as the consumer associates with a certain quality, comfort, aesthetics, which is backed by a certain manufacturer or a certain service / product line. Design determines not only the attractiveness of a product or site for the consumer, but also performs an identifying function, protecting both the manufacturer and the consumer's right to a quality product or service in a competitive environment.

Products that use a well-known design in bad faith will be sold at a lower price because competitors are not required to recoup the funds invested in its development. This can lead to loss of market share and damage to the goodwill of the company and its product. Thus, the struggle for the consumer ultimately comes down to protecting the design of your product. In order for the product to be recognizable and have characteristic properties and distinctive features, not only manufacturers are interested, but also consumers.

The relevance of the issues considered in this paper is due to the focus on solving one of the most important problems of socio-economic development - the involvement in the economic circulation of such widely used objects of intellectual property as works of design and applied art, industrial designs and trademarks, which have now become the main tool in the competitive struggle of business entities. The objective need for a legal mechanism for the protection of product design is due to the need to saturate the market with goods and services to meet the needs of the population. The main task of legal regulation is to protect the rights of the manufacturer and prevent the possibility of misleading the consumer.

In the context of the development of the information (digital) society, the protection of intellectual property objects (the Strategy of the Republic of Belarus in the field of intellectual property until 2030) becomes a priority. The issues of protection and protection of intellectual property rights in the digital environment are becoming a priority. Thus, on June 7, 2019, the Directive on Copyright in the Digital Single Market of the European Union (EU) (Directive EU 2019/790) came into force. Within the framework of the Eurasian Economic Union (EAEU) and the Commonwealth of Independent States (CIS), coordinated approaches are being developed to combat infringement of intellectual property rights in the global computer network Internet (State Program "Digital Development of Belarus" for 2021-2025; Priority areas of scientific, scientific, technical and innovative activities for 2021–2025 in the Republic of Belarus).

The complexity of design protection is that it performs three functions - artistic / aesthetic, utilitarian (industrial, functional), identifying. Therefore, it is protected as a work of applied art and design (copyright), as an industrial design (industrial property / patent right) and as a trademark (means of individualization as industrial property). **Therefore, there is a mixture of legal regimes**.

So, both industrial designs (volumetric and planar), and trademarks (volumetric and planar) determine the appearance of the goods. According to **the doctrine of functionality**, trademarks perform a distinctive function. **The doctrine of aesthetic functionality** defines the function of an industrial design as enhancing the aesthetic properties of a product without necessarily being distinctive. However, **industrial designs**, due to their features such as **novelty and originality** (which means a significant difference from analogues), **perform the same function as trademarks - they identify** a product / service and / or its manufacturer. This is enshrined in the legislative level of a number of countries. Thus, in the legislation of the Republic of Belarus, it is a violation to use an industrial design in which *the product makes the same general impression as the patented industrial design*, provided that the products have a similar purpose. (Law on Patents of the Republic of Belarus: art. 9; part 2, par. 3, art. 36).

A similar rule exists in the legislation of the Republic of Belarus in relation to trademarks: the use of a trademark or *a designation confusingly similar to it* without the permission of the trademark owner is recognized as a violation of the exclusive right to a trademark (Law of the Republic of Belarus on Trademarks: par. 3 of art. .3).

The difference between these two methods (regimes) of protection relates to such a condition for granting protection as novelty: for an industrial design - absolute world novelty, for a trademark - local novelty. However, if production and/or distribution in several countries is planned, then the trademark in fact (and not in procedure) also needs to be new in a number of countries. The differences concern both the procedure for obtaining and the conditions for the operation of protection.

Design refers to a separate type of copyright objects - works of applied art and design. It is an object of copyright, because it is the result of creative activity, recognized as such, regardless of the purpose and dignity, as well as the method of expression. According to copyright, the use of a work of design, including in the case of its use as a trademark or industrial design, is allowed *with the consent of the copyright holder*. *However*, the presence *of patent law norms* on the grace period (filing an application for a trademark within 6 months of the date of promulgation (Law on Patents of the Republic of Belarus: part 5, par. 1, art. 4; Law of the Republic of Belarus on Trademarks: par.3, art. 7) and the absence of the need to indicate the consent of the author in the application for a trademark (Regulations on the procedure for registering a trademark of the Republic of Belarus No 1719) *they say the opposite*.

Overcoming the problems of confusion of legal regimes is proposed through three systems of protection: cumulative, partial cumulative and demarcation.

The object of the study are: legal regimes of intellectual property objects that protect the design of products - copyright, industrial designs and trademarks; design protection systems - cumulation, partial cumulation and demarcation of these legal regimes. **The subject of the study** is the international legal acts and national legislation of a number of countries (the Republic of Belarus, the Russian Federation, Great Britain, the USA, Australia, Japan), which determine the systems of design protection.

The purpose of the study is to highlight the features of three protection systems - cumulation or partial demarcation of the above-mentioned legal regimes or their demarcation.

The scientific novelty lies in the fact that in the course of a comprehensive study, through a comparative analysis of the three industrial design protection systems, the reasons for the specificity, "non-embedding" of industrial designs and trademarks in the logic of the system of intellectual property objects, as well as trends in judicial practice, indicating an ambiguous understanding cumulation of legal regimes. This situation is facilitated by gaps in copyright law and its relationship with patent law (industrial property law) and the identity of the requirements of the legislation for industrial designs, works of design (applied art) and, with some exceptions, trademarks - originality, uniqueness, recognition. The concept of intellectual property that we propose would eliminate the need for special sui generis regimes.

The theoretical basis of the study is the provisions and conclusions contained in the works of legal scholars and legal practitioners. Empirical material is presented in the paper in the form of references to specific court decisions taken on the protection of product design.

Issues related to works as objects of copyright, industrial designs and trademarks, the relationship between copyright and patent rights (industrial property rights), the cumulation of legal regimes are discussed in the works of foreign authors: O. F. Afori, A. Arundel, M. Boldrin, D. K. Levine, D. H. Brean , E. Carrington, T. Burr, B. Lapini, A. Cook, M. A. Cusumano, B. D'Ippolito, P. Dickson, W. Schneier, P. Lawrence, T.-G. Durkin, J. Schirk, T. Jackson, Dennis S. Karjala, Dinwoodie Graeme B., Mark D. Janis, A.H. Khoury, J. Lahore, K. Li, Mark McKenna, M.C. Miller, S. Monseau, J. Moultrie, F. Livesey, S.S. Rahman, C. Rammer, J.S. Rothand, D. Jacoby, P. J. Saidman, L. Schickl, U. Suthersanen, J.P.s.a. Tsai, E.Y. Xia et al. Among Russian-speaking authors, incl. Belarusians are: R. D. Avvalova, O. L. Alekseeva, Yu. N. Andreev, S. A. Babkin, E. I. Basalai, I. A. Blizets, V. I. Vintkovsky, A. S. Vorozhevich E. P. Gavrilov, V. P. Gaiduk, N. L. Guest, T. M. Gonchar, S. P. Grishaev, I. A. Zenin, D. V. Ivanova, O. V. Ipatova, T. L. Kalacheva, O. V. Kalyatin, V. I. Kudashov, S. S. Losev, V. M. Melnikov, G. A. Negulyaev, Yu. V. Nechepurenko, M. V. Pyanova, A. P. Rabets, M. A. Rozhkova, A. P. Sergeev, S. A. Sudarikov, A. P. Yakimaho.

