Industrial property: protection of Community design

2022/0391(COD) - 06/11/2023 - Committee report tabled for plenary, 1st reading/single reading

The Legal Affairs Committee adopted the report by Gilles LEBRETON (ID, FR) on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002.

As a reminder, the proposal aims to modernise the European design protection system, in particular to adapt it to the digital age, and also to make this protection more attractive to independent designers and businesses, especially SMEs.

The committee recommended that the European Parliament's first-reading position under the ordinary legislative procedure should amend the Commission's proposal. Members broadly endorse the proposed guidelines, but suggest amendments aimed primarily at improving legal certainty.

European Union Intellectual Property Office

The European Union Intellectual Property Office should provide the public with frequent and clear information on these tasks, in order to publicise and promote the possibilities of registering an EU design.

Disclosure

Members note that the scenario where an illegal copy of an (unregistered) design is used as a disclosure against a later registered EU design is not contemplated. This situation significantly harms the rights of users of the design system, and it is unclear whether it constitutes ‘an abuse in relation to the designer’.

To ensure that consumers are not misled but are able to make an informed choice between competing products that can be used for repair purposes, Members believe it is necessary to make it explicitly clear in the legislation that the repair clause cannot be invoked by the manufacturer or seller of a part who has not duly provided consumers with detailed information on the origin of the product and the identity of its manufacturer to be used for the purposes of repairing the complex product. The indication of the manufacturer's identity should include at least the manufacturer's name, the geographical address of its registered place of business and, where appropriate, its telephone number or e-mail address.

Filing and forwarding of applications

From now on, it should only be possible to file an EU design application with the Office. However, Members believe that Member States should establish a ‘one-stop shop' through which applicants can receive guidance, legal and technical support.

Priority claims

The Executive Director may determine that the documentation to be provided by the applicant in support of the priority claim may consist of less than the documentation required under the implementing acts adopted pursuant to Article 42a, subject to compliance with the principle of equal treatment between applicants and provided that the information required is available to the Office from other sources.

Taking evidence

The Executive Director should determine the amounts of expenses to be paid, including advances, to cover the costs of taking of evidence.

Database

In addition to the obligation to keep a register, the Office will collect and store in an electronic database all information provided by holders or any other party to proceedings under this Regulation or acts adopted pursuant thereto.

The Executive Director should determine the conditions of access to the database and the manner in which the contents, other than the personal data, may be made available in machine-readable form, including the charges for such access if it is not free of charge. Any fees to be paid for accessing the database should in no case exceed the actual cost of the costs directly incurred as a result of such access.

Entitlement

Where the entitlement is not conditional upon the requirement of special professional qualifications, the person applying to be entered on the list who acts in design matters before the Benelux Office for Intellectual Property or a central industrial property office should have gained professional experience in the field of designs for at least five years.

Competence

Any other unit or person appointed by the Executive Director for this purpose shall be competent to take any decision within the framework of the procedures prescribed by the regulations, provided that each of the persons so appointed has sufficient professional experience to enable him to make an effective contribution to the protection of designs.

Fees and payment of fees

Where an excessive sum is paid to cover a fee or a charge, the excess should be refunded.

Members also introduced amendments to increase the amount of renewal fees (annex).