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ZAŠTITA DIZAJNA PRED UREDOM EUROPSKE UNIJE ZA INTELEKTUALNO VLASNIŠTVO

PROTECTION OF DESIGN AT THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

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SAŽETAK

Dizajn kao vanjski izgled nekog proizvoda ili predmeta utječe na tržišnu vrijednost stoga je bitna zaštita kao u hrvatskoj tako i u svijetu, a pravila o dizajnu Europske unije su upravo prošla značajne promjene kojima je cilj kako modernizirati, razjasniti i ojačati zaštitu dizajna tako i poboljšati dostupnost zaštite dizajna zatim osigurati poboljšanu interoperabilnost sustava zaštite dizajna kao i uskladiti različite režime zaštite rezervnih dijelova. Naime, industrijskim dizajnom se štite kako prostorna tako i plošna obilježja određenog proizvoda (industrijski ili zanatski proizvedenog predmeta) a koja su vidljiva pri njegovoj uobičajenoj upotrebi, no novine koje se uvode sada proširuju zaštitu i na animacije a i definicija „proizvoda“ je revidirana kako bi izričito uključivala nematerijalne predmete. Stoga autori u ovom radu analiziraju novine koje su uvedene u zaštitu dizajna sa naglaskom na praktične razlike koje nastaju uvođenjem ovih pravila.

Ključne riječi: *dizajn, EUIPO, pravna zaštita, rezervni dijelovi*

ABSTRACT

Design, as the external appearance of a product or item, influences its market value; therefore, protection is essential both in Croatia and worldwide. The European Union's design rules have recently undergone significant changes aimed at modernising, clarifying, and strengthening design protection, as well as improving the accessibility of design protection. Additionally, these changes seek to ensure enhanced interoperability of design protection systems and to harmonise various regimes for the protection of spare parts. Indeed, industrial design, protects the spatial or flat characteristics of a product (an item produced industrially or artisanally) that are visible during its normal (intended) use. However, the new changes now expand the protection to include animations, and the definition of "product" has been revised to explicitly include intangible items. Therefore, the authors in this paper analyse the innovations that have been introduced in the protection of design, with an emphasis on the practical differences that arise from the implementation of these rules.

Keywords: *design, EUIPO, legal protection, spare parts*

1. TERMINOLOŠKE PROMJENE I DEFINICIJE

1. TERMINOLOGICAL CHANGES AND DEFINITIONS

The design, external appearance or visual appearance of a product or object is what makes it attractive, appealing or desirable, and contributes to its sale and to increasing its market value. Industrial design, as a form of intellectual property, protects the three-dimensional or two-dimensional features of a product (an industrially

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produced or handcrafted item) that are visible during its normal (intended) use [1]. A design is protected by design rights if it is new and has individual character.

A design is considered new if no identical design has been made available to the public before the date of filing the application for registration or, if priority is claimed, before the date of recognition of priority. Designs are considered identical if their features differ only in immaterial details. A design is considered to have individual character if the overall impression it produces on an informed user differs from the overall impression produced on such a user by any design that has been made available to the public before the date of filing the application for registration or, if priority is claimed, before the date of recognition of priority [2]. In assessing individual character, the degree of freedom of the designer in developing the design is taken into consideration.

Industrial design, like other forms of industrial property, is protected territorially, meaning that each country protects it within its own territory, and it is acquired by registration based on the results of the examination procedure for an application for design protection conducted by the competent authority. In the Republic of Croatia this is the State Intellectual Property Office (hereinafter: SIPO), and within the European Union (hereinafter: EU) it is the European Union Intellectual Property Office (hereinafter: EUIPO). The basic requirements that a design must meet in order to be granted protection as intellectual property are novelty [3], individual character, and features that are not solely dictated by technical function. Industrial design therefore protects a design to the extent that it is new and has individual character.