In the process of researching this topic, general (methods of abstraction, deduction and induction, analysis and synthesis, ascent from the abstract to the concrete, historical method) and special methods (formal-legal, comparative-legal, structural-legal and structural-functional) were used. The work widely uses a systematic approach, expressed in the consideration of intellectual property as a system consisting of interrelated institutions, sub-institutions and norms, in the analysis of the mechanism of legal regulation in the field of intellectual property.

Industrial designs (***eng. Design, Industrial Design***) is the visually perceived appearance of utilitarian products. Industrial designs are designed to make utilitarian goods more aesthetic and appealing to a potential buyer without violating the functionality of the product. They inextricably *combine functional and non-functional (aesthetic) features*. **Industrial designs are closely related to works of art and can be equated with works of applied art and design**. They can be seen as a form of artistic expression. Although industrial designs are usually embodied in industrial (mass) scale goods, they can also be embodied in handicrafts. Crafts and other forms of traditional art expressed in tangible objects are **automatically copyrighted as works of art or applied art, and may also be protected as industrial designs**.

In most jurisdictions, due to the versatility of design, there are at least three regimes of protection for design solutions: **copyright, industrial designs, and trademarks**. The fourth mode is the regime of protecting information, including intellectual property, **from unfair competition**.

The protection of objects that embody aesthetic and utilitarian principles can lead to uncertainty in the question of the relationship between the protection regimes for the products of this activity. Approaches to solving this problem Issues vary greatly between jurisdictions.

The use of design solutions is regulated in most countries by **sui generis legislation (special legislation)**, which is associated with the uniqueness of the legal design of an industrial design, its "incompatibility" with the established legal classification of intellectual property objects: inventions and utility models protect the technical side of the product, copyright and related rights - a form of expression of thought. The emergence of a special sui generis protection regime for industrial design is due to the similarity of industrial designs with works of art (objects of copyright) and trademarks and, therefore, "mixing", "intersection" of copyright and industrial property.

Currently, there are **three systems of correlation between copyright and patent forms of design protection in the world legal order: cumulative protection, partial cumulative protection, demarcation of protection regimes**. Speaking about the patent form of protection, you *need to look wider - talk about the protection of industrial property rights*, including the institution of means of individualization: trademarks, trade names, geographical indications and other means that have not yet received protection in the Republic of Belarus (commercial designations, domain names, corporate identity). and etc.).

Under most sui generis industrial design laws, exclusive rights to an industrial design are acquired by registration or deposit. The approach ***to design protection*** in some countries is ***similar to that of the patent system*** and involves longer and more complex registration procedures (eg USA, Russia). Another approach adheres to ***the principle of copyright - protection based on creation or fixation and provides a relatively simple deposit or registration procedure***, free from the formalities of the industrial design protection system (for example, Belarus and the international industrial design registration system (Industrial Designs and Their Relations with Works of Applied Art and Three-Dimensional Marks (WIPO), 2002: p. 20)).

Cumulative design protection system

Cumulative industrial design protection refers to the statutory possibility of double protection of designs through copyright and patent law. However, it is worth recalling here once again that we are talking about the protection of design by **four regimes at once: copyright, patent law as an industrial design, trademark regime by the competition protection institute**. This approach is reflected in many legal orders, in particular in the legal order of the Republic of Belarus and the European Union.

At the regional level, issues of protection of industrial designs are resolved within the framework of the Eurasian Patent Office (EAPO/EAPO) and the European Union Intellectual Property Office (EUIPO). The European Patent Organization (EPO) is not an EU institution and was created to grant a single patent in the territory of its member states only for

inventions, while the EUIPO was created to protect only trademarks and industrial designs in the EU.

Protection of industrial designs and trademarks in the EU through the EUIPO is carried out through registration, after which the effect of protection extends throughout the EU (a regional application can be filed with the EUIPO or with the patent office of the participating country). But the right to obtain protection in the territory of certain states is retained by filing national applications with national patent offices.

The procedure for registering an industrial design in the **EUIPO** is similar to the procedure for patenting an industrial design in the Republic of Belarus (Law of the Republic of Belarus on patents 2002: art. 24, 28; Regulations on the procedure for drawing up an application for a patent for an industrial design in the Republic of Belarus 2011: pp.123-128, 133-134). The application is subject to a formal examination, during which it is determined whether the formal requirements have been met. Examination on the merits is reduced to checking whether the claimed solution relates to industrial designs, and it is also established whether this industrial design does not contradict public policy and moral principles. If the results of the examination are positive, the industrial design is registered and information about it is published in the EUIPO Official Bulletin (Council Regulation (EC) No 6/2002: art. 45-49).

The EU design registration is valid for 5 years from the date of filing of the application and can be subsequently renewed four times, each time for 5 years. Thus, the total duration of registration can reach 25 years (Council Regulation (EC) No 6/2002: art. 12).

EU legislation provides protection not only for registered industrial designs (registered Community design, RCD), but also for unregistered ones (unregistered Community design, UCD). An unregistered Community design shall be protected for a period of three years from the date on which the design first became publicly available within the European Union. After three years, protection cannot be renewed. The act of making it available to the public is called "disclosure". Revealing a design and being able to prove it is the key to protecting a design.

In the Republic of Belarus, design is protected by virtue of the norms of the institution of unfair competition (Law of the Republic of Belarus on Competition 2013: art. 28), and without a time limit.

Within the framework of the Eurasian Patent Organization (EAPO), which includes the Republic of Belarus, it became possible to obtain protection for industrial designs thanks to the signing in 2019 of the Protocol to the Eurasian Patent Convention (Protocol 2019 to the EAPO Convention). However, EAPO acts do not operate directly (like EU Council regulations that EUIPO is guided by), but through ratification by member states (Law of the Republic of Belarus 2021 No 137).

Like the registration of an industrial design and a trademark in the EU, a Eurasian industrial design patent is valid simultaneously on the territory of all Contracting States (Protocol 2019 to the EAPO Convention: art. 6).

If an industrial design is protected, the owner acquires the right to prevent unauthorized copying or imitation of the industrial design by third parties. This includes the right to prohibit all others *from making, offering for sale, importing, exporting, or selling any product that contains or*

applies to an industrial design. The law and practice of each country or region determines the scope of protection for a registered design.

In most member states of the Eurasian Economic Union and the European Union, industrial designs can also be protected as works of copyright. Thus, the absence of any obstacles to the cumulative protection of designs was noted in the decision of the European Court of Justice (*Cofemel – Sociedade de Vestuário SA v G-Star Raw CV (2019)*). In view of the absence of a regional unifying act regulating relations in the field of copyright, the answer to the question whether a design can be protected as a work of authorship depends on the applicable law of the EU Member States. For example, in one case, the court ruled that an industrial design registered in an EU Member State is also entitled to protection under the law on the copyright of this state, starting from the date when the industrial design was created or fixed in any objectively expressed form.In this case, the criteria for the protection of an author's work are determined by each member state of the union independently.

