

QUESTION 108 A

Protection of Designs and Models in the EC

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Resolution

Having studied the Green Paper of the Commission of the European Communities on the Legal Protection of Industrial Design, and the results of the meeting held on 25th & 26th February 1992 at which AIPPI was represented by a Special Committee, AIPPI resolves as follows:

1. In line with the Rio Resolution which expressed views on the fundamental rules for a Regional Convention setting up a regional design title, AIPPI is pleased with the E.C. Commission's practical and concrete approach and its willingness to listen to the needs felt by industry.

AIPPI agrees that the correct approach is the "design approach" chosen by the E.C. Commission and approves of the adopted method not to regulate in a uniform manner the problem of cumulative protection offered by design right and, for example, copyright or the rules against unfair competition, - but AIPPI makes it clear that it is very much in favour of cumulative protection.

2. AIPPI emphasises that the Commission's texts must not contain any proposals which are inconsistent with the Paris Convention.

3. AIPPI approves of the system being proposed:

- the adoption of a Directive to harmonize the laws of Member States on the legal protection of design, and
- the creation of a Community Design to which the same fundamental rules apply and which constitutes a new right.

In particular, AIPPI approves of the dual system being proposed for the Community Design, namely the Unregistered Community Design (giving protection for a maximum of 3 years) and the Registered Community Design (giving protection for 25 years).

4. In its latest draft, the E.C. Commission proposed that "a design shall be protected as a Community Design to the extent that it is new and has an own individual character" (Article 4). AIPPI believes that this definition is not satisfactory and that the concept of "characterising feature" ("physionomie propre") ought not to appear as another requirement in addition to novelty. Novelty is the only criterion for protection and the concept of "individual character" ought to be a qualification of design novelty.
5. Contrary to the E.C. draft, AIPPI is in favour of a system of absolute novelty, in time and space, without taking into account whether or not the earlier object in question is known to certain people. The Community Design has to be different in relation to any object previously disclosed.
6. AIPPI is in favour of giving protection to all designs, according to Article 3 of the E.C draft, excluding what in the shape is dictated exclusively by the technical function.
7. As regard Interconnections (Article 8), AIPPI is in favour of simply deleting this whole Article. Failing this, AIPPI recommends that the exception is limited to "must fit".
8. AIPPI confirms that it agrees with the principle of a Grace Period. It is necessary to allow industry time to test the market. This Grace Period is not a Priority Right. Thus an intervening publication by a third party constitutes an anticipation which destroys novelty.

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