

Q278



National Group: Hungary
Title: Industrial designs and the role of prior art
Contributors: Áron LÁSZLÓ (chair), György ÁDÁM, György BAKSAY-NAGY, Katalin GÁLNÉ-SZOMBATH, Bettina KÖVECSES, György MOROVJÁN, Dorottya VITTAY
E-mail: aron.laszlo@oppenheimlegal.com
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Questions

I. Current law and practice

Please answer the below questions with regard to your Group's current law and practice.

References to a "design" below are to be read as referencing the intellectual property right that specifically protects the outward appearance or ornamentation of an object or article of manufacture, irrespective of what it is called in your jurisdiction.

Note: If your answer(s) to Q1) to Q3) below is (are) the same as your answer(s) in reply to the 2016 Designs Study Question, you may simply refer to those answer(s).

- 1) a) Does your Group's current law provide for an intellectual property right (other than copyright, trade marks or trade dress), that specifically protects the outward appearance or ornamentation of an object or article of manufacture or other? Please answer YES or NO.

YES

- b) If YES to Q1.a), please identify that law and explain what that right is called. (e.g., registered design, industrial design, design patent, etc.).

Act No. XLVIII of 2001 on the Legal Protection of Designs (hereinafter referred to as DA) provides special protection for designs, which is harmonized with Directive 98/71/EC of the

European Parliament and of the Council of 13 October 1998 on the legal protection of designs (hereinafter referred to as EU Design Directive).

In the DA the subject matter of the protection is called "design" (in Hungarian: "formatervezési minta") and the right conferred by the law is named "design protection" (in Hungarian: "formatervezésiminta-oltalom"). The protection relates to registered designs.

Before 2002, under the former Law-Decree No. 28 of 1978 on the Legal Protection of Industrial Designs, the subject matter was called "industrial design" (in Hungarian: "ipari minta"), and, accordingly, the right was named "industrial design protection" (in Hungarian: "iparimintaoftalom").

Furthermore, Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (hereinafter referred to as Community Design Regulation) designs extends to Hungary; in addition, Hungary is a party to the Geneva Act of 2 July 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs.

- 2) Please identify what features of the outward appearance or ornamentation are taken into consideration for a design, e.g., shape/contour, surface, texture, color, etc.

According to Article 1(2) DA, in particular, the lines, contours, colours, shape, texture and/or materials used are the features taken into consideration.

The November 2020 report of the European Commission within the frameworks of the EU design reform suggests that to revise the subject-matter of protection with special regard to virtual designs, animated designs and graphical user interfaces.

The Hungarian Group notes that the current wording of the DA provides satisfactory opportunity for placing the virtual designs under design protection.

- 3) a) Is prior art used to assess requirements for protection of a design prior to registration/issuance of a design, i.e., during substantive examination by an Intellectual Property ("IP") Office? Please answer YES or NO.

YES by the Hungarian Intellectual Property Office (HIPO)

NO by the European Union Intellectual Property Office (EUIPO)

If you have answered YES to Q3.a), please proceed to answer Q3.b). Otherwise, please proceed to Q4).

b) Referring to Q3.a), for which requirements for protection of a design is prior art used? Please tick all boxes that apply.

Novelty

Originality

Individual character

- Non-obviousness
- Inventive step
- Aesthetic
- Ornamental
- Other, namely

c) Referring to Q3.a) to Q3.b), please identify your national/regional laws or guidelines that give definitions of prior art or indications of what qualifies as prior art in this context.

Articles 2 to 5 DA contain the relevant provisions for Hungarian designs, Articles 5 to 7 of the Community Design Regulation contain the relevant provisions for designs protected in the EU.

4) a) Is prior art used to assess requirements for protection of a design when validity of the design is contested in court or other post-registration/issuance venue? Please answer YES or NO.

YES

If you have answered YES to Q4.a), please proceed to answer Q4.b). Otherwise, please proceed to Q5).

b) Referring to Q4.a), for which requirements for protection of a design is prior art used? Please tick all boxes that apply.

Novelty

- Originality

Individual character

- Non-obviousness
- Inventive step
- Aesthetic
- Ornamental
- Other, namely

c) Referring to Q4.a) to Q4.b), please identify your national/regional laws or guidelines that give definitions of prior art or indications of what qualifies as prior art in this context.

Articles 2 to 5 and 28 DA contain the relevant provisions for Hungarian designs, Articles 5 to 7 and 25 of the Community Design Regulation contain the relevant provisions for designs protected in the EU.