Copyright protection for the form of a product, which would most often qualify as a work of applied art and design, differs significantly from Member State to Member State. Obtaining copyright protection for a work of applied art in some countries (e.g. Germany, Belarus) is more difficult than in others (e.g. Austria and France) (*Meyerhoff., Lee & Kerl (2015)*) due to either the law or the prevailing judicial the practice of high demands on the work.

The copyright law of the Republic of Belarus protects works of art and design (Copyright Law of the Republic of Belarus o2011 No 262-3). The elements necessary for a work to receive copyright protection are originality, fixation in a tangible medium, and authorship.

The sui generis system of cumulation design protection also includes a regime of means of individualization (trademarks, trade corporate style, etc.). In the United States, designs can be protected through trademark and trade dress regimes (Code of Federal Regulations, title 35 (ed. 11/17/2022), chapter 37). As a general rule, the exclusive right to a trademark or corporate style can arise if the ***requirements of distinctiveness and non-functionality*** are met.

The same requirements for trademarks are imposed on the Republic of Belarus - they should not: indicate the type, quality, quantity, properties, purpose, value of goods, as well as the time, place and method of their production or sale; represent the shape of the product or its packaging, determined solely or mainly by the essence or nature of the product, the need to achieve a technical result, the essential value of the product (Law of the Republic of Belarus on Trademarks 1993: subpar. 1.4 and 1.5 par. 1 art. 5).

According to **the doctrine of aesthetic functionality**, a design cannot be protected as a trademark or corporate identity if its functional purpose is to improve the aesthetic properties of the product, while there is no acquired distinctiveness. That is, **industrial designs are about aesthetics, and trademarks are about distinctiveness**. *However, in our opinion, this is not true: industrial designs also have a distinctive ability due to their originality (protectionability condition) - a significant difference from other designs*. In addition, a non-original solution that has become recognizable to the consumer, i.e. pointing to a specific product or manufacturer, may also have a distinctive ability.

The similarity of an industrial design with trademarks exists on such a basis as a distinctive ability, provided by such requirements for industrial designs as novelty and originality. The

difference is erased by the fact that industrial designs, like trademarks, can be both three-dimensional (the shape of a product or its packaging, interface design) and planar (label, ornament). The fact of binding to a certain class of goods (**The Locarno Classification of industrial designs (LOC), The Nice Classification of goods and services (NCL)**) will also be common. The difference will be that a trademark is obtained both to identify goods and services, and an industrial design is obtained only for goods (material objects) of a certain class of goods. But this difference is leveled by a number of facts: both a trademark and an industrial design can relate to virtual forms (for example, the interface of a site or application); a trademark that identifies a service is also objectified (embodied in a tangible medium or its digital form).

Therefore, the choice of a design protection regime will be determined not by the criteria of protectability, but by the cost, complexity and duration of the procedure for obtaining protection of a particular intellectual property object.

Cumulative protection is based on the understanding of IP as information (images, thoughts, ideas) that meets the requirements of national, regional (the law of the Eurasian Economic Union, the European Union) or international law, and which can be used and objectified by any means. Therefore, **a work of art does not depreciate from its utilitarian (domestic) use, for example, on a candy wrapper or in clothing design**. Cumulative protection offers **automatic enforcement of both copyright and industrial design regime (registered and unregistered) as well as trademarks**.

However, the cumulative design protection creates the most favorable conditions for abuse of the right and obstacles to competition: having such a strong legal monopoly, the right holder can significantly prevent other bona fide participants in civil circulation from using similar results of intellectual activity. If a design is protected only by a patent for an industrial design, then only the patent holder (licensee) can prohibit the use. And the circle of such persons is limited due to the need to pay patent fees. Copyright, on the other hand, operates by virtue of the fact of the creation, and not the issuance of a title of protection (patent, certificate) and the absence of a system of mandatory state registration of objects of copyright creates a situation of abuse of the right by an unlimited circle of persons. claiming copyright on the design.

System demarcation of design protection regimes

The demarcation of regimes, based on the theory of "separability" or "dissociation", offers a clear separation of protection regimes, according to which industrial designs - information (images) that determine the appearance of industrial and / or handicraft (handicraft) production - **can be protected only by special legislation**, specially designed for the design applied in the industry. *Such a position both "breaks" the construction of the concept of IP as information that can be reproduced in any way, and devalues works of art and design used in the manufacture of things (creation of a product), denying them the right to be called objects of copyright.*

It is not allowed to duplicate the protection of industrial designs as inventions and utility models, which are only technical solutions. The patent system supersedes all other forms of IP when it comes to protecting technical solutions and functional devices (inventions and utility models). Functional or technical characteristics of the product are not protected by design protection. Therefore, there **is no competition between the regimes for the protection of industrial designs,**

copyright, trademark protection, on the one hand, and the regime for patent protection of inventions and utility models, on the other hand.

It is worth recognizing that the system of complete demarcation (demarcation) of protection regimes for design solutions in its pure form is extremely **rare**, therefore, the systems of cumulative and partial cumulative protection of industrial design are most widely used.

Partial cumulative design protection system

The next approach is called partial cumulative protection and **is a more balanced form of legal regulation of relations over design**. Partial coincidence of regimes (partial cumulation) implies a **partial** "overlay" of copyright, industrial designs, trademarks, i.e. **application of these regimes under certain conditions**. Thus, partial cumulation makes it possible to protect copyrights for industrial designs only if they meet high standards of works of art (not designated as requirements for copyright objects in the legislation of the Republic of Belarus, but taking place in judicial practice (Ipatova, 2019, pp.33–35).

In Australia, as a general rule, a design that meets the criteria for industrial design protection may also be registered as a trademark, provided that it has acquired distinctiveness. Examples of such design solutions include perfume and other bottles, toys, confectionery, etc. At the same time, the Trade Mark Act of 1995 (Trade Mark Act of Australia 1995) includes a provision relating to trademarks containing products or substances that were previously used on the basis of a patent (as an industrial design). In accordance with section 25 of the law under consideration, **the validity of a trademark is terminated after 2 years after the expiration of the patent for an industrial design**. Thus, the law limits the validity of the exclusive right to a trademark in time if the right to it intersects with the right to an industrial design (or other patent rights).

The concept of partial cumulation is most common in the countries of the Anglo-Saxon system of law.

U.S. copyright law protects crafts (decorations, tableware or tapestry designs), it does not protect "useful items" (utility or functional items) (17 U.S.C. (ed. 2016), section 17, § 101), such like cars or televisions, which, while attractively shaped, are primarily functional. ***A "useful thing" is "a thing that has an intrinsic [technical] utilitarian function that is not only to depict the appearance of a product or convey information"*** (17 U.S.C. (ed. 2016), title 17, § 101).