The existing system of design protection at EU level was established more than twenty years ago by Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs, [4] but, under the influence of rapid technological progress, the need arose to adapt that system. Therefore, Directive (EU) 2024/2823 of the European Parliament and of the Council of 23 October 2024 on the legal protection of designs (recast) and Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 were published in the Official Journal of the European Union on 18 November 2024. However, they only fully enter into force on 1 July 2026, while the rules from the Directive must be implemented into the legislation of the Member States, and Directive 98/71/EC is repealed with effect from 9 December 2027. [5] The European Union Design Regulation (EUDR) aims to modernise the design protection system, align it with the digital age, and improve its efficiency and accessibility. Namely, the objectives of the reform are to increase legal certainty, reduce the complexity of the design protection procedure, and expand access to design rights.

A change in the fundamental terms is immediately noticeable: the term “Community design” has been replaced by the term “European Union design” (“EU design”). This is aligned with the terminology following the entry into force of the Lisbon Treaty [6]. Accordingly, the “Community design court” becomes the “EU design court”. Registered Community design and unregistered Community design become registered EU design (REUD) and unregistered EU design (UEUD). The Office for Harmonization in the Internal Market (OHIM) had already been renamed the European Union Intellectual Property Office (EUIPO), which is expressly confirmed in this Regulation as well.

In addition, this reform brings a conceptual shift in the understanding of the subject matter of protection, so the traditional understanding of design as exclusively a two-dimensional or three-dimensional feature of the appearance of the whole or part of a product undergoes a significant transformation adapted to the challenges of the digital age. The definition of design has been extended to animations and movement, because the definition of the term design now includes “movement, transition or any other sort of animation” as an integral part of the features of the appearance of a product. These rules therefore have far-reaching consequences for the protection of graphical user interfaces (GUI), [7] animated icons, variable fonts, and dynamic displays on screens. This legally recognises that design is no

longer a static category, but may also include a temporal dimension – that is, a sequence of visual events that constitute the recognisability of a digital product.

The next significant novelty is the explicit inclusion of both physical and non-physical forms in the concept of a product. A product is now defined as an item "regardless of whether it is embodied in a physical or non-physical form". This change removes previous doubts concerning the possibility of protecting a design that exists exclusively in a digital environment. For example, virtual products in the metaverse and NFTs (non-fungible tokens) representing digital assets can now be the subject of a registered EU design. This alignment with modern technologies places the EU among the leading jurisdictions in recognising digital assets as a legitimate object of intellectual property. [8]

Furthermore, the list of what is included in the concept of a product has been expanded, so it is emphasised that this means any industrial or handcrafted item, other than a computer program, regardless of whether it is embodied in a physical or non-physical form, including packaging (not only as a wrapper, but as an independent design with an identification function), sets of products (for example, cutlery as a whole), the spatial arrangement of items intended to form an interior or exterior environment (which includes the interior design of shops, exhibition spaces, and even virtual environments), and parts intended to be assembled into a complex product, as well as graphic works or symbols, logos, surface patterns, typographic typefaces, and graphical user interfaces (GUI), thereby particularly protecting the software and application development industry.

This change is essentially a reflection of the shift in economic reality [9]: in the economy, digital design often has even greater value than a physical product, and legal protection therefore follows that value where it is created, namely in virtual space.

2. ZAŠTITA I TRAJANJE PRAVA
2. PROTECTION AND DURATION OF RIGHTS

The protection of a registered design still lasts for 5 years from the date of filing the application, with the possibility of renewal every 5 years up to a maximum of 25 years. Fees increase over time (see point 3.5), which raises the question of whether it is commercially worthwhile to protect a design after a period of 10 to 15 years. The design itself belongs to the designer or their successor in title. However, the right to a registered design belongs to the employer if the design is created by an employee in the course of their duties or following the instructions of their employer, unless otherwise agreed between the parties concerned or provided for under national law.

The holder of the right to a registered design may inform the public that the design is registered by marking the product in which the design is incorporated or to which it is applied with a capital letter D enclosed within a circle Ⓓ Such design notice may be accompanied by the registration number of the design or a link to the entry for the design in the register [10].

Rules on the protection of unregistered designs also remain in place. Such designs are protected for 3 years from the date on which they are disclosed to the public, but only if they meet the requirements for design registration, without an application for registration having been filed. Whether someone will register a design or rely on the protection offered by the rules on unregistered designs depends on the designer and often on the expectation of how interesting and distinctive a particular product will be on the market; essentially, the shorter the "life" cycle of the product, the less likely it is that design registration will be pursued [11].