- 5) a) Is prior art used to assess requirements for protection of a design with respect to infringement proceedings or other legal situations not addressed by Q3) and Q4)?
Please answer YES or NO.

YES

If you have answered YES to Q5.a), please proceed to answer Q5.b). Otherwise, please proceed to Q6).

- b) Referring to Q5.a), for which requirements for protection of a design is prior art used?
Please tick all boxes that apply.

Novelty

Originality

Individual character

Non-obviousness

Inventive step

Aesthetic

Ornamental

Other, namely

- c) Referring to Q5.b), please indicate in which context these requirements for protection are taken into consideration, e.g., before a judge in infringement proceedings or other legal situations not addressed by Q3) and Q4).

Prior art may have an effect on the degree of freedom of the designer in developing the design. The freedom of the designer may be relevant to establish the actual scope of protection. In this respect, there are cases where prior art may be relevant in infringement proceedings in order to establish the scope of protection of a design.

- d) Referring to Q5.a) to Q5.c), please identify your national/regional laws or guidelines that give definitions of prior art or indications of what qualifies as prior art in this context.

Articles 2 to 5 DA contain the relevant provisions for Hungarian designs, Articles 5 to 7 of the Community Design Regulation contain the relevant provisions for designs protected in the EU.

- 6) a) Do your national/regional laws or guidelines provide different definitions of prior art or indications of what qualifies as prior art for registration/issuance, validity, infringement, or other? Please answer YES or NO.

NO

- b) If YES to Q6.a), please briefly identify the differences, if not readily apparent from your responses to Q3) to Q5).

Criteria of prior art

- 7) a) What are recognized means of disclosure, *i.e.*, which materials/documents, etc., can constitute prior art?

As according to Article 4 (1) DA, a design shall be considered to have been made available to the public if it has been published, exhibited, put on the market or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the European Community. This means that the Hungarian DA recognizes any means of disclosure. Based on the case law of the HIPO and the Courts in design cases concerning disclosure, the following means had specifically been recognized as fulfilling the precondition of Art 4 (1) DA:

- (i) Traditional evidence: catalogues, invoices, assembly manuals and spare part lists; representations of a design as registered; technical drawings; invitation to tender; store catalogue and the notarized online available copy thereof; painting; wearing a piece of the specific clothing in an event; photographs and drawings available in the design registry;
- (ii) Evidence produced via the internet: Wikipedia entry or article; Google search list; articles on the specific design and/or articles on the success of the holder of the design; photographs; Google search results filtered to the relevant date; screenshots of Google picture search filtered to the relevant date; archive online content retrieved by the use of WayBack Machine.

On the other hand, an advertisement appearing on an advertising board was found insufficient as it had not disclosed the design in its entirety. A production drawing without further evidence on the time of the produced product's disclosure was likewise found insufficient.

For further information about evidence for proving disclosure on the internet, see the answer in 7d) below.

- b) Does the prior art have to be “printed” and if so, what does that mean?

Materials and documents constituting prior art do not need to be in a printed form. Materials, information that is accessible in electronic form are accepted. See answer to 7a).

- c) Does the prior art have to be “published” and if so, what does that mean?

No, not in the sense that “published” shall be understood as being officially announced in the official gazette of a national or regional intellectual property office. The DA and case law do not require prior art documents or materials to be published, it is sufficient if these are “made available”, see answer to 7a).

- d) Have there been any recent updates or clarifications of prior art in your jurisdiction focused on intangible or other non-“printed” materials? Please provide those updates.

The HIPO being part of the European Trade Mark and Design Network agreed in April 2020 on the third Common Practice on Designs, and the tenth overall Common Practice (CP10), with the aim to identify common criteria for assessing disclosure of designs on the internet and to provide recommendations thereof. According to this Common Practice when assessing

disclosure of designs on the internet the following criteria shall be considered:

The most common sources of design disclosure on the internet are the following:

(i) Websites: There is a large variety of websites where a design can be disclosed, e.g. online shops, social media sites or online databases. The evidence taken from a website should be presented by creating a printout or a screenshot of the relevant information presented therein.

(ii) Apps: Disclosure of designs can be established through apps, in particular, those associated with online sales, auctions, social networking, etc.

(iii) Electronic mails: The exchange of electronic mails is widely used in commerce and can be a source where designs are disclosed.