Copyright and patent law under US copyright law (17 U.S.C. (ed. 2016), title 17, chapter 13, § 1329) **do not overlap**: *the grant of a patent on an original design of a manufactured product terminates any copyright protection of the original design*. At the same time, in relation to aesthetic-utility products, copyright protection is possible only if their form or configuration ***can be mentally separated from the product itself*** in which they are embodied. The design of a useful product is only included in paintings, drawings and sculptures if it can be identified separately from that useful product and can exist independently of the utilitarian aspects of the product (17 U.S.C. (ed. 2016), section 17, chapter 1, § 101). Works of art, which for some reason also include works of sculpture, are protected by copyright, that is, they are considered works if they are made in numbers of **no more than 200 pieces** and which are sequentially numbered by the

author and provided with the signature or other identifying mark of the author (17 U.S.C. (ed. 2016), § 101).

In addition, the jurisprudence has developed a position according to which an *individual element of an industrial design can also be protected as an art work in the event* of its possible *independent existence*, for example, a design element on a uniform (*Star Athletica, LLC v. Varsity Brands, Inc. (2017)*). As another example, Mather v. Stein clarifies the concept of separability: The U.S. Supreme Court held that "the Balinese figurines that formed the basis of the lamp were copyrighted because the aesthetic work in question (the statuette) was separable from the useful object (the lamp)" (*Mazer v. Stein (1954)*).

After **"physical separability"** in this Mather case, the notion of **"conceptual separability"** was later revealed in Kieselstein-Cord v. Accessories by Pearl Inc. In this case, the Court of Appeal held that "the standard of separability does not require 'physical' separability, but may also include 'conceptual' separability". Conceptual separability allowed the court to distinguish between the aesthetic design of the belt buckles that were the subject of the trial and their utilitarian function. This led the court to conclude that the conceptually separable artistic elements of belt buckles should be copyrighted (*Kieselstein-Cord v. Accessories by Pearl, Inc. (2d Cir. 1980)*).

It is important to note that the conceptual "separation" of design from the object in which it is embodied is possible **if the object was originally a work of art and only later began to be used as a consumer product or placed on it**. For example, figurines could be used as tableware. In such a case, they will be protected as sculptures, despite their utilitarian use. In such a system of protection, most design decisions - the shape or configuration of goods - will not be subject to copyright, because. it will be difficult to separate them from the very goods for which it was developed. **US law allows partial cumulation** in relation to works of design, applied art, etc., however, *most objects of design activity are still protected only as industrial designs*.

The UK also has a **partial cumulation system** (Copyright, Designs and Patents Act of UK 1988). Under section 51(1) of the current Copyright, Designs and Patents Act, making or copying a product that embodies an unregistered industrial design (an artistic design of the form or configuration of a product) does not constitute an infringement of copyright, except for works of art and fonts. In addition, section 236 of this law **excludes the possibility of double infringement of copyright and patent rights to a design** - mechanisms have been developed aimed at preventing double punishment for infringement of intellectual rights to a design in case of their intersection.

In Australia, **industrial design patent protection has prevailed for many years** (Designs Act of Australia 2003). The main idea was that the industrial design regime enshrined in the Designs Act 2003 was a more appropriate form of legal protection for mass-produced products. The relationship between the protection of works and industrial designs is governed by the Copyright Act 1968 (Designs Act of Australia 2003: division 8 part III). Artistic copyright is not protected in relation to works that have been applied on an industrial scale (Copyright Act of Australia 1968: art. 78). *An industrial application is considered to be the manufacture **of 50 or more products** in which the design has been embodied* (Protecting your designs, 2010: p. 1).

So openly stated about the policy of protectionism against manufacturers. Such a position from the point of view of justice is possible due to the argument that either the author, or his employer, or, with their permission, a third party (Copyright Act of Australia 1968: art. 13), as well as the Republic of Belarus (Law of the Republic of Belarus on patents 2002: par. 2 art. 6). With regard to trademarks, the consent of the author is not required - the author is not even indicated in the application (Law of the Republic of Belarus on Trademarks and Service Marks 1993).

However, the law allows for several **exceptions to the general rule of regime demarcation**:

- ***cumulative*** protection applies to ***two-dimensional works*** (except for two-dimensional drawings) (and industrial designs can also be two-dimensional);
- ***"works of artistic craft" and architectural works*** (except small portable buildings and swimming pools) there is ***a choice*** between copyright and patent form of protection, but registration of an industrial design, as a rule, leads to the loss of copyright (Copyright Act of Australia 1968).

It should be noted that the mechanisms of partial cumulation (demarcation) of design protection regimes are also formed in other legal orders.

For example, in **Japan**, industrial designs are traditionally not subject to copyright protection. A design as ***a work of applied art can only be protected by copyright if it has a high degree of artistry*** and craftsmanship (*Case No. 2016 (Ne) 10059*).

At the same time, in one of the cases, the protectionability of a child seat as an object of copyright was recognized. The Court held that the statutory wording "expressed in a creative way" used in paras. 1 p. i art. 2 of the copyright law, means the following: "The expression in question need not be creative in the strict sense of the term, but must exhibit certain *unique authoring characteristics*" (*Case No. 2014 (Ne) 10063 (2015)*).

And although this case is not like other cases in the Japanese court, it is possible to determine the range for determining the attributes of a work as an object of copyright: from a high degree of skill *to the uniqueness of the author's handwriting*. Thus, *cumulative design protection in Japan is possible only in exceptional cases*.

Partial cumulation is a way to preserve the legal construction of IP, defined by the Paris Convention for the Protection of Industrial Property of 1883, ***designed for the industrial economy***: copyright protects the form of expression of information, and the ideas themselves that can make a profit, i.e. applicable for production on an industrial scale, protected by industrial property rights. ***But it is more difficult to do this in the information society***, when new forms of objectification of the results of creative activity (digital, cryptographic - we are talking about the form of the form) cast doubt on the definition of the object of copyright as a form of information. In addition, **today information is no longer so much a resource as the result of mass production**.

However, the former concept has advantages - it does not allow the abuse of the right by the author and the abuse of the right to develop competition. After all, the exclusive right to the idea itself is received not by the author, but by the patent holder - the one who will start production based on this idea.

The position of supporters of partial imposition of protection regimes (**partial cumulation**) of design is based on the thesis that ***full copyright protection is not required, inappropriate and harmful*** for several reasons.

The first is that despite the lack of full copyright protection, ***the power of copyright is sufficient*** to support an ever-growing design industry. Second, **current design patent laws** also **provide some protection** for design decisions. Third, **copyright is incompatible with industry (mass production)** *due to the doctrine of utilitarian (useful) things and the difficulty of distinguishing original works from non-original ones*. The fourth reason is that the provision of full copyright protection will lead to **an increase in the number of litigation, fear of creativity and an increase in the cost of business to protect product design**.

