

Study on the Establishment of Design Patent Infringement in Taiwan: From the Comparative Perspective of German Laws

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Abstract

Design patent or design right is a form of intellectual property right concerned with the visual appearance of articles which have industrial use. The protected design confers an exclusive right to use it and to prevent any third party from using it without the holder's consent. The use covers making, offering, putting on the market, importing, exporting, or using a product to which the design is applied. In the proceeding of infringement litigation, the court has to determine whether the accused product infringes the protected design. The test for infringement is whether the alleged infringing product does or does not "produce on the informed user a different overall impression". According to the legal practices in Germany, in assessing the scope of protection, the degree of freedom of the designer in developing the design should be considered. To determine whether the protected design is infringed or not, the concepts of "informed user" and "overall impression" should be interpreted by the courts. The overall impression test means that the court would not focus on minor variants in the designs, but would look at whether the overall impression created by the alleged infringement is the same as the protected design. The above-mentioned rule should be followed in Taiwan. However, methodology of determining design patent infringement has not been established by the Intellectual Property Court till now,

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even though some disputes attract attention and design patent plays more important role in recent years.

This article reviews the normative conceptions and doctrines of determination of design infringement, including freedom of the designer in developing the design, scope of protection, informed user and overall impression. To address these issues, this article provides comprehensive assessment of the articles and decisions adjudicated by the Supreme Court (BGH) in Germany. Also, this article analyzes the regulations of design patent and decisions adjudicated by Intellectual Property Court in Taiwan.

Keywords: design, patent, design patent, overall impression, informed user, ordinary observer, patent litigatio