(iv) File sharing: Making a file that incorporates a design available through a file sharing system (e.g. peer to peer (P2P) or file hosting platforms) might constitute an event of disclosure.

The CP10 provides further specific recommendation on how the disclosed design should ideally be presented as well as the means to present such prior art disclosure, such as in particular printouts and screenshots, images and videos, metadata URL addresses and hyperlinks or statements in writing.

Time of disclosure

8) a) What is the relevant date of a prior art reference?

Based on Articles 2 and 3 DA, both the novelty and the individual character shall be assessed based on the design made available to the public before the date of priority. Thus, the relevant date of prior art reference is the time period before the date of priority.

Based on Article 40 DA, the right of priority of an application shall be determined:

- a) in general by the date of filing of the application for a design (application priority);
- b) in the cases specified by the Paris Convention for the Protection of Industrial Property, by the filing date of the foreign application (convention priority);
- c) in the cases defined in the communication of the President of the Hungarian Intellectual Property Office published in the official gazette (Magyar Közlöny), the first day of displaying the design at an exhibition, which is not earlier than six months prior to the date of filing of the application (exhibition priority);
- d) by the filing date of an earlier application which was filed by the applicant for an identical design within the preceding six months and which is still in progress, provided that no other priority has been claimed in connection therewith (internal priority).

b) Are design applications published, and if so, when?

NO, the HIPO does not publish the design applications.

c) When and how are issued design patents or registered designs published?

Following the granting of design protection (post registration), the HIPO issues a design certificate together with the registry extract of such design and publishes the registered design in the official journal of HIPO, the Patent and Trademark Gazette.

Based on Article 35 (d) DA, the publication shall contain the following data regarding the registered design: the registration number, the name (corporate name) and address (registered office) of the holder of the design protection, the name and registered office of the representative agent, the case number, the filing date of application, the date of priority of the design, the name of the product embodying the design, and the international classification code of the product applied in accordance with the Locarno Agreement establishing an international classification for industrial designs, the representation of the design, the name and address of the designer, as well as the date of the resolution granting protection.

d) Does the publication of an issued design patent or registered design effect a publication of the underlying design application if not previously published?

Not applicable, as the design applications are not published in Hungary.

Circumstances of disclosure

9) Are the circumstances of disclosure relevant, e.g. (please tick all boxes that apply):

geographic location

type of location (e.g., during an exhibition)

sector/type of products

the person disclosing the prior art (e.g., the applicant of a design, a person

bound by a confidential agreement, etc.)

the recipient of the disclosed prior art

other, namely the length of time during which the design is perceptible

All these circumstances of disclosure may be relevant in case of a dispute between the parties, see a couple of examples further below.

According to Article 4(1) DA, a design shall be considered to have been made available to the public if it has been published, exhibited, put on the market or otherwise disclosed, except where these events could not reasonably have become known in the normal course of business to the circles specialised in the sector concerned operating within the European Community.

Under specific circumstances the disclosure of the design does not affect the novelty and/or the individual character. Under Article 4(2) DA, a design shall not be considered to have been

made available to the public if it has been disclosed to a third person under the conditions of confidentiality.

Pursuant to 4(3) DA, which contains the rules of the grace period, in determining novelty and individual character, making available to the public of the design that occurred not earlier than twelve months preceding the date of priority shall not be taken into consideration if

- (a) it was a consequence of an abuse in relation to the applicant or his predecessor in title; or
- (b) it has been made available to the public by the applicant, his predecessor in title, or a third person as a result of information provided or action taken by the applicant or his predecessor in title.

The determination of the criteria for disclosure has been addressed in several court judgments.

In their decision no. 8.Pkf.25.437/2009/4 the Court of Appeal confirmed the standpoint of the Metropolitan Court stating that a short-term availability for a narrow audience does not constitute disclosure. The subject of the case was a sewage pit which was sunk into the ground after delivery. The design was perceptible only until it had been installed into the ground in accordance with their intended purpose. The court further added that two isolated cases, presumably based on individual orders would not provide the level of disclosure required for the applicability of the ground for invalidation. That is, not just the number of people knowing the form, but the time available to get to know it would not have been enough to establish disclosure.

When attesting disclosure, the characteristics of the product must be clearly identifiable. In case no. 8.Pf.20.707/2008/12 the Court of Appeal held that since there was no photograph available showing the applicant's product in its entirety, the external appearance of the contested design cannot be identified. Photographs taken of certain parts of the product are not suitable for proving the overall appearance of the same.

