

Feedback on options for Designs reform

Have your say!

Have your say on design policy

We want to hear about your experiences and your views on proposed changes to designs protection in Australia.

We particularly welcome your views on:

1. Introduction of a grace period to provide a safety net for designers
2. More protection for parts of products
3. More protection for virtual products (such as screen displays and graphical user interfaces (GUI))
4. How to make terminology clearer

You can answer as many questions below as you would like. All responses will be considered and reviewed as part of the consultation process. More information about these issues and other proposed changes intended to form part of a designs bill can be found [here](#).

To find out more or for further queries please contact Brett Massey on (02) 6285 0721 or emailing brett.massey@ipaaustralia.gov.au.

About You

We ask you to identify yourself as part of this feedback form as it is important that we understand the source of the input, and to seek clarification if needed. Please let us know if you would like your feedback and details to remain confidential.

Name or Organisation:

Pipers IP

A design is what makes a product look the way it does. It includes shape, configuration, pattern and ornamentation. It must also be new and distinctive.

1. Grace Period – a safety net

Have you published your design before seeking legal protection? For example, have you posted a product on Facebook or Instagram before you lodged your design application? Currently, publishing a design before you file your application can prevent you from being eligible for protection. We would like to hear your views on a general safety net known as a 'grace period'. A grace period would give you a period of time to file for a design, even if you've already published it. Other original designers will also have the benefit of a safety net.

a) Have you ever faced a situation where you needed a grace period, and if so, how would your business have benefited from having this safety net?

Comments:

Have had many situations will the grace period would have been useful. Clients would benefit. Would make Designs consistent with grace period for patents - less confusion. Grace period needs to include any disclosure or publication (eg registration in other countries) to make it like Europe's Designs grace period.

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b) Should there be a general safety net?

- yes
- no
- not sure

c) If we do introduce a safety net, the duration of the safety net should be:

- we should not have one (like in New Zealand and China)
- 6 months (like in South Africa, Singapore and the Philippines)
- 12 months (like in Canada, the EU the United States and Japan)
- greater than 12 months (like in El Salvador and Macao)

Please provide comments explaining your choice:

I think coordinating with Patents and European Grace period makes more sense and simplifies rules and provides more certainty for clients and attorneys

d) The safety net should apply before:

- the [filing date](#) (the date that the design was filed with IP Australia);
- a design's [priority date](#) (e.g., the date that the design was filed with IP Australia or the date that the design was filed overseas, whichever is earlier). This date filed overseas can be up to six months earlier than the filing date.

Please provide comments explaining your choice:

Makes it simpler and less confusing to take the grace period from the earliest date

e) The safety net:

- should apply automatically;
- should require the applicant to request that the safety net applies. This would rely on the applicant knowing that a safety net exists.

Please provide comments explaining your choice:

Automatic so no need to have IP Australia to do anything

2. Protection for parts of a product

Designs for parts of products (that are not made or sold separately) generally can't be protected in Australia. For example, designs for the heel of a sock or handle of a mug cannot be registered without the sock or mug, even when it is only the heel or handle which is the new and distinctive part of the product. Unlike Australia, these types of designs are protected in other countries such as the United Kingdom, United States, Japan and Singapore.

a) Have you faced any difficulties or suffered any costs, because you were unable to protect a design for part of a product?

For example, if you have experienced difficulties in applying for design protection overseas or were unable to differentiate your product range from a competitor.

Comments:

Yes we have - we have had difficulty during examination whereby the statement of novelty has had to be specifically amended to disclaim the rest of the article, other problems were found by needing more costly drawings than was strictly necessary.

b) What benefits can you see for your business if you were able to protect your design for a part of a product and why?

For example, if you were able to protect the heel of a sock, handle of a mug or other parts of the products you design.

Comments:

Benefits will be less cost for drawings, less time required for preparing a design application so less cost to applicants

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c) Can you foresee any difficulties or additional costs (economic or otherwise) for your business if protection for part of a product was allowed?

For example, it could make it harder to find out what designs your competitors have protected.

Comments:

Cant see any difficulties

d) Should Partial designs be protected?

- yes
- no
- not sure

e) If we introduce protection for partial designs, how should it apply?

- we shouldn't introduce protection for partial designs (**current approach**)
- protect partial designs for **similar** products only (e.g. handles for household goods)
- protect partial designs for **any** product (e.g. handles for cups, handbags, doors etc.)

3. Protection for virtual designs

Do you have a screen saver, graphical user interface (GUI), icon or font to protect? Currently these types of virtual designs are difficult to protect in Australia. Unlike Australia, these types of designs are protected in other countries such as the United Kingdom, United States, Japan and Singapore. We would like your views on how this issue should be addressed.

a) If virtual designs were protected in Australia, what type of virtual designs should be protected? Please select all that apply.

- screen displays
- graphical user interfaces
- screen icons
- fonts
- holographic designs
- projected images
- animated characters
- virtual 3D designs
- all of the above.
- Other:

b) Have you faced any difficulties or suffered any costs because you were unable to protect a virtual or non-physical design?

For example, have you experienced difficulties determining how to protect or applying for design protection for screen displays, GUIs, fonts, or virtual 3D designs?

Comments:

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c) What benefits can you see for your business if you were able to protect virtual designs and why?

For example, if you were able to protect the screen displays, GUIs, fonts, or virtual 3D designs?

Comments:

d) Will changing the way virtual design protection works in Australia make it simpler for you to protect your designs outside Australia? Would this make it easier for you to approach the global market?

Comments:

e) Do you consider that other forms of intellectual property protection (such as copyright or trade marks) are enough to protect your virtual design in Australia?

Comments:

f) Should virtual designs be protected?

- yes
- no
- not sure

4. Clearer terminology

Are you confused about the difference between registration and certification of designs? A registered design is not legally enforceable until it is certified. Enforceable means being able to take certain actions to deter potential infringers, such as sending letters of demand or going to court. To get a design certified you need to go through the extra steps of requesting and passing examination. We understand that the term 'registered design' might be confusing some businesses into thinking that uncertified designs are enforceable. We would like your views on how we can make this clearer through changing the terminology.

a) In order of preference, please number the terms below that best describe a design without a certificate of examination. You do not have to number all boxes.

- registered design (current terminology)
- uncertified design
- unexamined registered design
- provisional design
- pre-certification design
- pending certification design
- pending design
- unenforceable design
- other:

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5. Other comments

Please tell us about any other comments or ideas you would like to provide about design policy in the free text field below, and we will consider them as part of our ongoing Designs Review Project.

If you have any input on patents, trade marks or plant breeder's rights policy issues please let us know via our [policy register](#).

Comments: