Industrial property: legal protection of designs

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This additional opinion covered all of the other questions raised by the Commission. In particular, a number of articles could be worded better to avoid problems of interpretation. The Committee also made 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’ on which a design was made available to the public should be more definite and its geographical scope identified; - since it was difficult to determine the reference date indicating the duration of protection, it was suggested that the holder of an unregistered Community design should be required to communicate the date from which protection was effective; - one article empowered the holder of an unregistered design to prevent any third party from using an identical design resulting from ‘copying’. This provision was only acceptable if the burden of proof was reversed; - registration of designs with deferred publication was of interest. 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; - provision was made for a

Community Design Court
to enjoin a counterfeiter to provide information on the origin of counterfeit products. A supplementary provision should be inserted, allowing the holder of a registered or unregistered design to initiate an action to seek information, independently of any action concerning the counterfeit, as was possible under German law. This would enable the holder to secure information of value in identifying the source of the copy, in other words the element of intent.