Design
Searching

Summary

*This is an updated version of the fact sheet originally developed and first published in 2015.

Introduction

Design protection transfers the exclusive right to use a design to its owner or holder. It focusses on creating, launching, importing, exporting or using the product in which the design is incorporated or to which it is applied. Moreover, Design protection helps to prevent third parties from using a product commercially, without prior consent. Design rights are acquired through registration within national or regional intellectual property offices.

The European Union and some national legislations even allow for an unregistered design protection. Accordingly, in most European countries, original designs are automatically subject to copyright protection, which is taking effect from the moment of the work's creation, without registration.

For the aforementioned forms of design protection, the first-come, first-served principle applies[1]. However, the risk of investing in a non-original design can be avoided or at least limited by conducting a thorough prior search.

This fact sheet highlights the main characteristics of design searching as a best practice approach. Design searching allows companies and designers to keep up with the latest market trends, but also review and research designs that may prevent the possibility to acquire protection or that infringe copyrights for their creations.

The first part outlines why design searching is important and offers practical advices on how to search unregistered designs.

A short overview of the most common design databases, which are the main place to search registered design data, is presented in the last part of this factsheet.

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1 Unregistered design rights come into force when the design is made available to the public. Registered design protection begins when a filing date is granted.

1. Design searching

1.1. Why is design searching important?

Design searching can be defined as the process of searching design databases or other sources that are offering design information. It is mostly done in the context of registration procedures, invalidity and enforcement proceedings or to study the market development of certain designs. Within increasingly competitive markets, design searching is also used as a strategy to monitor trends. Innovative companies use design databases to research the market in a specific commercial area.

Searching design databases ensures existing designs will not form an obstacle to the registration and publication of a planned design. Furthermore, to challenge the validity of a design, proof is required that an identical (or highly similar) design really exists and has been, in fact, made available to the public through registration or otherwise (e.g., use in trade, exhibition). Hence, design searching is also useful to find convincing evidences in case of a legal dispute.

> In summary, design searching helps to:
> - Find registered and unregistered designs[2]
> - Find registered trademarks or other distinctive signs
> - Find works that are protected under copyright law
> - Determine whether a design is new and original
> - Determine whether the term of protection of a certain design expires
> - Find design protection strategies
> - Find competing design products on the market

It is important to note that design searching is not limited to registered designs only. All published designs, whether unregistered or registered, are already considered prior art[3] and thus may threaten the protection of identical or similar subsequent designs.

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2 Owners of registered but also unregistered designs can take legal action against anyone using an identical or similar design.

3 A design that has been made available to the global public becomes part of the state of the art.

While comparing two designs, every element of a new design that can be found in an earlier one, will lead to the subsequent design to be considered to lack novelty[4].

If two designs are not identical but look similar, the overall impression that the subsequent design evokes must be clearly distinguishable from earlier designs. The comparison focuses on features which are distinctive, arbitrary and visible during normal use. The term "informed user" refers to a person, an imaginary user, with knowledge of designs in a particular field of activity, who is not necessarily a designer, technical expert, manufacturer or seller.

Design searching should also cover the search of trademarks or other distinctive signs as well as copyrighted works. Hence, a design can be contested and declared invalid if it is in conflict with any prior design, but also if it makes unauthorised use of an existing distinctive sign or of a work protected by copyright.

Note: Do not limit your search to a particular territory: any design that has been made available to the public, anywhere in the world, and at any time must be considered during the search.

Some creations are not subject to registration or the registration is not made publicly available, once protection is granted.

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4 The exact meaning of 'novelty' may vary within different jurisdictions. A design will be considered new if there is no identical and already published design.

2. Searching unregistered designs

Within the European Union (EU), new designs with an individual character are automatically protected and regulated under a system of design rights, called Community designs. This form of design protection also exists in some national jurisdictions – e.g., in the United Kingdom.

Unregistered designs cannot be found in design databases. However, unregistered designs can be discovered in existing literature, design catalogues, websites, by visiting trade fairs or by conducting a search within the circles specialising in a specific business sector.

Moreover, designers and companies in the industry have to keep up with current design trends by nature and can use this know-how to assess the novelty as well as originality of a particular design.

3. Design search databases

Designs can be registered with national, regional or international intellectual property offices[5]. These registers constitute the primary official source of data on registered designs. However, searching registers individually is often complicated and time-consuming because the data has to be accessed separately, e.g., in different languages or under various layouts.

Therefore, international multilingual design databases are a more helpful searching tool that offer the possibility to search in a large set of design data, simultaneously and across borders.

The following paragraphs will outline the characteristics of two essential design search databases: the European Union Intellectual Property Office (EUIPO) and the World Intellectual Property Organization (WIPO).

3.1. DesignView (EUIPO)

DesignView is a free of charge, multilingual database, which gives access to design applications and registrations through one single online platform. The information is available in 32 languages, including the 24 official EU languages (and others, such as Arabic or Russian). DesignView is a centralised database and a search engine for both, registered Community Designs and national applications. It also includes registrations from 39 participating IP offices (including from most EU member states as well as Korea, Japan, USA, Tunisia, Turkey, Russia, Morocco, Mexico and Canada). The design information is provided by the participating national IP offices, by EUIPO and WIPO[6].

