

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

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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

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



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.

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