Industrial property: protection of Community design

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This additional opinion covered all of the other questions raised by the Commission and put forward the following recommendations: - it was important to check whether the general requirements set out in the regulation were compatible with Article 25 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, including trade in counterfeit goods; - the date and geographical scope of a design made available to the public should be clearly identified; - the holder of an unregistered Community design should be required to provide details of the reference date, from which protection was effective; - the provision empowering the holder of an unregistered design to prevent any third party from using an identical design resulting from ‘copying’ was only acceptable if the burden of proof was reversed; - consideration should be given to granting all the rights conferred by registered designs even in the case of registration of a design with deferred publication; - one provision established presumption of validity in that a Community design was to be considered new within the meaning of Article 5 provided the holder submitted evidence of its individual character. It was practically impossible to satisfy this requirement as the proposed provisions constituted a reversal of the burden of proof against the defendant counterclaimant, i.e. the possible counterfeiter, rather than the right holder; - a supplementary provision should be inserted, allowing the holder of a design to initiate an action to seek information before the Community Design Court, as was possible under German law, enabling the holder to secure information of value in identifying the source of the copy, in other words the element of intent.