Industrial property: legal protection of designs

1993/0464(COD) - 21/02/1996 - Modified legislative proposal

The amended Commission proposal incorporates all the European Parliament amendments except the one concerning the insertion of the concept of a legal presumption of novelty in infringement proceedings brought before national courts. The main changes made by the Commission in the light of the amendments tabled by the European Parliament serve to: - state that the design or model for which protection is sought must mean the 'outwardly visible appearance'; in addition, the word 'texture' adds a dimension to the design or model; - clarify that the scope of the Directive also includes designs and models in Member States which have no system of official registration but grant protection after the design or model concerned has been filed and officially published; - add a further condition to protect the components of complex products: the visible features of the components of a complex product can only as such be afforded protection if the component part remains visible during normal use of the complex product; - define the concept of 'normal use'; - define the individual character of a design or model, lowering the 'threshold' of protection; - limit the guiding principles intended to assist national courts in judging the individual character of a design or model to that which relates to the freedom of the designer; - add a 'safeguard clause' with a view to protecting the designs and models sector from any applications for revocation which might be filed on the grounds that an earlier design or model exists which is used in another part of the world, although the European sectors involved could not have been aware of this; - give more details of the case where disclosure of the design is the result of abusive conduct; - clarify the provisions regarding designs and models dictated by their technical function and designs of interconnections: protection should not be granted where the form is dictated by function; clearer definition of the 'must fit' clause; - state that it is the design or model per se which may be contrary to public order or morality, and not its use or publication; - state that protection extends to cover any design or model which does not produce on the informed user a different overall impression (instead of a significantly similar overall visual impression); - add several reasons for invalidity in order to enable infringing registrations to be removed from the registers of designs and models; - as regards the provisions of the 'repair clause': abolition of the three-year period for freedom of reproduction and introduction of a remuneration system taking effect on the date of registration of the design or model; addition of an obligation whereby the third party concerned must offer to supply the right-holder with the information needed to determine the level of remuneration in a fair and reasonable manner; when component parts falling within the scope of the 'repair clause' are produced outside the EC and then imported, remuneration is paid by the importer; addition of guiding principles to ensure that the system of remuneration works in the same way throughout the EC; details regarding the bases on which to calculate the level of remuneration; possibility for a right-holder to bring infringement actions provided for under national law; analysis of application of the 'repair clause' five years after the directive enters into force; - add a new article concerning the right to information: when interim or interim protective measures are ordered information can be requested before a final decision has been reached in infringement proceedings. No-one can be forced to give information which could subsequently be used against them; - put back the date for transposition of the directive to 1 January 1998.