Grace period

- 10) Does your jurisdiction provide a grace period after a first public disclosure of a design for later filing for protection of such design? Please answer YES or NO. If answering YES, please explain the conditions (e.g., formal request, same applicant) and identify the length of time for the grace period (e.g., 6 or 12 months).

Yes.

The conditions for a grace period after a first public disclosure of a design are defined in Article 4(3) DA. According to this paragraph, if a design is made available to the public as a consequence of an abuse in relation to the applicant or his predecessor in title, or if a design is made available to the public by the applicant, by his predecessor in title, or by a third person as a result of information provided or action taken by the applicant or by his predecessor in title, the event of making available shall not be taken into consideration for the purpose of assessing novelty and individual character. The grace period is a maximum of twelve months preceding the date of priority.

Other

- 11) Please indicate any other relevant criteria of prior art.

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The use of prior art when assessing the requirements for protection of a design

- 12) a) Does one single prior art reference have to disclose *all features* of a design in order to prevent its validity?

YES, but only those features which have effect on the overall impression produced on the informed user.

The Metropolitan Court of Budapest (Judgment No. 3.P.20.082/2009/9 of 11 December 2009) confirmed that those features of a design which are solely dictated by their technical function, shall not be taken into account when assessing the validity of a design:



"It is established that if according to Article 1 DA the external characteristic is exclusively a consequence of the technical purpose of the product, then the external characteristic does not result in a design that merits protection. Since this is only a condition of the design protection, but on the other hand it is not one of the conditions of protection of a design, it is obvious only upon exclusion that this condition can only be understood as a condition regarding the external characteristics of the product's appearance in a way that those external characteristics of the product's appearance that are excluded from the design protection cannot result in a design. That is to say every design is product appearance, but not all product appearance is a design."

In the case of Gyógyszertároló (medication holding device), the Metropolitan Court of Appeals of Budapest explained (Judgment No. FÍT 8.Pf.21.087-2007-4)



However, the fact that the merely functional external characteristics are disregarded does not mean that in a claim for the infringement of a design protection the exclusion clauses of design protection set out in Article 6(1) DA are relevant in establishing an infringement. Article 6(1) DA, according to which external characteristics that are exclusively consequences of the product's technical purpose cannot form subject of design protection, only applies to cases where the product appearance for which protection is sought consists exclusively of external characteristics stemming from the technical purpose, that is to say the exclusion clause applies to the design as a whole. This is confirmed by the Minister's justification attached to Articles 1 to 11 of the act, according to which functional external characteristics, that is to say those that relate to the product's technical functions, can be protected; the protection cannot be denied from the product's novel and individual appearance for the mere reason that it is paired with or stems from a certain technical function. Hence the court of first instance held incorrectly that external characteristics excluded from design protection by Article 6(1) DA cannot result in a design even together with other external characteristics.

- b) Can a prior art reference that *differs only in minor details* from a design prevent finding validity? If YES, please indicate what does *only in minor details* mean (is it, e.g., in a non-substantive way)?

YES, a prior art reference that differs only in minor details from a design can prevent finding validity. Minor details in cording which are only perceptible in close up investigation are insignificant (see Metropolitan Court 3.Pk/2010/5; Metropolitan Court of Appeals 8. Pkf.25.071/2011/6. - mente, dolmány, süveg).

- c) Can a prior art reference that discloses the entire design *with additional features* prevent finding validity?

YES, if the overall impression that the prior art, disclosing the entire design with additional features, produces on the informed user does not differ from the overall impression produced on the informed user by the design, such prior art can prevent finding validity. This may be especially the case, if the additional features are minor or are solely dictated by their technical function. See case law above at section 12a).

- d) Can a *combination* of prior art references be used to disclose the features of a design in order to prevent its validity? If YES, is there a limit to the number of prior art references that can be combined?

NO, no combination of prior art references shall be used when assessing validity of the design. The informed user compares designs side-by-side. The authorities and courts apply feature analysis by finding essential features of the designs, one to one, and whether the prior art produces the same overall impression, meaning that all essential features in both designs are substantially the same (note: stricter test than confusingly similarity or likelihood of confusion known in trademark law).

- e) Does the assessment of validity differ where there is numerous prior art or very few prior art available?

