



Study Question

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Sarah MATHESON, Reporter General
Jonathan P. OSHA and Anne Marie VERSCHUUR, Deputy Reporters General
Yusuke INUI, Ari LAAKKONEN and Ralph NACK, Assistants to the Reporter General

Partial designs

Responsible Reporter(s): Yusuke INUI and Ari LAAKKONEN

National/Regional Group	Hungary
Contributors name(s)	András CSERNY, György BAKSAY-NAGY, Barnabás MEZŐ
e-Mail contact	kereszty@godollepat.hu

I. Current law and practice

Please answer all questions in Part I on the basis of your Group's current law and practice.

1 Is protection given to Partial Designs, and if so, are the laws for the protection of Partial Designs different to the laws for the protection of designs generally? If YES, please explain.

Yes

Please Explain

Yes, under Hungarian law partial designs may be protected. The Hungarian Design Act [\[1\]](#) states that the design means the appearance of the whole or a part of a product, therefore partial designs are accepted. There is no difference in applicable law for partial designs and designs in general.

Footnotes

- [1.](#) [^](#) Act XLVIII of 2001 on Legal Protection of Designs

2 How are Partial Designs specified, described and/or graphically depicted?

2.a Is there a visual indication, e.g. by dotted or dashed lines, or shading or colouring, of those components that are not included in the Partial Design, i.e. of the Unclaimed Part?

Yes

Please Explain

In 15 July, 2016 Hungary amended the provisions of design applications pursuant to CP6. Thus, since then it is allowed to indicate in the application non-solid lines (dotted or dashed lines), shading or colouring, or boundaries. The Hungarian design law does not expressly provide for specified acceptable ways for visual disclaimers, it only states that the visual disclaimer must indicate clearly which part of the design is sought to be protected and which part is unclaimed.

2.b

Is there a written description of the Product, of which the Partial Design forms part?

Yes

Please Explain

The application may contain a so called 'declaration of alteration'. Before 15 July, 2016 such declaration served as a verbal disclaimer, and there was no other way of indicating the disclaimer. Now, under the new regime it is only for the purpose of clarification. The declaration of alteration may be lodged either with the application form or later, but must clearly indicate which part of the design is unclaimed. However, the applicant must enclose the graphical representation of the design including the visual disclaimers to the declaration of alteration, therefore the importance of the declaration is rather low nowadays.

2.c

Can verbal disclaimers be used?*

**Verbal disclaimers may be used in Brazil. For example, in the case of a handle for a pan, the entire pan is shown but the applicant may indicate in writing that protection is sought only for the handle.*

Yes

Please Explain

Yes. The declaration of alteration used to serve as a verbal disclaimer. Under the current regime, in case of attaching the declaration of alteration, the verbal disclaimer must be indicated graphically in the design itself as visual disclaimer and such disclaimers must not be contradictory.

3

Can a Partial Design forming part of a Product X be infringed by the use of the same Partial Design on a Product Y? If so, please explain any required link or nexus between X and Y.

Yes

Please Explain

Yes, general infringement test is applicable. The registered partial design X and accused partial design Y should produce different overall impression on the informed user to avoid the infringement.

4

Can a Partial Design forming part of a Product X be considered not novel in view of the same Partial Design in prior Product Y? If so, please explain any required link or nexus between X and Y.

Yes

Please Explain

Yes, general objective novelty test is applicable. The partial design is considered new if no identical partial design has been made available to the public before the date of priority. The partial designs are deemed identical if their features differ only in immaterial details.

5 Please explain if your Group's laws take into account elements outside the scope of the Partial Design (i.e. the Unclaimed Part) when considering the application of Design Constraints, such as must fit / must match exceptions.

Hungarian law does not take into account the unclaimed part in case of partial designs, irrespective of whether the application is claimed for protecting must fit or must match design.

II. Policy considerations and proposals for improvements of your Group's current law

6 Are there aspects of your Group's current law or practice relating to Partial Designs that could be improved? If YES, please explain.

Yes

Please Explain

Yes. The Hungarian Group is of the view that the possibility of attaching a declaration of alternation (verbal disclaimer) should be considered to be discontinued. A verbal disclaimer is not that important since the visual disclaimers may be placed on the design, therefore with the opportunity of submitting a verbal disclaimer, there is a risk of unwanted reduction in terms of the scope of protection. Likewise, a verbal disclaimer might impose further risks if the visual and verbal disclaimers are not fully consistent.

7 Is the way of specifying, describing or depicting Partial Designs satisfactory?

Yes

Please Explain

Yes, as visual disclaimers may be used pursuant to CP6.

8 Should the Unclaimed Part influence the protection of the parts of the design that are claimed? Please explain why or why not.

