

International Design Law Continues to Evolve

BY DANIEL A. GAJEWSKI

Like 2020 before it, 2021 has been a year of change for global design protection. Countries like Korea continue to update their rules to deal with the realities of modern, virtual design. China enacted a big modernization to its design laws, bringing them more in line with international norms. Australia is beginning to implement changes based on a long-running review of its design laws. And the European Union is in the midst of a period of public consultation and review aimed at modernizing the legal framework for its design protection. Meanwhile, the Hague International Design System continues to add contracting parties, and the Eurasian Design System came online.

There is a lot to keep up with in the world of design law. This summary will highlight some of the more significant developments of 2021 and point out some areas to watch in 2022 and beyond.

Korea

Korea continued a trend of countries modernizing to better protect digital image designs like graphical user interfaces, virtual reality, and augmented reality designs. An amendment to Korea's Design Protection Act that went into effect in October 2021 allows these so-called "image" designs to be protected even if they are not displayed on a screen of an item. These image designs must be more than inert images though—an eligible image design must be used for the operation of a device or exhibit a function.

This is a welcome update that recognizes and adapts Korea's law to the realities of current technology and how people increasingly interact with modern design. It brings Korea in line with a growing international consensus that does the same. Korea joins a number of other countries that have recently made similar changes to their design laws to protect image designs independent of a physical article, including Japan, China, and Singapore. The US also appears to be in the early stages of considering similar modernization.

The world is paying close attention to design law in recent years, with countries taking positive action to catch up to each other in the quality and consistency of their design practices. The scope of industrial design is continuing to expand into new areas. The activity in 2021 is a good signal that design law may be able to keep up.

China

A revision to China's patent laws came into force in June 2021, with big changes for its design protection. China now joins the vast majority of countries in allowing partial-design claiming—the practice of claiming only a portion of an entire article, usually by showing the unclaimed portion in broken lines. Not only will this change protect designs for portions of physical devices, but it should also allow digital image designs to be protected independently, no longer tied to a specific device.

Allowing partial-design claiming in China is a long-awaited change, and helped pave the way for China to join the Hague International Design System, since allowing partial-design claiming is a precondition to do so. China's update also extended design patent term from 10 years to 15 years (also a precondition for joining the Hague system). China joined the Hague system on February 5, 2022 (effective May 5, 2022).

The biggest question moving forward in 2022 is *how* China's new law will be implemented. Draft examination guidelines were released in August 2021, and China took comments from the public on them, but so far the guidelines have not been finalized. And it appears that until they are, China is not examining applications that include partial-design claims, leading

International Design Law Continues to Evolve

continued

to some significant delays. Look to 2022 to hopefully get this moving with finalized examination guidelines.

Graphical user interface (GUI) designs may get a further boost in 2022 thanks to a recent decision by the Shanghai IP Court which, for the first time, found infringement of a GUI design based primarily on the software itself, not the mobile device on which it was displayed. Combined with the ability to claim partial designs, this de-coupling of a GUI design from the appearance of its displaying article shows a positive trend for GUI protection in China.

Australia

In September 2021, Australia amended its Designs Act based on a comprehensive review that began in 2012. Starting on March 10, 2022, Australia will have a 12-month grace period to file a design application. Although design grace period provisions and details vary among different jurisdictions, with this change Australia will join the majority of jurisdictions in at least *having* a design grace period. In general this grace period will apply to both authorized and unauthorized disclosures of the claimed design.

The amendment also simplifies the publication and registration process. Designs will no longer publish before registration, and making the request for registration can be deferred for six months after filing. This appears to effectively create a six-month window in which a filed design application can remain confidential, which is a welcome simplification for applicants.

Although IP Australia's public consultation showed strong support from the public for allowing partial designs to be protected (like China just did), the 2021 Design Act does not change the law in this respect. IP Australia plans to continue considering this issue and will take feedback on it via its policy register at any time: <https://www.ipaustralia.gov.au/policy-register/allow-partial-product-registration-designs>.

Hague International Design System

The Hague System continues to grow. It now includes 77 members. Jamaica and Belarus both acceded in 2021, and China in February 2022.

Eurasian Design System

The Eurasian Patent Organization's (EAPO) Eurasian design patent system was implemented in June 2021, after years of planning. Similar to an EU Registered Community Design, an EAPO registration is valid across several member states, which for now includes Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, and Russia.

European Union

The EU is in the midst of a review and update to its rules on design protection. A public consultation period was completed in July 2021. The EU's initiative aims to improve consistency and accessibility, and to modernize its design framework for the digital age. The review also considers whether to scale back design protection for spare parts. European Commission adoption is planned for the second quarter of 2022.