2.1. ISKLJUČIVA PRAVA KOJA DAJE EU DIZAJN I OGRANIČENJA
2.1. RIGHTS CONFERRED BY THE EU DESIGN AND LIMITATIONS

The scope of exclusive design protection has also been extended to 3D printing, as it has been expressly stipulated that the designer's exclusive right includes creating, downloading, copying, and sharing or distributing to others any medium or software recording the design for the purpose of enabling a product in which the design is incorporated, or to which the design is applied, to be made.

As new rights have been granted to the designer, new limitations on those rights have also been introduced. The protection of the designer's rights continues not to apply to acts done privately and for non-commercial purposes, to acts done for experimental purposes, or for the purpose of citation or teaching, or to equipment on ships and aircraft registered in a third country that temporarily enter the territory of the Union, and to the importation of spare parts and accessories into the Union for the purpose of repairing such ships and aircraft, or to the execution of repairs on such ships and aircraft. In addition, two new limitations on exclusive rights have been introduced, namely for identification and reference, and for comment, criticism, or parody. Acts carried out in order to identify or refer to a product as that of the design right holder, intended to enable the interoperability of products, are permitted, as are acts of comment, criticism, or parody, in order to protect the right to freedom of expression. This was highlighted in the judgment Deckmyn v Vandersteen (C-201/13) [12], where it was clearly indicated that parody may constitute a legitimate exception to copyright protection, and this has, over time, been extended to other intellectual property rights as well.

2.2. KLAUZULA O POPRAVKU
2.2. REPAIR CLAUSE

Completely new rules seek to encourage the spare parts industry, particularly in the automotive sector but also in other industries. [13] It is therefore emphasised that design protection shall not be granted for a registered design that constitutes a component part of a complex product, on whose appearance the design of the component part is dependent, and which is used as a registered design solely for the purpose of repairing that complex product so as to restore its original appearance. This rule cannot be invoked by a manufacturer or seller of a component part of a complex product who has not duly informed consumers, by means of a clear and visible indication on the product or in another appropriate manner, of the commercial origin of the product to be used for the repair of the complex product and the identity of the manufacturer of that product, so that consumers can make an informed decision between competing products that can be used for the repair. The manufacturer or seller of a component part of a complex product is not required to guarantee that the component parts manufactured or sold by them are ultimately used by end users exclusively for the purpose of repair so as to restore the original appearance of the complex product.

Manufacturers of parts of complex products (e.g. bumpers, doors, headlights, mirror covers) may therefore manufacture and sell such parts if they are used exclusively for the repair of the complex product in order to restore its original appearance. This exception applies only to repairs in which the replacement part must match the appearance of the original part. The manufacture of an identical part required for repair is permitted, but the use of the original design for upgrading the product or for modifications that provide additional functions is not permitted. In this respect, indicating the origin of the product is important, because the manufacturer must be clearly and visibly indicated on the part or packaging (e.g., "This bumper is manufactured by XYZ company").

These new repair rules significantly affect both the automotive industry and all industries in which a product has numerous smaller parts, making it important to have products available that are necessary for repair. Precisely because of this complexity, a longer adaptation period has been prescribed for Member States, so it is stipulated that if the national legislation of a Member State on 8 December 2024 provides design protection in respect of component parts of complex products, such protection shall continue until 9 December 2032, provided that the application for registration was filed before 8 December 2024.

3. POSTUPAK REGISTRACIJE
3. REGISTRATION PROCEDURE

To facilitate the registration procedure, multiple applications are now possible, allowing up to 50 designs in a single application. This approach is recommended for product families (such as sets of glasses or different sizes of the same design) or for colour variants of the same shape and similar designs. The "unity of class" requirement has been abolished, allowing a wider range of designs to be included in a single application, but a limit of 50 designs per application has been introduced

to keep the process manageable.

The examination procedure itself is formal, as EUIPO examines only the formal requirements (correctness of the application, representations, specimens), then the absolute grounds for refusal (public policy, morality, coats of arms) and whether the representation corresponds to the definition of a design. Novelty and individual character are not examined ex officio, but only if a third party raises an objection through opposition or invalidity proceedings.