Because of this, an intermediate option - **a system for the protection of sui generis industrial designs of partial cumulation - is the most acceptable at the moment for most legal orders.** This special design protection system only protects designs that are **"exceptionally original"**. **Originality**, *the concept of which is not disclosed in either national or international law*, **is defined and thus differs from novelty, in our opinion, as the non-obviousness of the solution, its obvious dissimilarity to the already existing one in general impression**. At the same time, originality should refer only to the appearance of the product, and not to its function. Although in the legislation of a number of countries there is a requirement for the ergonomics of industrial designs (for example, in the Russian Federation; in the Republic of Belarus this requirement was excluded from the legislation on industrial designs (Ипатова, 2021a).

At the same time, **originality should refer only to the appearance of the product, and not to its function**. Although in the legislation of a number of countries there is a requirement for the *ergonomics of industrial designs* (for example, in the Russian Federation; in the Republic of Belarus this requirement was excluded from the legislation on industrial designs (Ipatova, 2021a). However, it is difficult for designs to fulfill this requirement, as ***it is difficult to separate design from product function***. This is the difficulty of obtaining a patent if a patent examination of a sample is carried out (in Russia it is carried out, in Belarus it is no longer (Law of the Republic of Belarus on patents of 2002: art. 24; Ipatova, 2021b: p. 3)), as well as the basis for contestation and revocation of a patent. Such a definition and such regulatory requirements, being so narrow, protect only a limited and select group of designs.

This level of protection and high threshold for legal liability for infringement will lead to the following results:

- firstly, it will encourage ***designers to be more innovative***, and not just recreate and adapt previous designs, because, despite the incentives to develop new designs, there is nothing the bad news is to encourage designers to strive for higher levels of design innovation;

-second, the elevated standard of originality driven by its criteria above will make it ***easier to identify truly innovative desions***, as opposed to the current vaguely defined “little creativity” standard that sets a low threshold for protection;

- third, a high standard of protection and a high threshold for liability ***will not diminish creativity***, as many fashion designers are wary of providing a low threshold of protection.

Such a sui generis system would bring only a few exceptionally original designs out of the public domain. All these factors will only promote competition, reduce the range of opportunities for abuse of the right - the claims of authors to violate their right to inviolability and the right to processing. Such **a high threshold does not invalidate the system of protection**, as it aims to protect against products that potentially harm the market for original designs due to the confusion that may result from copying. Such an approach is necessary, ***otherwise, a legal basis will be created for numerous lawsuits that will raise prices for manufactured products***. Few designers can sincerely claim that their designs meet the rigorous standards of exceptional originality. Consequently, there will be a significantly smaller number of plaintiffs willing to expend resources to prosecute a wrongdoing that is unlikely to meet this high legal "standard".

A clear definition of the originality of a design, and thus the conditions for liability, **is a viable compromise between copyright protection and patent law** (industrial property law - let's not forget design protection and trademarks (3D and 2D). Granting a monopoly to only a ***very limited number of design decisions strikes a balance between giving protection to design decisions and creating a rich design public domain*** from which elements other designers can draw inspiration. This measure will satisfy both the original designers and the rest who work in the industry. In order for the fields of design (architectural design, craft, design, fashion, etc.) to continue to develop and flourish, they must not be deprived of a broad societal base.

So industrial designs **are regulated in most countries by sui generis legislation**, which means the uniqueness of the legal design of an industrial design, ***its "non-embedding" in the current legal classification of IP objects***: inventions and utility models protect the technical side of the product, copyright and related rights - a form of expression of thought. The emergence of a special sui generis protection regime for industrial design is due to their similarity with works of art (objects of copyright) and trademarks and, therefore, "mixing", "intersection" of copyright and industrial property. **Overcoming the problems of confusion of legal regimes is proposed through three systems of protection: cumulative, partial cumulative and demarcation**. These are three approaches to linking copyright, trademark rights and industrial design rights.

The use of cumulative protection overcomes the disadvantages of each of these industrial design protection methods. "Disadvantages" (differences) may relate to both the conditions for granting protection (requirements for intellectual property rights), and the conditions for its operation (the fact of use, the term of protection) and the procedures for obtaining protection (patenting procedures, registration of objects). Business entities often use several methods of protection at once.

Cumulative protection based on the **"unity of art" theory** offers total and automatic enforcement of both copyright and special design regimes. The demarcation of regimes, based on the theory of "separability" or "dissociation", offers a clear separation of protection regimes, according to which industrial designs can only be protected by special (sui generis) legislation, since artistic expression, if any, cannot be separated from the product in which it is embodied. Such a position "breaks" the design of the concept of intellectual property as information that can be reproduced in any way / in any form. Partial coincidence (partial cumulation) of regimes will allow copyright protection for industrial designs in case of compliance with the standards of works of art, although the required level of artistic merit (not designated as requirements for objects of copyright in the

legislation of the Republic of Belarus, but taking place in judicial practice) is not easy to meet on practice.

The system of complete delimitation (demarcation) of protection regimes for design in its pure form is extremely **rare**, therefore, the systems of cumulative and partial cumulative protection of industrial design are most widely used. **The cumulative design protection creates the most favorable conditions for the abuse of the right and obstacles to competition**: having such a strong legal monopoly, the right holder can significantly prevent other bona fide participants in civil circulation from using similar results of intellectual activity. **The partial cumulation** sui generis industrial design protection system is currently **the most appropriate** for most legal orders and only protects **designs that are " exclusively original"**.

An unambiguous solution to the problems of mixing legal regimes is possible not so much through the creation of a special sui generis legal regime - a system of protection (full or partial cumulation, demarcation of regimes), but through a change in the paradigm of copyright and industrial property, which reflects the new emerging concept of intellectual property in the context of the development of a post-industrial society. The latter became **possible thanks to modern information technologies (virtual platforms for registration, cryptographic protection, depositing of objects of copyright, blockchain, NFT, cloud systems, etc.)**. The entire structure of intellectual property is called into question - the need for the existence of *industrial property, which is nothing more than objects of copyright used in production*. From this position, the concept of the object of copyright also needs to be revised, which requires understanding not as a form of expressing an idea, but the idea itself - information that has novelty and contains an element of transformative activity. Otherwise, emerging new forms of copyright objects will not be protected.

The paradigm shift in the field of intellectual property towards the protection of the rights of authors, i.e. the shift in the balance of interests of the copyright holder (author) and society and towards the author, is associated with the transition to a post-industrial (information) economy based not on material resources, but on information, in including on knowledge, innovation, creativity. We can already say that information is not so much a resource as a product of production. The resource becomes the person himself (the creator), and not material assets, therefore, the further development of the economy and social relations depends on the motivation of a person, the protection of the results of his intellectual, incl. creative activity.

The experience of foreign countries and international institutions in the field of design protection, in our opinion, is interest for the further development of science and intellectual property law, art and industry. The findings will save the resources of business entities in determining the methods and systems for the protection of design.

Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs. *OJ EC* L 3 of 5.1.2002, p. 1. amended by Council Regulation No 1891/2006 of 18 December 2006 amending Regulations (EC) No 6/2002 and (EC) No 40/94 to give effect to the accession of the European Community to the Geneva Act of the Hague Agreement concerning the international registration of industrial designs. *OJ EC* L 386 of 29.12.2006, p. 14). URL: https://euipo.europa.eu/ohimportal/web/guest/community-design-legal-texts

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC [2019] *OJ* L 130, 17.5.2019, p. 92-125. URL: https://eur-lex.europa.eu/eli/dir/2019/790/oj

Protocol 2019 on the Protection of Industrial Designs to the Eurasian Patent Convention of September 9, 1994. URL: https://www.eapo.org/ru/documents/norm/proc_industr_design_protect_txt.html

Code of Federal Regulations of USA. Title 35: Patents, Trademarks, and Copyrights (ed. 17.11.2022). URL: https://www.ecfr.gov/current/title-37/

17 U.S.C. (ed. 2016). URL: https://www.law.cornell.edu/uscode/text/17/101.

Copyright, Designs and Patents Act of UK 1988. URL: https://www.legislation.gov.uk/ukpga/1988/48/contents.

Designs Act of Australia 2003 (consolidated as of 24 February 2019). URL: https://wipolex.wipo.int/ru/legislation/details/18974.

Trade Mark Act of Australia 1995 № 119, Compilation № 36 *Australian Government. Federal Register of Legislation*. URL: https://www.legislation.gov.au/Details/C2017C00046/

Copyright Act of Australia 1968 (consolidated as of 1 January 2019). URL: https://wipolex.wipo.int/ru/legislation/details/18588.

Strategy of the Republic of Belarus in the field of intellectual property until 2030: approved. fast. Council of Ministers Rep. Belarus dated 24 November 2021 No 672 [2021] *Etalon-Belarus / National. Center for Legal Inform. Rep. Belar,* Minsk.

State Program "Digital Development of Belarus" for 2021-2025: approved by the Council of Ministers of the Republic of Belarus on 2 February 2021 No 66 : as amended on 17 October 2022 [2022] *Etalon-Belarus / National. Center for Legal Inform. Rep. Belarus*, Minsk.

Priority areas of scientific, scientific, technical and innovative activities for 2021-2025: approved. by decree by the President of Rep. Belarus dated 7 May 2020 No 156 [2020] *Etalon-Belarus / National. Center for Legal Inform. Rep. Belarus.* Minsk.

The Law of the Republic of Belarus "On Patents on Inventions, Useful models, Industrial Designs" from 16 Dec. 2002 No 160-Z as amended. dated 18 December 2019. URL: https://www.ncip.by/zakonodatelstvo/promyshlennaya-sobstvennost/

Law of the Republic of Belarus "On Trademarks and Service Marks" dated 5 Feb. 1993 № 2181-XII ed. from 9 January 2023. URL: http://gknt.gov.by/rules/pravovye-akty-respubliki-belarus-v-sferakh-nauchnoy-nauchno-tekhnicheskoy-i-innovatsionnoy-deyatelno/

Law of the Republic of Belarus "On Copyright and Related Rights" May 17, 2011 No 262-3 as amended. 15 July 2019. URL: https://etalonline.by/document/?regnum=h11100262.

Law of the Republic of Belarus "On the Accession of the Republic of Belarus to the Protocol on the Protection of Industrial Designs to the Eurasian Patent Convention of 9 September 1994" dated 31 December 2021 No 137. URL: https://pravo.by/document/?guid=3961&p0=H12100137.

Law of the Republic of Belarus "On counteraction to monopolistic activity and development of competition" dated 12 December. 2013 No 94-3: as amended. 18 December 2019 [2019] *Etalon-Belarus / National. Center for Legal Inform. Rep. Belarus.* Minsk.

Regulations on the procedure for drawing up an application for a patent for an industrial design, conducting an examination on it and making a decision based on the results of the examination [Electronic resource]: approved. fast. Council of Ministers of the Rep. Belarus from 2 Feb. 2011 No 121 as amended. and additional as of 1 Jan. 2014 (repealed). URL: http://pravo.newsby.org/belarus/postanovsm2/sovm529.htm

Cofemel – Sociedade de Vestuário SA v G-Star Raw CV Case № C-683/17 (12 September 2019). URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62017CJ0683.

Star Athletica, LLC v. Varsity Brands, Inc., 580 U.S. (2017). URL: https://www.supremecourt.gov/opinions/16pdf/15-866_0971.pdf.

Mazer v. Stein, 347 U.S. 201, 217 (1954). URL: https://supreme.justia.com/cases/federal/us/347/201/.

Kieselstein-Cord v. Accessories by Pearl, Inc., 632 F.2d 989 (2d Cir. 1980). URL: https://www.lexisnexis.com/community/casebrief/p/casebrief-kieselstein-cord-v-accessories-by-pearl-inc.

Case № 2016 (Ne) 10059, Intellectual Property High Court of Japan, October 13, 2016. URL: https://www.ip.courts.go.jp/app/search_en/list?keyword=%E2%84%96+2016+%28Ne%29+10059&search=

Case № 2014 (Ne) 10063, Intellectual Property High Court of Japan, April 14 2015. URL: https://www.ip.courts.go.jp/app/files/hanrei_en/861/001861.pdf

Afori, O.F. (2008) "Reconceptualizing Property in Designs", *Cardozo Arts & Entertainment Law Journal*, 25(3), pp. 1105-1178.

Arundel, A. (2001) "The Relative Effectiveness of Patents and Secrecy for Appropriation", *Research Policy*, 30(4), pp. 611-624.

Boldrin, M. and D.K. Levine (2013) "The Case against Patents", The Journal of Economic Perspectives, 27(1), pp. 3-22.

Brean, D.H. (2008) "Enough Is Enough: Time to Eliminate Design Patents and Rely on More Appropriate Copyright and Trademark Protection for Product Designs", *Texas Intellectual Property Law Journal*, 16(2), pp. 325-381.

Carrington, E., T. Burr and B. Lapini (2007) *Intellectual Property Rights (Ipr) Toolkit for Italy*, Washington D.C.: US Department of Commerce, US Commercial Service, 50 p.

Cook, A. (2007) "Points of Novelty, Lawman Armor, and the Destruction of Design Patents!", *Journal of Technology Law & Policy*, 12(1), pp. 103-133.

Cusumano, M.A. (2013) "The Apple-Samsung Lawsuits", *Communications of the ACM*, 56(1), pp. 28-31.

D'Ippolito, B. (2014) "The Importance of Design for Firms' Competitiveness: A Review of the Literature", *Technovation,* 34(11):716-730.

Dickson, P., W. Schneier, P. Lawrence, et al. (1995) "Managing Design in Small High-Growth Companies", *Journal of Product Innovation Management*, 12(5), pp. 406-414.

Durkin, T.-G. and J. Schirk (2011) "Design Patents and Trade Dress Protection: Are the Two Mutually Exclusive?", *Computer & Internet Lawyer*, 28(8), pp. 22-27.

Holton, P. (2014) "Intellectual Property Laws for Fashion Designers Need No Embellishments: They Are Already in Style", *Journal of Corporation Law*, 39(2), pp. 415-436.

Jackson, T. (2014) "Functional Signs and Decanters of Wine: How Trade Dress Protection Unconstitutionally Extends Expired Design Patents", *Marq. Intell. Prop. L. Rev*., 18, pp. 431-455.

