Industrial property: protection of Community design

1993/0463(CNS) - 21/06/1999 - Legislative proposal

The Commission presented a new modified proposal on 21 June 1999, based on Article 308 of the EC Treaty, in order to give effect to a Court of Justice opinion (opinion 1/94 of 15/11/1994), as well as to a request made by the Committee on Legal Affairs and Citizens' Rights of the European Parliament on 27/11 /1997 to change the legal base of its proposal. The Court of Justice's opinion 1/94 ruled that the Community, in creating a new and unitary Community design right through a Regulation, use the same legal basis as for the Regulation on the Community trade mark, i.e. Article 308 of the Treaty. The Commission's initial proposal had been based on Article 95 of the Treaty. Furthermore, the amended proposal includes all the relevant provisions on substantive design law, which are incorporated in the Design Directive. On certain issues, these provisions differ from the provisions on substantive design law, which were included in the Commission's initial proposal for the Regulation on Community Design. The reason is that the provisions in the Commission's initial proposal for the Regulation incorporated the substantive provisions of the Commission's initial proposal for the Directive. Certain relevant provisions of the Directive focused in particular on the free use of spare parts for repair purposes and the protection of their design. In design terms, the problem related in particular to component parts of complex products upon whose appearance the design is dependent. In such cases, the consumer would not have any choice as to the replacement of the spare part to permit the repair of the complex product so as to restore its original appearance. The so-called 'repair' clause should avoid the creation of captive markets in spare parts, in particular in the motor vehicle sector. After lengthy and complex discussions, the Conciliation Committee finally reached an agreement which is often referred to as the 'freeze plus' compromise. The compromise implies that Member States shall maintain in force their existing legal provisions relating to the use of spare parts for the purpose of repair and shall introduce changes to those provisions only if the purpose is to liberalise the market for such parts. The Commission undertook to submit an analysis of the consequences of the Directive 3 years after the implementation date of the Directive and to propose, at latest one year later, any changes to the Directive needed to complete the internal market in respect of spare parts. The Commission also undertook to launch a consultation exercise, immediately after the adoption of the Directive, involving the parties most concerned, and with a view to arriving at a voluntary agreement among these parties on the free use of spare parts for repair purposes and their protection. The consultation exercise has in the meantime been initiated. Given that full harmonisation of the design laws of the Member States on the spare parts issue could not yet be introduced, at the present stage, it does not seem either appropriate or realistic to expect that such harmonisation could be achieved through this Regulation. It would not be appropriate because the Commission has only just started the consultations with the parties most concerned with the spare parts issue, in accordance with the commitment which it undertook vis-à-vis the Council and the Parliament. Under these circumstances, it would be preferable to await the outcome of these consultations and, subsequently, the review of the consequences of the Directive for, in particular, the spare parts sector before presenting any proposals on the free use of spare parts and the protection of their design, within the context of this Regulation. Nor would it be realistic to expect at this stage, and under the circumstances described above, a concrete solution with regard to the use and protection of the design of spare parts can be found within the framework of this Regulation. For these reasons, the amended proposal excludes, for the time being, the registration of the design of a component part of a complex product upon whose appearance the design of a component part is dependent. A proposal with regard to the use and protection of spare parts under this Regulation, shall be submitted by the Commission in parallel with the proposal which the Commission shall make to complete the internal market in respect of spare parts within the framework of the Design Directive. It should be stressed that the suggested approach does not deprive the designers of spare parts from the filing of applications for the registration of their design in all circumstances. First, spare parts, the design of which is not dependent on the appearance of the complex product can be filed for registration, if they fulfil the

conditions set out in Art. 4 of this Regulation. Second, where the design of a given spare part cannot be registered as a Community design, pursuant to Art. 10a, applications for the registration of such design may be filed in those Member States, which continue to provide such possibility, in accordance with Art. 14 of the Directive. To summarise, the proposed Regulation would: - define what constitutes a 'design', - establish criteria for protection (a design would have to be new and have individual character), - fix the duration protection (minimum of 5 years and maximum of 25 years), - fix the scope of protection (the designer would have the exclusive right to use the design and prevent any third party from using it); - establish limits to the design right (e.g. it would not normally cover inter-connections between components), - establish rules on the nullity of the registration of a design, - provide that Community protection of designs would co-exist with existing Member State systems for protecting designs, including under copyright, trade mark or patent law, and with the Community Trade Mark.