

Study on the Patent Protection for the Industrial Design in Taiwan: From the Comparative Perspective of German and Community Design

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Abstract

Design, which encompasses everything from shape, pattern, color or any combination thereof of an article as a whole or in part by visual appeal, is increasingly the subject of intellectual property claims. The design protection is named the protection on “look and feel”. The law of design is confused and splintered among various conceptions in copyright, patent, trademark and unfair competition laws. The key difference between the IP law governing design in Taiwan and Europe is the design protection system. In Taiwan, industrial design is protected by patent right, same as in the USA. Germany and other European countries follow sui generis protection for design.

European design and fashion markets are significantly well developed, since IP law for design and textiles has existed for much longer and is more expansive in Europe. For this reason, this article traces back the history of design protection in Europe and reviews the normative conceptions and doctrines of specific design protection system, including the requirement of individual character, freedom of the designer in developing the design, scope of protection, right conferred by the protected design as well as determination of infringement of design right. To address these issues, this article provides comprehensive assessment of the articles and decisions, particularly the German laws. After analyzing the regulations of design patent in Taiwan, this article asserts that Taiwan should reconsider the legal framework of IP protection for industrial design. The main challenge of

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protection and enforcement of design patent in Taiwan is that lots of regulations and conception of design patent are improperly influenced by the invention patent and utility model patent, since design protection is incorporated into the Patent Act. Consequently, the court decisions depart quite starkly from the normative protection for the subject matter of “look and feel”, namely the overall impression.

Enhanced protection for industrial design not only promotes the contribution of individual designers, but also encourages innovation and development of new products and investment in their production. A more accessible design-protection legal system is essential for the industries. This article argues that it is important to bring the IP protection for industrial design in Taiwan into line with the legal framework of German and European design laws, which provides designers with significant levels of protection.

Keywords: design, patent, design patent, patent infringement, trade dress, overall impression, unfair competition, intellectual property court, patent litigation, counterfeit