NO, the assessment of validity does not differ based on the saturation of prior art (the number

of available prior designs). The test of validity is the same for all type of designs and all relevant circumstances of the case. Saturation of prior art however influences the freedom of the designer, thus influences the validity through the requirement of the individual character. Broader design corpus (dense prior art) results in constraints for designers to develop new and individual designs, accordingly even smaller differences will result in individual designs, thus leaving more room for validity.

- f) Does the assessment of validity differ with respect to designs for different industry sectors (e.g., textile design vs. GUI design)?

NO, the assessment of validity does not differ according to industry sectors. The test of validity is the same for all type of designs and all relevant circumstances (eg. type of design or industry sector) of the case. The type of design or industry sector however influences the informed users (their knowledge and their attention to details), thus it can have an indirect influence on validity. The industry sector may also have an effect on the freedom of the designer as well, thereby indirectly affecting the assessment.

The influence of prior art on the infringement/scope of protection of a design

- 13) Does the assessment of infringement/scope of protection of a design differ where there is numerous prior art or very few prior art? Please refer to earlier response(s) where applicable.

The saturation of prior art may have an influence on the freedom of the designer, which may result in affecting the validity through the requirement of the individual character of a design, which in turn can have an influence on the scope of protection.

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

- 14) Could any of the following aspects of your Group's current law relating to prior art be improved? If YES, please explain.
- a) defining criteria of prior art

More guidance through guidelines or case law would be welcome.

- b) the use of prior art when assessing the requirements for protection of a design

More guidance through guidelines or case law would be welcome.

- c) the influence of prior art on the infringement/scope of protection of a design

More guidance through guidelines or case law would be welcome.

- 15) 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?

The Hungarian group proposes to abolish the substantial examination of design applications in order to streamline a procedure and offer a real alternative to EU-wide design protection. The requirements of design protection can be examined post-registration in case of disputes in invalidity proceedings.

III. Proposals for harmonisation

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

- 16) Do you believe that there should be harmonisation in relation to the definition of prior art and/or the use of prior art when assessing the requirements for protection?

YES

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.

- 17) a) Should prior art be used to assess requirements for protection of a design prior to registration/issuance, i.e., during substantive examination by an IP Office? Please answer YES or NO.

There should be no substantive examination, however, if there is, YES it should be.

If you have answered YES to Q17.a), please proceed to answer Q17.b). Otherwise, please proceed to Q18).

- b) Referring to Q17.a), for which requirements for protection of a design should prior art be used? Please tick all boxes that apply.

X Novelty

Originality

X Individual character

Non-obviousness

Inventive step

Aesthetic

Ornamental

Other, namely

- 18) a) Should prior art be used to assess requirements for protection of a design during determination of validity when validity of the design is contested in court or other post-registration/issuance venue? Please answer YES or NO.

YES

If you have answered YES to Q18.a), please proceed to answer Q18.b). Otherwise, please proceed to Q19).

- b) Referring to Q18.a), for which requirements for protection of a design should prior art be used? Please tick all boxes that apply.

X Novelty

Originality

X Individual character

Non-obviousness

Inventive step

Aesthetic

Ornamental

Other, namely

- 19) a) Should prior art be used to assess requirements for protection of a design with respect to infringement proceedings or other legal situations not addressed by Q17 and Q18)? Please answer YES or NO.

YES

If you have answered YES to Q19.a), please proceed to answer Q19.b). Otherwise, please proceed to Q20).

- b) Referring to Q19.a), for which requirements for protection of a design should prior art be used? Please tick all boxes that apply.

X Novelty

Originality

X Individual character

Non-obviousness

Inventive step

- Aesthetic
- Ornamental
- Other, namely

c) Referring to Q19.b), please indicate in which context these requirements for protection should be taken into consideration, e.g., before a judge in infringement proceedings or other legal situations not addressed by Q17) and Q18).

The degree of freedom of the designer in developing the design shall be relevant to establish the actual scope of protection.

Criteria of prior art

20) a) What should recognized means of disclosure be, i.e., which materials/documents, etc., can constitute prior art?

Any means capable of proving actual disclosure and the time of disclosing.

b) Should the prior art have to be “printed” and if so, what should that mean?

No, both on-line and off-line evidence shall be acceptable.

c) Should the prior art have to be “published” and if so, what should that mean?

No, it shall be sufficient if it is made available by any means.

Time of disclosure

21) What should the relevant date of a prior art reference be?

