

### Conclusions

In short, I recognize the problems in reaching an international consensus and understand that some cynicism is appropriate in this area. Nevertheless, I am suggesting that the material incentive for reaching such a consensus might be provided by treating proposals for international disclosure standards as significant components of proposals for international listing standards through the concept of qualified securities. Such qualified securities would be automatically eligible for trading in the major financial centers of the world, although each country could also allow trading of other securities according to different criteria. Finally, I believe that greater access to membership on stock exchanges throughout the world would enhance the international trading of securities.

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## Design Copyright Protection in the United Kingdom

The ideal of every innovative designer is a form of legal protection which is inexpensive to obtain yet gives strong, reasonably easily enforceable protection. Patent protection involves stringent requirements of originality and uniqueness and is expensive to secure and maintain. Design protection by registered design or, in the United States, by design patent, also involves costly legal procedures. There is a requirement of some form of "novelty" in the sense of meritorious advance and the patent is usually confined to protecting artistic merit. For a design to be eligible for registration it cannot be solely functional in nature. In some countries, slavish copying is prohibited, but often only if the copy is marketed in a manner which confuses the customer as to its origin.

It is a unique aspect of British law that there has developed over the last few years a simple protection for "design" with no requirements as to artistic merit or originality. The issue is simply whether a certain article is produced from the designer's drawings and whether that article is reproduced by the alleged infringer. The term "copyright" generally implies some form of artistic merit, and it must be made quite clear that this is not the basis of the British concept of design copyright.

The following discussion relates to design copyright law in Great Britain, though at least two other jurisdictions appear to have similar laws.<sup>1</sup>

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<sup>1</sup>See note 28 and accompanying text, *infra*.

Until 1968 the copyright law had been confined to the protection of what might be described as artistic works. The law appeared to exclude specifically industrial articles. In 1968 the law was amended<sup>2</sup> to give some protection for items which had not been protected by a registered design. Whether inadvertently or by deliberate decision, the amendment of the statute had a major effect in enlarging available protection. For some years there was considerable challenge of the concept; only recently, with a decision of the House of Lords,<sup>3</sup> has the concept of design copyright come to be fully accepted. Indeed, there are still some United Kingdom patent agents and lawyers, although a tiny minority, who would valiantly maintain that an engineering drawing is not a drawing in a true sense but is merely a statement of dimensions, and thus not protectable by copyright.

What is the essence of design copyright protection? It can be somewhat crudely stated as follows: When there is a drawing from which an article is manufactured and the final shape of that article can be visualized by a lay eye (that is, the eye of a person not skilled in reading engineering drawings) from the original drawing then a reproduction of the final article represents an infringement of the original drawing.

This somewhat crude statement does, of course, require some additional refinement but it contains the essential aspects, namely: a drawing and copying. Copying has two aspects: first, the actual act of copying and second, the creation of a "copy" that is substantially the same as the original article.

In United Kingdom copyright law almost any drawing is worthy of copyright protection. There has always been some debate as to how simple or crude a drawing might be before it would not be protected. Section 3(1)(a) of the Copyright Act, 1956, states that any drawing is an artistic work which qualifies for copyright protection "irrespective of artistic quality."<sup>4</sup> The ultimate extreme would be a simple straight line or a circle.<sup>5</sup>

In *Tangrose Engineering v. High-Low Storage Systems*<sup>6</sup> the court held that there might be some question as to the copyright in an individual drawing of a simple article such as an angle iron. However, there appeared undoubtedly to be copyright in the series of drawings which related to a composite article.

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<sup>2</sup>Design Copyright Act, 1968, making amendments in section 10 of the Copyright Act, 1956 and in the first schedule of that Act. *But see* note 13, *infra*.

<sup>3</sup>L. B. Plastics v. Swish [1979] R.P.C. 551; *but see* arguments that law should be amended. Whitford Report 1977 and March 1980 issue of EUROPEAN INTELLECTUAL PROPERTY REV. (article by John Drysdale).

<sup>4</sup>Section 3(1)(a) appears to distinguish an artistic work of the group including drawings from other works, e.g., architectural drawings; and the section also omits the adjective "original" which is used in relation to literary works.

