



Current and Future Design Patent Issues
当前和未来外观设计专利问题

May 2019
2019年5月

欧盟和中国均：

- 外观设计保护仅延及产品的式样设计；
- 丕保护产品的技术性功能
- 外观垄断权的目的在于刺激产品设计的创新

外观设计权是有限度的垄断权利

- 刺激和妨碍创新之间的矛盾关系
- 欧洲和中国在处理这种矛盾关系时所采用方式的细微差别

In both the European Union and China

- Design protection is concerned solely with the ornamental appearance of a product
- Not with technical functions of the product
- Monopoly is intended to incentivise creativity in product design

Designs are a limited term monopoly right

- Tension between incentivising and supressing creativity
- Europe and China address this tension in slightly different ways

目前的几个关注点

- 产品局部设计的保护
- 延迟公布
- 新颖性测试

Current Issues

- **Protection for partial design of an product**
- **Deferment of Publication**
- **Novelty Test**

部分外观设计的保护

中国（外观设计专利）

- 未规定对局部设计的保护
- 须为包括新的设计特征的产品的整体设计

欧洲（注册式共同体设计）

- 允许保护产品的局部设计

欧洲方法

- 为设计者提供更宽泛的保护
- 体现出对创新设计贡献的重点保护
- 简化和统一新颖性测试标准

Protection for Part of a Product

China (Design Patent)

- Does not allow a design patent to protect partial design of an product
- Must be the whole product including the new feature(s)

Europe (Registered Community Design)

- Does allow a RCD to protect partial design of an product

The European approach

- Provides broader protection to designers
- Focuses on and rewards the creative contribution
- Simplifies novelty assessments

延迟公布

中国（外观设计专利）

- 未规定延迟公布

欧洲（注册式共同体设计）

- 自最早日起可迟延至30个月公布

欧洲方法

- 延长保密期
- 竞争者的考虑
- 申请人的市场优势
- 进一步优化市场策略和产品

Deferment of Publication

China (Design Patent)

- No procedure for deferring publication of a design application.

Europe (Registered Community Design)

- After registration publication can be deferred for up to 30 months from the filing date or priority date.

The European approach

- Provides an extension of confidentiality
- Competitors not aware of the design in question
- Market advantage for design applicant
- Can further develop marketing strategy or production preparation

新创性测试

中国（外观设计专利）

- 外观设计必须明显区别于：
 - 任何现有设计
 - 现有设计特征的组合

欧洲（注册式共同体设计）

- 共同体设计必须单独和各个现有设计相比较
- 着重于与单个现有设计的不同的整体印象

欧洲方法

- 相对宽松
- 着重于整体外观的比较
- 着重于一个设计vs另一个设计
- 简化了新创性测试的标准

Novelty Test

China (Design Patent)

- The design must be obviously distinguished from
 - any prior design or
 - combination of the features of prior designs

Europe (Registered Community Design)

- The Community design must be compared with each and every earlier design relied on, individually
- Focuses on a different overall impression from individual prior designs

The European approach

- Is less restrictive
- Focuses on a comparison of appearances overall
- Focuses on one design vs another design
- Simplifies novelty assessments

- 工业设计海牙体系（WIPO）
- 未注册式设计权利

- **The Hague System for Industrial Designs (WIPO)**
- **Unregistered Design Rights**

海牙体系

- 允许单个申请通过单一语言（英语，法语或西班牙语）在多个国家申请
- 预期中国也将加入海牙体系
- 荷兰，加拿大和英国于2018年加入

关注点

- 提交要求：图片
 - 必须符合各选定国家的法律要求
 - 部分设计 vs 整体产品
 - 提交后修改复杂及困难
- 语言—以英语，法语或西班牙语提交
 - 2017: 611,000 国内外外观设计专利申请
 - 中国预期将是海牙体系最大的用户
 - 中文是否应当作为官方语言？

The Hague System

- Applications in multiple countries from a single application in a single language (English, French or Spanish)
- It is expected that China will also join the Hague System
- The Netherlands, Canada, and the United Kingdom joined in 2018

Issues

- Filing requirements: Drawings
 - Must meet the laws of each country selected
 - Partial designs vs full product
 - Complex and difficult to amend after filing
- Language – filing in English, French or Spanish
 - 2017: 611,000 domestic Design Patent applications
 - China could be the largest user of the Hague System
 - Should Chinese be an official language?

未注册式设计权利-欧洲

- 防止对季节性和时尚行业的设计抄袭-无需注册
- 保护产品整体或部分的三维外观
- 保护期限从欧盟范围内首次可获知日起三年
- 三维著作权保护的一种形式

关注点

- 中国正发展其自身时尚和设计产业
- 低成本和短期内的三维设计保护
- 鼓励在中国的时尚设计创新
- 鼓励外国原创产品进口
- 英国-提供互惠的未注册式设计权利（香港获益）

Unregistered Design Rights - Europe

- Protection against copying for seasonal or high fashion industries – no registration needed.
- Protects the 3 dimensional appearance of the whole or part of a product
- Three years from date on which the design was first available to the public within EU
- A form of 3 dimensional copyright protection

Issue

- China is developing its own fashion and design industries
- There is a gap in protection for low cost, short term, 3 dimensional protection
- Encourage fashion creativity in China
- Encourage import of foreign creative products
- UK – offers reciprocal Unregistered Design Right (Hong Kong benefits)

谢谢!

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