The Hungarian Group is of the opinion, that the current regulation is in harmony with the needs of the industry and regulation and the case law is clear in that respect.

Both the novelty and the individual character shall be assessed based on the design made available to the public before the date of priority. Thus, the relevant date of prior art reference shall be the time period before the date of priority.

Circumstances of disclosure

22) What, if any, circumstances of disclosure should be relevant? Please tick all boxes that apply.

geographic location

type of location (e.g., during an exhibition)

sector/type of products

X the person disclosing the prior art (e.g., the applicant of a design, a person

bound by a confidential agreement, etc.)

X the recipient of the disclosed prior art

X other, namely the length of time during which the design is perceptible

All these circumstances of disclosure may be relevant in case of a dispute between the parties, see the example from case-law under point 8) a) above.

The length of the disclosure may also be relevant.

Grace period

23) a) Should there be a grace period after a public disclosure of a design for later filing for protection of such design? Please answer YES or NO.

YES

b) If the answer to Q23.a) is YES, please identify what the length of time for the grace period should be. Also, please explain what the conditions allowing for the benefit of the grace period should be (e.g., formal request, same applicant).

The Hungarian Group agrees with the current regime of the 12-month grace period deadline. A formal request shall not be necessary, the applicant may acquire the benefit of the grace period through assignment.

Other

24) Should there be any other relevant criteria of prior art?

NO

25) Should the assessment of prior art differ for the different requirements for protection mentioned in Q17)b), Q18)b) and Q19)b)?

NO

The use of prior art when assessing the requirements for protection of a design

26) a) Should one single prior art reference have to disclose *all features* of a design in order to prevent its validity?

NO, but it should disclose all features essential for determining overall impression produced on the informed user, regardless of features excluded from protection due to functionality.

b) Should a prior art reference that *differs only in minor details* from a design prevent

finding validity? If YES, please indicate what should *only in minor details* mean (is it, e.g., in a non-substantive way)?

YES, prior art reference that differs only in minor details from a design should prevent finding validity.

Minor detail shall mean the detail which may only be revealed when making a close forensic analysis, should be minor and trivial in nature, not affecting the overall impression of a design produced on the informed user.

c) Should a prior art reference that discloses the entire design *with additional features* prevent finding validity?

YES, if the overall impression that the prior art, disclosing the entire design with additional features, produces on the informed user does not differ from the overall impression produced on the informed user by the design, such prior art should prevent finding validity. This should be especially the case, if the additional features are minor or are solely dictated by their technical function.

d) Should it be possible to contest the validity of a design on the ground of a *combination* of prior art references disclosing the features of a design? If YES, should there be a limit to the number of prior art references that can be combined?

NO, no combination of prior art references shall be used when assessing validity of the design. The informed user compares designs side-by-side. The authorities and courts apply feature analysis by finding essential features of the designs, one to one, and whether the prior art produces the same overall impression, meaning that all essential features in both designs are substantially the same (note: stricter test than confusingly similar or likelihood of confusion known in trademark law).

e) Should the assessment of validity differ where there is numerous prior art or very few prior art available?

NO, the assessment of validity shall not differ based on the saturation of prior art (the number of available prior designs). The test of validity shall be the same for all type of designs and all relevant circumstances of the case. Saturation of prior art however may influence the freedom of the designer, thus it may influence the validity through the requirement of the individual character. Broader design corpus (dense prior art) may result in constraints for designers to develop new and individual designs, accordingly, even smaller differences will result in individual designs, thus leaving more room for validity.

f) Should the assessment of validity differ with respect to designs for different industry sectors (e.g., textile design vs. GUI design)?

NO, the assessment of validity shall not differ according to industry sectors. The test of validity shall be the same for all type of designs and all relevant circumstances (eg. type of design or industry sector) of the case. The type of design or industry sector however may influence the informed users (their knowledge and their attention to details), thus it can have an indirect influence on validity.

The influence of prior art on the infringement/scope of protection of a design

- 27) Should the assessment of infringement/scope of protection of a design differ where there is numerous prior art or very few prior art? Please refer to earlier response(s) where applicable.

The saturation of prior art may be relevant through its influence on the freedom of the designer.

- 28) Please comment on any additional issues concerning any aspect of industrial designs and the role of prior art you consider relevant to this Study Question.

N.a.

- 29) Please indicate which industry sector views provided by in-house counsel are included in your Group's answers to Part III.

Pharmaceutical industry