No

Please Explain

No. The "what you see is what you get" approach is relevant in the European and also in the Hungarian design law. In case the applicant does not wish to protect the unclaimed part, then such part should not influence the scope of protection of the design.

9 Should Design Constraints restrict the subsistence and scope of protection of Partial Designs? Please explain why or why not.

Yes

Please Explain

Yes, in the same ways as regarding the "normal" designs. No differentiation is necessary in this respect.

10 Should the assessment of whether a design is for a portion of a whole Product, i.e. that design is a Partial Design, take into account:

0.a the design as shown and any Unclaimed Part; and/or

Yes

Please Explain

Yes, to apply the Design Constraints, such as the repair clause, the complexity of the product should be taken into consideration (and check whether it is a must match or must fit design).

0.b whether the Product is normally sold separately?

Yes

Please Explain

In view of the Hungarian group, the circumstances of selling the product that the design is based on might be relevant. Such circumstances may indicate whether or not the design shall be considered as a Partial Design. Nevertheless, the mere fact that the product is sold separately should not, per se, determine the nature of Partial Designs.

11 Are there any other policy considerations and/or proposals for improvement to your Group's current law falling within the scope of this Study Question?

Yes

Please Explain

The Hungarian Group is of the opinion that an HIPO Design Guidelines on Hungarian national designs would be more than welcome.

III. Proposals for harmonisation

Please consult with relevant in-house / industry members of your Group in responding to Part III.

12 Should a Partial Design be registrable as an independent design?

Yes

Please Explain

13 Is harmonisation of the law of Partial Designs desirable?

Yes

Please Explain

Yes, the assessment whether the unclaimed part should be taken into account when considering the overall impression of a design should clearly be harmonized. Also, the borderline between partial designs and being part of a complex product needs further harmonization.

If YES, please respond to the following questions without regard to your Group's current law or practice.

Even if NO, please address the following questions to the extent your Group considers your Group's current law or practice could be improved.

14 Please propose a suitable framework for specifying, describing and/or graphically depicting (a) the Partial Design and (b) the Unclaimed Part.

The Hungarian Group is of the view that the framework laid down by CP6 is efficient and clear in this respect.

15 Taking the example of a Partial Design for a handle for a pan, and an accused product consisting of a sieve with the same handle, the:

- Unclaimed Part (UP) of the Partial Design is the pan without the handle;
- Surrounding Context (SC) is the part of the accused product without the protected Partial Design, i.e. the sieve without the handle,

Please explain whether differences between the SC and UP should be relevant when considering the overall impressions of the accused product and the Partial Design, in the following circumstances. In each case, please briefly explain why.

5.a SC is the same as UP

No. The overall impression of the accused product and the Partial Design produced on the informed user should be determined by taking into account only the actual registered earlier Partial Design and the relevant part of the accused product. In case we take into account either the UP or the SC, the assessment will provide an unwanted outcome since with different SCs or UPs it is rather easy to establish different overall impression, even if the registered Partial Design and the accused product without the SC is exactly the same. In case this method was to be followed, Partial designs could easily be 'copied' and used with different SCs without qualifying as infringement.

5.b SC is not the same as UP, but SC and UP relate to products that are used in the same way

No. SC and UP should not be relevant when considering the overall impressions of the accused product and the Partial Design. For further reasoning see the answer provided under point a).

5.c SC is not the same as UP, but SC and UP relate to products that look the same

No. SC and UP should not be relevant when considering the overall impressions of the accused product and the Partial Design. For further reasoning see the answer provided under point a).

5.d SC is not the same as UP, but SC and UP relate to products that categorised in the same way when registering designs

No, SC an UP should not be relevant when considering the overall impressions of the accused product and the Partial Design. For further reasoning see the answer provided under point a).

5.e SC is not the same as UP, and SC and UP are entirely unconnected.

No, SC an UP should not be relevant when considering the overall impressions of the accused product and the Partial Design. For further reasoning see the answer provided under point a).

16 In light of your answers to Question 15, please propose appropriate rules specifying whether and how the Unclaimed Part should be taken into account when analysing the overall impression of a Partial Design for both individual character and infringement.

The Unclaimed Part should not be taken into account. For further reasoning see the answer provided under div 15 point a).

17 Please propose appropriate rules specifying whether and how Design Constraints arising from the Unclaimed Part should affect a Partial Design. In particular, please explain whether and how must fit / must match Design Constraints affect Partial Designs.

As the Hungarian Group is of the view that the Unclaimed Part should not affect the scope pf protection of Partial Design, there is no such rule to be proposed in terms of Design Constraints arising from the Unclaimed Part and affecting the Partial Design.

18 Please comment on any additional issues concerning any aspect of Partial Designs you consider relevant to this Study Question.

N/A.

19 Please indicate which industry sector views are included in your Group's answers to Part III.