Dinwoodie Graeme B., Janis Mark D. (2022) *Trade dress and design law, GB Dinwoodie*, MD Janis Aspen Publishing, 582 p.

Industrial Designs and Their Relation with Works of Applied Art and Three-Dimensional Marks (2002) *WIPO. Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications* : Ninth Session Geneva, November 11 to 15, pp. 33. URL: https://www.wipo.int/edocs/mdocs/sct/en/sct_9/sct_9_6.pdf.

Karjala, Dennis S. (2002-2003) *Distinguishing Patent and Copyright Subject Connecticut Law Review,* Vol. 35, Issue 2 (Winter 2003*), pp. 439*.

Khoury, A.H. (2008) "Three-Dimensional Objects as Marks: Does a Dark Shadow Loom over Trademark Theory." *Cardozo Arts & Ent. LJ*, 26, pp. 335.

Lahore, J. (1971) "Art and Function in the Law of Copyright and Designs", *Adel*. L. Rev., 4, pp. 182.

Li, K. (2012) "Where Is the Right Balance-Exploring the Current Regulations on Nontraditional ThreeDimensional Trademark Registration in the United States, the European Union, Japan and China." *Wisconsin International Law Journal*, 30, pp. 428.

McKenna, Mark (2018) "Claiming Design ", *Notre Dame Law School*, 167 U. Pa. L. Rev. 123.

Miller, M.C. (2014) "Copyrighting the "Useful Art" of Couture: Expanding Intellectual Property Protection for Fashion Designs", *William & Mary Law Review*, 55(4), pp. 1616-1646.

Meyerhoff, L.H.; Lee A. and F. Kerl (2015) *International World Trademark Review*. URL: https://www.worldtrademarkreview.com/portfolio-management/international.

Monseau, S. (2012) "The Challenge of Protecting Industrial Design in a Global Economy", *Texas Intellectual Property Law Journal*, 20(3), pp. 495-544.

Moultrie, J. and F. Livesey (2014) "Measuring Design Investment in Firms: Conceptual Foundations and Exploratory UK Survey." *Research Policy*, 43, pp. 570-587.

Protecting your designs (2010) [Information sheet] *Arts Law Center of Australia*. URL: https://www.artslaw.com.au/images/uploads/Protecting_your_designs.pdf

Rahman, S.S. (2014) "Industrial Design in Different Jurisdictions: A Comparison of Laws", *Journal of Intellectual Property Rights*, 19, pp. 223-228.

Rammer, C. (2002) *Patente Und Marken Als Schutzmechanismen Für Innovationen*. ZEW.

Roth, J.S. and D. Jacoby (2009) "Fashion, Copyright, and the Proposed Design Piracy Prohibition Act", *IP Litigator*, 15(6), pp. 1.

Saidman, P.J. (2007) "The Crisis in the Law of Designs", *Journal of the Patent & Trademark Office Society*, 89(4), pp. 301-338.

Schickl, L. (2013) "Protection of Industrial Design in the United States and in the Eu: Different Concepts or Different Labels?", *Journal of World Intellectual Property*, 16(1/2), pp. 15-38.

Suthersanen, U. (2010) *Design Law: European Union and United States of America*, London: Sweet & Maxwell, pp. 278.

Tsai, J.P.s.a. (2005) "Fashioning Protection: A Note on the Protection of Fashion Designs in the United States", *Lewis & Clark Law Review*, 9(2), pp. 447-468.

Xia, E.Y. (2010) "The New Trend: Protecting American Fashion Designs through National Copyright Measures", *Cardozo Arts & Entertainment Law Journal*, 28(2), pp. 417-441.

Алексеева, О. Л., Е. А. Павлова, О. М. Козырь и др. (2018) *Комментарий к части четвертой Гражданского кодекса РФ (постатейный). В 2 т.*; отв. ред.: Л. А. Трахтенгерц. М, с. 928.

Алексеева, О. Л. (2006) Промышленный образец: соотношение и разграничение с произведениями дизайна / О. Л. Алексеева // Интеллектуальная собственность. Промышленная собственность, 3, С. 7-14.

Аввалова, Р. Д. (2012) "Разграничение промышленных образцов с другими объектами интеллектуальной собственности." *Интеллектуальная собственность Казахстана*, 1, С. 18-23.

Андреев, Ю. Н. (2011) *Судебная защита исключительных прав: цивилистические аспекты: монография*. М.: Норма, Инфра-М, 400 с.

Бабкин, С. А. (2004) *Исключительные права: сравнительно-правовой анализ законодательства России и США*: дис. ... к. юрид. наук : 12.00.03. М., 210 с.

Басалай, Е.И. (2006) Международная охрана интеллектуальной собственности: Учеб.-метод. Пособие. Минск: БИП-С Плюс, 63 с.

Близец, И. А., Гаврилов Э. П., Добрынин О. В. [и др.] (2014) *Право интеллектуальной собственности: учебник*; под. ред. И. А. Близнеца. М.: Проспект, 960 с.

Близнец, И.А. (ред.) и К. Б. Леонтьев (2014) Авторское право и смежные права : учебник. Москва: Проспект, 416 с.

Вайпан, В. А. и М. А. Егорова (2019) *Правовое регулирование экономических отношений в современных условиях развития цифровой экономики*, 376 с.

Винковский, В.И. (2014) "Обзор патентных систем отдельных стран мира в части регулирования вопросов преодоления конфликта прав заявителей." *Гуманитарные научные исследования*, 3. URL: https://human.snauka.ru/2014/03/6105

Ворожевич, А.С. (2017) "Об утилитарности интеллектуальных прав, принудительных лицензиях и бюрократических рентах." *Закон*, 8. С. 140-165.

Гаврилов, Э. П. (2016) *Право интеллектуальной собственности. Промышленные права. XXI век* М.: Юрсервитум, 736 с.

Гайдук, В. П. (2020) "Эволюция права интеллектуальной собственности в цифровую эпоху." *Журнал российского права*, 2. С. 72-85.

Гесть, Н.Л. и Ж. Шмидт-Шалевски (2004) *Охрана промышленной собственности в Европейском Союзе: Учебное пособие*. Мн.: БГЭУ, 125 с.

Гончар, Т. М. (2015) "О некоторых вопросах правовой охраны достижений в области дизайна по авторскому и патентному праву." *Вестник Гродненского государственного университета имени Янки Купалы*. Серия 4. Правоведение, 2, сс. 38-47.

Гончар, Т. М. (2021) "Развитие правовой охраны промышленного образца в соответствии с Протоколом об охране промышленных образцов к Евразийской патентной конвенции 1994 г." *Вестник Гродненского государственного университета имени Янки Купалы*. Серия 4. Правоведение. Том 11, 1, сс. 123-130.

Гончар, Т. М. (2017) "Правовая охрана промышленных образцов в условиях евразийской интеграции." *Право. by*, 4, сс. 37–42.

