



Hunting with Artemis

9th Session: EU Case-Law Update

Impacting Design Cases

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Abstract

The purpose of this presentation is to provide with a general overview of the most impacting design cases from the last couple of years.

The presentation is divided into four parts during which the following topics will be presented:

- i. **Functionality:** The main focus will be on the rules laid down by the Court in *Doceram* for the assessment of functionality, i.e. when the appearance of a product is solely dictated by its technical function, and hence excluded from Community design protection. Particular attention will be given to the two tests adopted by the different European Courts before the *Doceram* case. Finally, we will make a brief comparison with trademarks, analysing how to assess if the shape of the sign is necessary to obtain a technical result.

Case law: C- 395/16 of 08/03/2018, *Doceram*; T-164/11 of 19/09/2012, *Knife handle*; T-44/16, 31/01/2018, *Transdermal Patch*; R 452/2017-1, *Cubes (3D)*.

- ii. **The representation of a design:** We will highlight the importance of the graphical representation of the design for its protection.

Case law: T-90/16 of 4/07/2017, *Electronic wristband*; T-286/16 of 21/06/2017, *Toilet seats*; T-16/16 of 09/02/17, *Mast-Jägermeister*.

- iii. **The identification of the prior design:** We will check the recent judgement of the CJEU related to the correct identification of the prior art in order to ascertain potential infringements.

Case law: C-361/15 and C-405/15 of 21/09/2017, *Shower Drains*

- iv. **The repair clause:** The last part of the presentation will be focused on the repair clause ex Art. 110 CDR, which sets out an exclusion to EU-wide design protection for visible spare parts, where these are used for the purpose of the repair of the complex product so as to restore its original appearance. A final reference to BoA design cases will be made.

Case law: C-397/16 and C-435/16 of 20/12/2017, *Acacia*; R 1537/2016-3 of 28/09/2017, *Wheel rims*; R 1204/2016-3 of 21/11/2017, *Fahrzeuge*