



Congress Seoul 2012
Adopted Resolution
October 23, 2012

Resolution

Question Q231

The interplay between design and copyright protection for industrial products

AIPPI

Noting that:

- 1) AIPPI has previously studied the unification of the law on industrial designs (Q34) and the economic importance of the protection of designs (Q73).
- 2) However, AIPPI has not previously studied the interplay between design and copyright protection for industrial products. This is an important area of the protection for intellectual property rights, because it offers the potential for the longer term of protection under the copyright laws, compared to the more limited term of protection for design rights.
- 3) This Resolution addresses the circumstances in which industrial products are protected by copyright law. The resolution also addresses the relationship between copyright and design protection for industrial products. This resolution is intended to foster international uniformity of the rules governing the interplay between these two bodies of law with regard to the protection of industrial products.
- 4) This Resolution addresses industrial products in the sense of all types of products for which protection is available, based upon appearance, shape and ornamentation, including, for example, handicraft products and works of applied art.
- 5) This Resolution does not address all the details of: (1) the requirements for obtaining protection or (2) the scope of protection. Patents (except design patents), utility models, trademarks and unfair competition are also beyond the scope of this resolution.

Considering that:

- 1) All the reporting national Groups report that cumulative protection of the same industrial product or the shape thereof by copyright and design law in their countries is permitted to some extent.

- 2) The majority of these Groups state that registration of a design is necessary under national laws. Some require substantive examination. Most groups state that registration is not necessary for copyright protection.
- 3) Typically novelty and originality or individual character are required for design protection, though some reporting groups say that more than novelty may be required, such as some measure of creativity over known designs. In contrast, most Groups report that novelty is not required for copyright protection, but rather originality.
- 4) Most reporting Groups say that their copyright law grants the same, or substantially the same, scope of protection for industrial products as for other copyrighted works.
- 5) The vast majority of reporting Groups say that the criteria for assessing infringement of copyright protected industrial products are different from the criteria for assessing infringement of a design right, although substantial similarity can be a main criterion for both. The vast majority also say that access to the protected work is an important requirement for copyright infringement, but not for infringement of registered design rights.
- 6) The vast majority of reporting Groups say that copyright protection remains unaltered after expiry of design protection and that therefore there is no measure of adjustment in their law, whereby the same industrial product may have a limited term of protection compared to the usual term of protection under the copyright laws.

Resolves that:

- 1) Copyright protection should be available for industrial products.
- 2) Copyright protection should be available for industrial products without the requirement for registration of the copyright.
- 3) Having original artistic character should be a sufficient qualification for copyright protection for industrial products.
- 4) Copyright and design right protection of industrial products may be excluded in so far as the shape or appearance of the product is dictated exclusively by functional considerations.
- 5) Cumulative protection should be available for industrial products by both copyright and design rights.
- 6) The term of copyright protection for industrial products should be independent of the term of design right protection for such products.
- 7) The scope of copyright protection for an industrial product should not differ from the scope of protection normally conferred by copyright law.