Design registries of the ASEAN countries can be accessed through the ASEAN Designview version, which hosts data from 10 participating countries, based on the same interface structure[7].

Moreover, the DesignView interface offers two search options: basic search and advanced search.

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5 New international registrations, renewals, and modifications affecting existing international registrations are published in the International Designs Bulletin, which is the official publication of the records of the International Register of the Hague System. The Community designs Bulletin contains data regarding registrations, amendments, renewals, transfers and licenses of Community designs. National registrations are published in the official registers of the relevant national offices. Their characteristics are not subject of this fact sheet. Information can be found on the website of each office, on the Innovaccess website or by contacting the relevant IP office directly.

6 Although the data is accessible via a centralised system each office remains the owner of the data and is responsible for its accuracy. Thus, DesignView reflects with certainty the design registers of the participating offices or organisations at the moment of consultation.

7 Countries participating to ASEAN DesignView are: Brunei Darussalam, Indonesia, Cambodia, Lao PDR, Myanmar, Malaysia, Philippines, Singapore, Thailand and Vietnam.
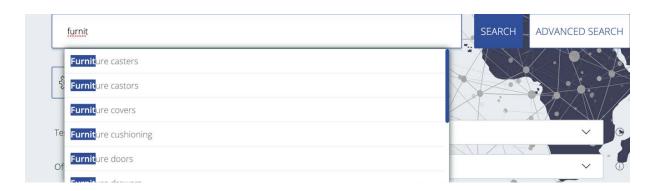
3.1.1. Basic search

The basic search option helps to identify products that incorporate specific designs. In DesignView, products can be identified either by keywords or by their corresponding classes and subclasses in the Locarno classification (the international classification system for industrial designs[8]).

DesignClass, EUIPO's search tool, automatically classifies products into classes and subclasses. This search tool also helps to detect products and their corresponding classification. DesignClass is based on the same structure as the Locarno Classification and available in 29 languages. Hence, there is no need to translate entries before searching.

Once a term is entered into the database, a list of results will appear. Using the gallery mode helps to visualise the images. Searches can be further defined by selecting specific filters.

The search field offers an auto-complete function, while a keyword is typed in.
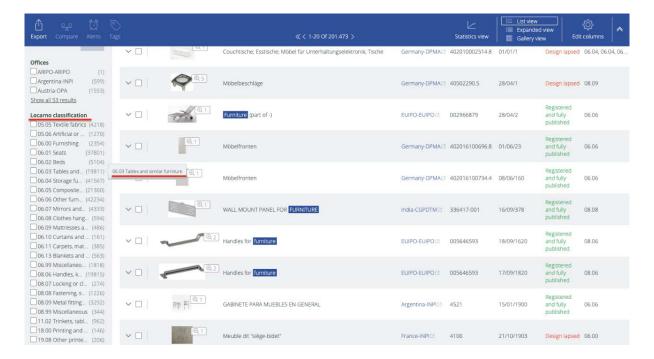

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8 The Locarno classification is administered by the WIPO and it serves administrative purposes. Indeed, it allows both classifying products indicated in design applications and searching registered designs. Neither the indication of products nor the classification affects the scope of protection of a design as such. The current (thirteenth) edition is in force since January 2021 and incorporates all the revisions made in up to this date. It contains 32 classes, 237 subclasses and an alphabetical list of more than 7,000 products. The alphabetical list is presented in two parts: the first part lists all the goods in a single alphabetical list, with indication of the class and subclass to which each good belongs; the second part lists the goods in alphabetical order within each subclass. The explanatory notes are incorporated in the list of classes and subclasses.
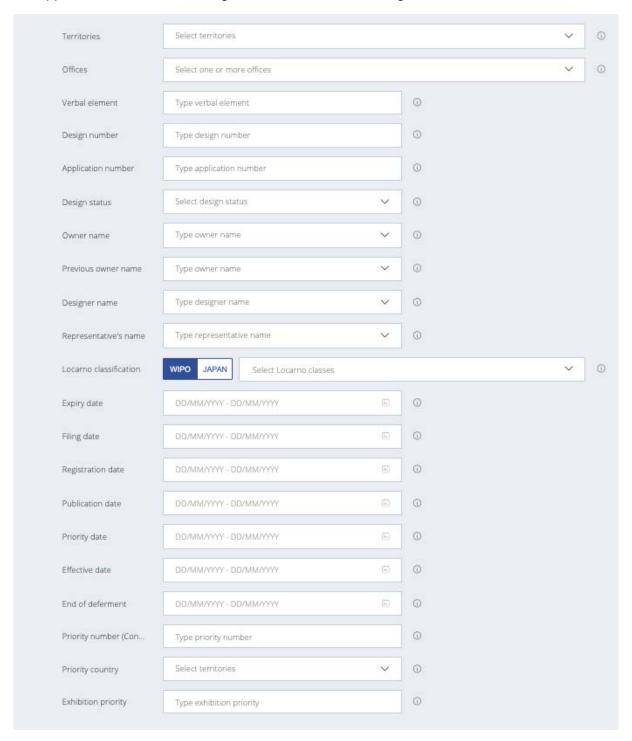
Thereafter, a list of research results will appear.