Applications for an EU design can no longer be filed through national offices, meaning that all applications must now be filed directly with EUIPO. This simplifies the procedure and reduces complexity. However, payment of the application fee has become a condition for determining the filing date, so applicants must ensure payment of the fees within one month of filing the application, aligning the procedure with that for EU trade marks. For the sake of simplicity, the obligation to submit physical specimens has been abolished.

The rules on deferment of publication have also been extended, with the period lengthened from 12 to 30 months from the date of filing the application (or the priority date). During this period, the design is registered and protected but is not publicly available in the register, making this ideal for confidential market testing, crowdfunding campaigns or protection prior to the official launch. A publication fee is no longer payable for deferred publication. Accordingly, design holders can no longer prevent publication by non-payment but must expressly surrender designs that they do not wish to be published.

3.1. NIŠTAVOST I PRAVA TREĆIH STRANA

3.1. NULLITY AND THE RIGHTS OF THIRD PARTIES

As previously emphasised, when a design is protected, its formal validity is examined, while the validity of the design itself is examined only in proceedings initiated by a third party, and the design may therefore be declared invalid. The reform has added three new categories of grounds, namely conflict with an earlier design, regardless of whether the earlier design is a registered EU design, a nationally registered design or an internationally registered design having effect in the EU. Furthermore, a design may be declared invalid due to a conflict with an earlier trade mark (particularly one with a reputation). Specifically, if a design makes unauthorised use of an earlier trade mark that has a reputation in the EU, the trade mark holder may request a declaration of invalidity. For example, a sneaker design that imitates adidas's distinctive side stripe pattern. In addition, a design may be declared invalid due to copyright infringement, e.g., if the design represents unauthorised use of a work protected by copyright (e.g. an illustration, photograph or sculpture).

Depending on the grounds on which a declaration of invalidity is sought, the persons entitled to file such a request also differ. In a case where it is claimed that a design lacks novelty or individual character, such proceedings may be initiated by any person, but if it is claimed that there is a conflict with an earlier design, then this may be done only by the holder of the earlier right. A similar approach applies where it is claimed that the design conflicts with an earlier trade mark, in which case invalidity proceedings may be initiated only by the trade mark holder, while in the case of copyright infringement, the only person entitled to file the request is the copyright holder.

3.2. PRODULJENJE

3.2. RENEWAL

The calculation of the basic renewal period for EU designs has been aligned with the calculation for European Union trademarks. The basic renewal period is now a six-month period ending on the date of expiry of the registration, rather than on the last day of the month in which the protection expires.

The updated renewal fee structure encourages the maintenance of only active, commercially relevant designs, ensuring that the Register remains up to date. This approach promotes a healthier design ecosystem and simplifies the management of companies' intellectual property. In addition, aligning the renewal process with European Union trade mark regulations offers convenience and potential cost savings. It is important to note

that EUIPO will use the date of receipt of the user's renewal request as the reference date for calculating renewal fees. For requests received before the date of application, the old fees apply. For requests received after the date of application, the new fees apply.

3.3. KOMUNIKACIJA
3.3. COMMUNICATION

For practical purposes, rules on digital communication have been introduced, namely via the user portal, e-mail or API (for large applicants), with all data being retained indefinitely in the public register and database, while personal data are retained in the internal database for 18 months after the expiry of protection, after which their deletion may be requested. Although all EUIPO decisions are publicly available on the internet, parties may request the removal of personal data (anonymisation). [14]

In principle, the application is filed in one of the five EUIPO languages, namely English, French, German, Italian or Spanish, but the second language (for communication) may be any official EU language or another of the five listed languages.

Given that the EU is a party to the Geneva Act of the Hague Agreement, [15] for international registrations designating the EU, EUIPO acts as the competent authority and has a period of 6 months from notification by the World Intellectual Property Organization (WIPO) to refuse protection. This means that if EUIPO does not refuse protection within 6 months, protection automatically takes effect. This has a practical advantage because designers from the USA, China or Japan can obtain protection in the EU through a single international application (WIPO), without a separate application to EUIPO.