Гончар, Т. М. (2017) "Перспективы присоединения Республики Беларусь к Гаагской системе международной регистрации промышленных образцов." *Вестник Гродненского государственного университета имени Я. Купалы*. Серия 4. Правоведение. Том 7, 3, сс. 105-118.

Гришаев, С. П. (2009) *Интеллектуальная собственность : учеб. пособие*. М.: Юрист, сс. 364.

Зенин, И. А. 2019 *Право интеллектуальной собственности в 2 ч. Ч. 1 : учебник для академического бакалавриата*. 10-е изд., перераб. и доп. Москва: Юрайт, сс.318.

Иванова, Д. В. (2016) Идеальная теоретическая модель интеллектуальной собственности как основа построения современной системы права интеллектуальной собственности в

Республике Беларусь." *Право и демократия: сб. науч. трудов*. Вып. 27.; [редкол.: В. Н. Бибило (гл. ред.) и др.]. Минск: БГУ, сс. 206-214.

Иванова, Д. В. (2013) "Теории интеллектуальной собственности: догматическое исследование." *Право и демократия : сб. науч. трудов*. Вып. 24 (II). Минск, сс.183-197.

Ипатова, О. В. (2019) *Способы правовой защиты дизайна товара: пособие*. Брест: изд-во БрГТУ, сс. 60.

Ипатова, О. В. (2022) "Кумулятивная защита дизайна." *Информационно-правовая система "Нормативка.by"*. – URL: https://normativka.by/lib/document/104959/sid/c177d5669c874bfba1aa37749ed8108d#serialnumber=37

Ипатова, О. В. (2022) "Соотношение авторского права и промышленной собственности: конкуренция и злоупотребление правом." *Информационно-правовая система "Нормативка.by"*. – URL: https://normativka.by/lib/document/105366/sid/c177d5669c874bfba1aa37749ed8108d#serialnumber=63

Ипатова, О. В. (2021а) "Международная и национальная процедуры получения охраны промышленных образцов." *Интеллектуальная собственность в современном мире: вызовы времени и перспективы развития*: *Междунар. науч.-практ. конф. (Минск, 20 октября 2021 г.). В 2 ч. Ч. 1*; под ред. В. А. Рябоволова. Минск : Альфа-книга, сс. 196–202.

Ипатова, О. В. (2021б) "Процедуры патентования промышленных образцов и регистрации товарных знаков: выбор способа защиты дизайна." *Информационно-правовая система "Нормативка.by"*. URL: https://normativka.by/lib/document/94838/sid/21b19727588240eb83e1cc170efa08a0

Калачева, Т. Л. (2011) "Многоаспектность обеспечения правовой охраны результатов интеллектуальной деятельности." *Российская юстиция*, 9, сс. 2-4.

Калятин, О. В и Д. В. Мурзин и др. (2011) *Практика рассмотрения коммерческих споров: Анализ и комментарии постановлений Пленума и обзоров Президиума Высшего Арбитражного Суда Российской Федерации.* М. : Статут,. – Вып. 17. – 293 с.

Калятин, В. О. Д. В. Мурзин, Л. А. Новоселова и др. (2000) *Интеллектуальная собственность (исключительные права): учеб. для вузов*. М.: НОРМА, сс. 480.

Кудашов, В. И. (2007) *Управление интеллектуальной собственностью: учеб. пособие для студентов учреждений, обеспечивающих получение высшего образования*. Мн.: ИВЦ Минфина, сс. 360.

Кудашов, В. И. и Ю. В. Нечепуренко (2013) *Интеллектуальная собственность: экономические и организационно-правовые механизмы управления*. Мн.: Амалфея, сс. 190.

Лосев, С.С. (2007) *Основы управления интеллектуальной собственностью: учеб.-метод. пособие*. – Мн. : БГЭУ, сс. 154.

Лосев, С. С. (2018) *Ограничения исключительного авторского права: теоретический аспект // Актуальные проблемы развития законодательства в сфере экономики, природопользования и охраны окружающей среды : сб. науч. ст.*; под ред. О. А. Бакиновской. Минск: Колорград, сс. 132-152.

Лосев, С.С. (2021) "Международная регистрация товарных знаков." *ЭТАЛОН. Законодательство Республики Беларусь. Нац. центр правовой информ. Респ. Беларусь*. Минск.

Лосев, С. С. (2021) "Гаагская система международной регистрации промышленных образцов: основные положения." *Информационно-правовая система "Нормативка.by"*. URL: https://normativka.by/lib/document/93081/sid/c9f28fd5d54d44a2bbfd3e6088c7c76c

Лосев, С.С. (2013) *Научно-практический комментарий к Закону Республики Беларусь "Об авторском праве и смежных правах."* Минск: Бизнесофсет, сс. 300.

Маковский, А.Л. (2008) "Исключительные права и концепция части четвертой Гражданского кодекса." *Гражданское право современной России* / Сост. О.М. Козырь и А.Л. Маковский. М.: Статут, сс. 103-141.

Мельников, В. М. (2003) Соотношение прав на товарный знак с правами на другие объекты интеллектуальной собственности. М. : ИНИЦ Роспатента,. сс. 66.

Мельников, В. М. (2002) *Товарные знаки за рубежом XXI века*. М.: ИНИЦ Роспатента, сс. 301.

Нечепуренко, Ю. В. (2019) "Правовая охрана объектов промышленной собственности белорусскими заявителями на российском рынке." *Правовая защита интеллектуальной собственности: проблемы теории и практики : мат. конф*. Новополоцк : ПГУ, сс. 101-105.

Негуляев, Г. А. (2017) "Гаагская система международной регистрации промышленных образцов – эффективный способ зарубежного патентования." *Интеллектуальная собственность. Промышленная собственность*, 8, сс. 49-58.

Пьянова, М. В. (2010) Ответственность за незаконное использование товарного знака в праве зарубежных стран // Общество и право, 5, сс. 125-128.

Рабец, А. П. (2003) Правовая охрана товарных знаков в России: современное состояние и перспективы. СПб.: Изд-во «Юридический центр Пресс», сс. 340.

Рожкова, М. А. (2019) "О новой (третьей) группе имущественных прав, носящих абсолютный характер." *Журнал Суда по интеллектуальным правам*, 26, сс. 20-24.

Сергеев, А. П. (2005) *Право интеллектуальной собственности в Российской Федерации: учебник для вузов.* 2-е изд., перераб. и доп. М. : Проспект, сс. 750.

Судариков, С. А. (2010) *Право интеллектуальной собственности: учебник*. М.: Проспект. 368 с.

Судариков, С. А. (2011) "О взаимосвязи авторского и промышленного права." *Интеллектуальная собственность в Беларусь*, 2, сс. 16–20.

Яковлев, В.Ф.; Маковский, А. Л. (ред.); Суханов Е. А. и П. В. Степанов (2008) *Комментарий к части четвертой Гражданского кодекса Российской Федерации.* М. : Статут, сс. 715.

Якимахо, А. П., Ясников Г. Е. (ред.) и др. (2011) *Управление интеллектуальной собственностью в Республике Беларусь*. Минск: Дикта, сс. 318.