To refine the search, a class can be selected via the drop-down menu above the search field.
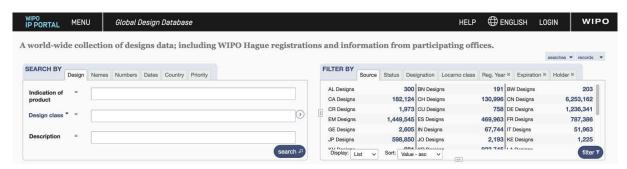
3.1.2. Advanced search

Advanced searches offer multiple search criteria such as the product type, the Locarno class, the application number, the design status or the owner/designer's name[9].

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9 The asterisk (*), question mark (?) and double quotation marks („ „) are special wild-card characters with specific functions that can be used in this mode. For further information, please consult the Help section of the DesignView webpage.

3.2. The Global Design Database (WIPO)

The Global Design Database is a worldwide data collection of industrial designs, which are registered under the WIPO-administered Hague System and in national collections. This database enables free access to design data and offers to search multiple criteria. Users can choose to search designs by typing in products, names of design owners (creators), application- and registration numbers, dates as well as countries[10].

3.3. The Hague Express Database (WIPO)

The Hague Express Database includes bibliographical data and international design registrations (including reproductions of industrial designs) that have been listed in the International Register and published in the International Designs Bulletin[11].

This database is structured into areas and fields that can be used to search via keywords[12]. The tab "search by field" is divided into five separate categories, i.e., design, names, numbers, dates and country. Each field provides automatic suggestions for terms.

Search queries are performed by using terms and operators. Terms can either be single words (e.g., dress) or multiple words surrounded by quotes (e.g., „camera carrier"). The database provides suggestions of potentially matching terms. Terms can also be modified or combined together in a more complex query, using different types of operators (e.g., simple logical operators to combine terms such as: "AND, OR, NOT <term>," or grouping operators such as: (<term> OR <term>) AND <term> etc.).

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10 Detailed explanation of the Global Design database searching criteria are available on the WIPO website

11 Note that the only official publication remains the International Designs Bulletin.

12 A complete description of the functionalities of the Hague Express Database is available here.

3.3.1. Search by design

The "search by design" tab in the Hague Express Database allows to search for terms directly related to the design. Three fields are comprised in this tab: indication of products, Locarno class and description:

- The tab "Locarno Class" helps to search designs according to their Locarno classes. Find competing design products on the market
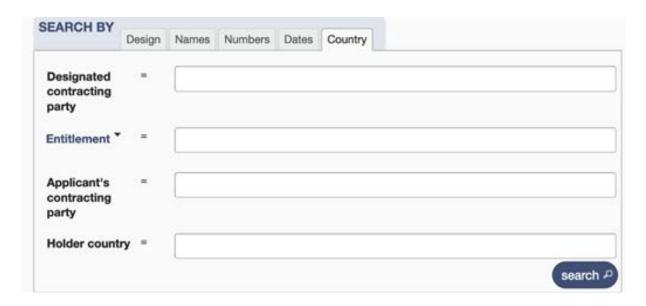- The tab "Description" helps to search for terms in the description, which are provided in the registration.

For example, a search for the term "office furniture" in the Locarno 06-05 (composite furniture, dressing table, school desks with attached seats) provides the following results:

The most recent search will be remembered by the system and appears before the list of results. To remove a search entry, the "current search" field can be cleared and a new keyword may be entered.

There are four additional search options available:

- By names (e.g., holder, creator or representative)
- By numbers (e.g., publication number, application numbwer)
- note that for collections that don't have separate application and publication numbers (such as Hague), searching in either field will produce the same results.
- By dates (e.g., filing, registration, publication, priority)
- By country

The search results can also be filtered and narrowed down to particular categories, without having to enter any additional search terms. Different types of filters are divided into separate tabs. Specific information is available for the following individual categories:

- Designation
- Locarno Class Registration Date
- Applicant's Contracting Party

4. Analysing the design search results

Design searching helps to use a new design in business and to ensure that there is no legal risk in applying for a particular design registration.

However, if a design does display similar or identical features of an earlier registered or unregistered design, the following options exists:

- Negotiating an agreement with the owner of the earlier design that regulates the coexistence of both designs.
- Filing a design application, regardless of the search result, because the existence of an earlier design does not prevent from applying for design registration as such. However, this option might entail the risk of invalidity or infringing actions.
- Challenging the validity of an earlier design, due to potential lack of novelty or individual characteristics.
- Taking no further action, if the risk of conflict with an earlier design is too high.

The decision which option is most suitable for a particular design depends on the search result. A legal expert should be consulted during the process of interpreting the search results to identify professionally which subsequent actions are appropriate.

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

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