



UK Design Practice

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The UK has a diverse manner of rights that protect the appearance of objects (both real and virtual objects). These are generally cost efficient, and in some cases cost free.

UK Registered Design Right

The UK registered design right still shares many key features with the EU registered design right. Both jurisdictions provide a quick, formality-only assessed registration process that can be enforced almost immediately. However, the two jurisdictions differ markedly for unregistered right protection.

The UKIPO works to a timeline for registration in around 1-2 weeks from filing making UK design registrations a very quick and effective tool.

Multiple Design Application – Low Official Fees

The UK allows for multiple designs to be filed as part of a single design application.

This means high numbers of designs can be filed together with official fees as low as £50 for a single design and rising to only £150 for 50 designs. This makes large multiple design applications cost effective.

This is much cheaper than the EU.

What can be protected?

The appearance of nearly anything can be protected by a design registration as long as:

- The appearance is not solely dictated by technical function

- The appearance is not of an object that forms a component part of a complex product, where that component part is not visible in normal use
- The appearance does not relate to a “must-fit” shape such as a plug socket or the like

Designs must also be novel and have individual character – but this is not examined during registration.

Grace Period

Unlike patents, there is a 12-month grace period for self-disclosures before these disclosures are considered as prior art prejudicial to validity of the registration.

Design Litigation

Design invalidity actions can be brought at the UKIPO.

Design infringement actions can be brought in the Intellectual Property and Enterprise Court (IPEC) or the High Court (Patents Court).

Written Disclaimers

Unlike in the EU, a written disclaimer does have legal effect in the UK.

Unregistered Design Rights

These are rights that subsist automatically. For infringement these rights must be copied - they are not monopoly rights.

UKUDR (UK Unregistered Design Right)

This is an extremely important right with many design litigation cases in the UK utilising both registered designs and unregistered designs. UKUDR provides greater flexibility in litigation.

A UKUDR provides protection for the whole or part of an article, providing it is not commonplace in the relevant technical field. This means that designs that lack novelty – but where the design is not **commonplace** – may still have valid associated UKUDR.

Protection lasts for up to 15 years from the **end of the year** in which the design was first recorded or a corresponding article was first made, or 10 years from the **end of the year** in which the design was first marketed (whichever is shorter). However, during the last five years of term, a license of right is available to all third parties.

Designs dictated solely by technical function **can** be protected. However, methods or principles of construction cannot be protected, along with surface decoration and “must-fit” and “must-match” (e.g. car body panels) designs.

Qualification for UKUDR are limited to people resident in the UK or a qualifying country or businesses formed under the laws of the UK or a qualifying country. Where qualification is a result of

first marketing, you will need to have disclosed your design in the UK or a qualifying country.

SUD (Supplementary Unregistered Design)

The UK has filled the voids left behind for unregistered design protection after Brexit. A supplementary unregistered design right (SUD) was introduced after Brexit to provide similar protection to the EU unregistered Community design right - but only within the UK. It is a form of design protection in the UK that automatically protects the visual appearance of a product, including both 2D and 3D features like shape and pattern. A point of note is that a SUD is only established by first disclosure in the UK. As such, one must be careful that first disclosure for a design is not made elsewhere such as in the EU (if relying on a SUD) as such disclosures do not establish a SUD.

SUD is similarly not a monopoly right, and only lasts for three years. This is therefore most useful for items with a short sales life.

Copyright

Some designs may also be protected by copyright. This has a far longer term of protection – 70 years after the authors death.

The UK and EU appear to be diverging as to which products have associated copyright. In the UK we advise seeking advice on a case-by-case basis. In general works of craftsmanship are likely to be protected, whilst industrial functional items are less likely to.

Key Differences Unregistered vs Registered Design Rights

A registered design is a monopoly right – copying does not have to be proven. The right can last up to 25 years with no licence of right available. Protection is set by the drawings. Functional designs, and non-visible components of complex products cannot be protected. Registration is required. A registration must be novel and have individual character to be valid.

UKUDR lasts 10-15 years, and is not a monopoly right. A licence of right is available in the last 5 years. Protection is very flexible and is to part or whole of an article. Functional designs and non-visible components of complex products can be protected. Surface decoration and must-match designs cannot be protected. Registration is not required. To be valid a design must not be commonplace.

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