

Le droit du design

Design Law

Marcus Höpperger, Grégoire Bisson, Carlo Rusconi,
Nathalie Tissot, David Stone, Michael Ritscher, Bertrand Siffert

Actes de la Journée de Droit de la Propriété Intellectuelle du 5 février 2015



UNIVERSITÉ
DE GENÈVE

FACULTÉ DE DROIT

Schulthess
ÉDITIONS ROMANDES §

Table des matières / *Table of contents*

| | |
|--|------|
| Avant-propos | V |
| Sommaire / <i>Contents</i> | VII |
| Table des abréviations / <i>Table of abbreviations</i> | XIII |

New Trends and Developments in Industrial Design Law at the International Level

Marcus Höpperger

| | |
|---|----|
| I. Introduction | 1 |
| II. Industrial Design Filing Activity | 3 |
| III. WIPO Fact Finding | 4 |
| A. Subject Matter | 5 |
| B. Reproduction of Industrial Designs in Applications | 6 |
| C. Details in Industrial Design Applications | 7 |
| D. Deferment of Publication | 8 |
| E. Grace Period | 9 |
| F. Filing Date Requirements | 9 |
| G. Term of Protection | 10 |
| H. Examination | 10 |
| IV. Work on a Design Law Treaty | 11 |
| V. Concluding Remarks | 15 |

The Hague System Today and Tomorrow

Grégoire Bisson

| | |
|---|----|
| I. The Geneva (1999) Act: Rationale and History | 18 |
| II. A Slow Take-Off and a Gradual Change for Users | 20 |
| III. An Impressive List of Declarations, but a Superficial Change for Users .. | 22 |
| A. Korea | 22 |
| B. The United States of America | 23 |
| C. Japan | 24 |
| D. Consequences of These Declarations | 25 |
| IV. A Less Visible but More Profound Change for Users | 27 |
| A. Relation with a Principal Design, Application or Registration (Japan and the Republic of Korea) | 28 |
| B. Declaration Concerning Exception to Lack of Novelty and Supporting Documentation (Japan and the Republic of Korea) | 29 |

| | |
|--|----|
| C. Information on Eligibility for Protection under Rule 7(5)(g) and Section 408(d) of the Administrative Instructions (United States of America) | 30 |
| V. An Invisible but Fundamental Change | 31 |
| VI. Some Beneficial Changes at the National Level for Hague Applicants ... | 35 |
| VII. Conclusion – Savviest Users Will Benefit More | 36 |

L'appréciation du caractère individuel des dessins et modèles communautaires dans la pratique de l'OHMI

Carlo Rusconi

| | |
|---|----|
| I. L'utilisateur averti | 40 |
| II. Le degré de liberté du designer | 46 |
| A. Les contraintes techniques | 46 |
| B. Les contraintes normatives | 47 |
| C. Les contraintes esthétiques | 47 |
| D. La saturation de l'état de l'art | 48 |
| III. Principes applicables lors de la comparaison des modèles | 49 |
| A. L'importance de la visibilité du modèle lors de la comparaison | 50 |
| B. Le rôle des éléments accessoires dans la comparaison | 57 |

La protection des designs en droit suisse: bilan de la LDes et perspectives

Nathalie Tissot

| | |
|--|----|
| I. Introduction | 61 |
| II. Enseignements jurisprudentiels et mise en perspective | 64 |
| A. Du point de vue des motifs d'exclusion de la protection | 64 |
| B. Exigences de nouveauté et d'originalité | 68 |
| C. Principe de la priorité du dépôt (art. 6 LDes) | 74 |
| III. Conclusions | 78 |

European Union Design Law in the Apple v Samsung Dispute: Lessons and Perspectives

David Stone

| | | |
|------|-------------------------------------|-----|
| I. | Background | 81 |
| A. | Apple's RCD | 82 |
| B. | Summary of the EU Proceedings | 83 |
| C. | Chronology | 85 |
| D. | Scope of this case note | 87 |
| II. | Some Preliminary Issues | 87 |
| A. | RCD or iPad? | 87 |
| B. | Interpreting the Design | 88 |
| C. | Dotted Lines | 88 |
| III. | Provisional Measures | 90 |
| A. | The Netherlands | 90 |
| B. | Germany | 95 |
| IV. | Main Proceedings | 102 |
| A. | United Kingdom | 102 |
| B. | The Netherlands | 122 |
| C. | Spain | 123 |
| D. | Germany | 125 |
| E. | OHIM | 126 |

Global Protection of Product Designs from a Practitioner's Point of View

Michael Ritscher

| | | |
|------|---|-----|
| I. | Introduction | 129 |
| II. | The Project Vitra | 130 |
| III. | Protection of Product Designs by Means of Design Law | 131 |
| IV. | Protection of Product Designs by Means of Trademark Law | 132 |
| V. | Protection of Product Designs by Copyright Law | 133 |
| A. | Utilitarian Purpose | 134 |
| B. | Inseparability of the Design and the Product | 135 |
| C. | Industrial Scale Production | 136 |
| D. | Loopholes | 137 |
| E. | Threshold..... | 137 |
| F. | The Threshold-Scope Relation (Freedom to Innovate) | 139 |

La pratique du droit du design dans l'horlogerie et la bijouterie

Bertrand Siffert

| | | |
|------|---|-----|
| I. | Introduction | 143 |
| II. | La création du design | 144 |
| | A. L'analyse de tendances | 144 |
| | B. La phase créative | 144 |
| III. | La protection légale | 145 |
| | A. Le droit du design | 145 |
| | B. Quelques notions | 146 |
| | C. L'objet de la protection | 147 |
| | D. La stratégie de protection | 149 |
| | E. Bref aperçu de la jurisprudence suisse | 151 |
| | F. Les droits connexes | 153 |
| IV. | Les moyens de mise en œuvre | 161 |
| | A. Lettres de mise en demeure | 161 |
| | B. Actions en nullité – opposition | 161 |
| | C. Les actions judiciaires | 162 |
| V. | Conclusion? | 165 |