3.4. PRIJENOS, LICENCIJA I VLASNIŠTVU
3.4. TRANSFER, LICENSE, AND OWNERSHIP

The rules on the transfer of ownership of a design have been further clarified. It is now stipulated that, where an application has been filed by an unauthorised person, the lawful holder of the design may request its transfer within three years from the publication of the registration. The changes concerning ownership clarify the appropriate authority for resolving these matters and confirm that a request for a change of ownership through entitlement proceedings may be submitted by the person entitled to the design. These changes ensure that lawful holders can directly request a change of ownership instead of first having the design declared invalid.

In addition to transfer, a common method of disposing of design rights is licensing, [16] which grants the right to use a particular design. It remains stipulated that a licence may be exclusive or non-exclusive. However, in the case of an exclusive licence, the licensee may initiate infringement proceedings independently if the holder fails to do so within a reasonable period. A licence may cover the entire EU or part of it (e.g., only Croatia and Slovenia).

3.5. PRISTOJBE
3.5. FEES

The new rules on fee levels provide for the consolidation of registration and publication fees into a single application fee, while a flat-rate fee per additional design is introduced for multiple applications. However, the amendments result in a significant increase in fees depending on the renewal period, so that the first renewal of an EU registration costs EUR 150 per design and the fourth renewal period costs EUR 700 per design, while the renewal of an international registration costs EUR 62 per design for each period.

At the same time, the new fee structure includes a reduced individual fee for each additional design in a multiple application (up to a certain limit) and a reduction in fees for applications for a declaration of invalidity and for appeals.

4. ZAKLJUČAK
4. CONCLUSION

The reform of the EU design protection system, embodied in Regulation (EU) 2024/2822 and Directive (EU) 2024/2823, represents the most

comprehensive modernisation of this area of intellectual property since the adoption of the original Regulation in 2002. Analysis of the amendments introduced points to several key conclusions.

First, the reform brings a conceptual shift in the understanding of the subject matter of protection. By extending the definition of design to animations, movement and transitions, and by explicitly including non-physical forms in the concept of a product, the legal framework finally reflects the technological reality in which digital assets (virtual products, NFTs, GUIs, dynamic fonts) often have a higher market value than their physical equivalents. This places the EU among the leading jurisdictions in recognising digital design as a legitimate subject matter of intellectual property. [17]

Second, the introduction of the repair clause (Article 20a) represents a carefully calibrated compromise between the protection of original designers and the need for a sustainable spare parts market. By allowing the manufacture of replacement parts of identical appearance exclusively for repair purposes, subject to the obligation clearly to indicate their origin, the reform promotes the circular economy and extends the service life of complex products, particularly in the automotive industry. The transitional period until 2032 for existing national protections ensures legal certainty during the adaptation process. [18]

Third, procedural improvements significantly reduce the administrative burden. Multiple applications covering up to 50 designs, the extension of deferred publication to 30 months, the abolition of the requirement to submit physical specimens and mandatory digital communication make the system more accessible, particularly for small and medium-sized enterprises. Alignment with trade mark procedures (the six-month renewal period, payment of the fee as a condition for determining the filing date) brings long-awaited harmonisation within the EUIPO.

Fourth, the expanded grounds for invalidity – including conflict with an earlier trade mark and copyright infringement – strengthen legal certainty and enable more effective protection of earlier rights. At the same time, the new limitations on exclusive rights (for the purposes of identification, interoperability, comment, criticism and parody) ensure a balance with freedom of expression and market competition.

Fifth, although the reform enters into force on 1 July 2026, Member States have until 9 December 2027 to implement the Directive. This two-year transitional period, together with the long-term protection of existing designs of component parts of complex products until 2032, enables the gradual adaptation of all stakeholders, from individual designers to large corporations.

Finally, despite numerous improvements, questions concerning practical implementation remain open: how the individual character of animated GUIs will be assessed in practice, how sequences of movement will be documented in applications, and how the boundary between permitted repair and prohibited upgrading will be interpreted. The answers to these questions will be shaped by future EUIPO practice and by the case law of the Court of Justice of the EU.

The reform therefore represents not merely a technical adjustment [19] but a strategic framework that recognises that, in the 21st-century economy, design – whether physical or virtual – constitutes a key competitive advantage that deserves modern, effective and accessible legal protection.

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