<sup>5</sup>British Northrop Ltd. v. Texteam Blackburn Ltd. [1974] R.P.C. 57, 68. *See also Tangrose Engineering*, note 6 *infra*.

<sup>6</sup>*Tangrose Eng'r Ltd. v. High-Low Storage Systems Ltd.*, High Court, Dec. 20, 1979 (unreported).

Whether in two or three dimensions, any reproduction of a drawing which is a reproduction of a substantial part of the work, is copyright infringement.<sup>7</sup>

Reproduction is defined as including conversion of a two dimensional work to a three dimensional work providing the "resemblance" is clear to the lay eye.<sup>8</sup> This is important because a very technical engineering drawing, which to a lay judge would not be recognizably similar to the final product, might not provide the necessary support to establish copyright infringement. An expert can give evidence on similarities but cannot state that one product is a copy of the original article in which copyright exists.

Thus, any reproduction of a three dimensional article made from a drawing is an infringement of the original copyright existing in the drawing. Under certain circumstances, it might be an infringement of rights in the three-dimensional article made by the manufacturer. Reproduction of a three-dimensional article, however, would require a proof of artistic craftsmanship that has artistic merit.

The same problem arises if there is no original drawing. If an industrial article is produced from a prototype, from which final production is directly derived, one would have to rely on the concept of artistic craftsmanship. Although works of artistic craftsmanship are protected,<sup>9</sup> the requirements are not defined in the Act and are extremely confused.

If the engineering drawings are too complex for the lay eye to recognize the shape of the final article, the draftsman may prepare an isometric or other view from which the final shape of the article can readily be visualized. Where such a drawing is not in the direct line of production for the actual final article, that drawing cannot be used to establish design copyright infringement. For the same reason schematic drawings, e.g. flow diagrams or circuit diagrams, are equally useless for the purposes of design copyright infringement because they do not, in most circumstances, clearly indicate the final "shape or appearance of the article."

The question is sometimes raised: What is the nature of a drawing? Most of the cases with which the courts have been concerned in design copyright cases have involved actual drawings as traditionally recognized. The United Kingdom law of copyright recognizes for copyright any permanent representation of the artistic work. Therefore, a drawing produced by a computer-driven design system, if on a permanent record, e.g. a magnetic disc, would probably serve to generate design copyright protection. However, if the rep-

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<sup>7</sup>Section 49(1) Copyright Act, 1956. This is a complex section, but the effect is as summarized. See also sections 3(5) and 48(1).

<sup>8</sup>See section 9(8) of the Copyright Act, 1956. The test is applied in a somewhat negative fashion but is reasonably clear.

<sup>9</sup>See Copyright Act, 1956, section 3(1)(c); but see *George Hensher v. Restawile Upholstery Ltd.* [1974] Fleet Street Reports 173.

resentation were merely the result of a program and was never specifically maintained in a permanent form then it could not generate design copyright protection. This concept is somewhat speculative and is derived from the general law on copyright and not from any of the specific cases on design copyright.

Emphasis has already been placed on the question of lack of "novelty." The term "novelty" as used in the field of copyright is sometimes, unfortunately, misunderstood because of the implications from patent and registered design law and, indeed, from some other areas of copyright law that novelty requires some artistic merit or "originality." It must be emphasized that the concept of "novelty" in design copyright law is that the designer or draftsman was the first to prepare that actual drawing and that he did not "copy" from some earlier drawing. To take the simplest case, if the engineer, from his knowledge of hexagonal-headed bolts, prepares a drawing of a conventional hexagonal-headed bolt with a conventional thread, then that drawing is entitled to design copyright protection, provided it is created from "theoretical" information as to hexagonal bolts.

This concept of originality being simply a new drawing cannot be taken too far. Copyright does not protect a right which, intentionally or unintentionally, is an *exact* reproduction of an earlier existing entity. This issue does not normally arise, because it is mathematically unlikely that any one drawing would be "identical" to an earlier one. Nevertheless, for very simple standard articles this might happen.

For this reason, it is somewhat unlikely that the very simplest of engineering units, e.g., bolts, nuts, etc., could be subject to copyright protection and, indeed, it might be difficult to enforce such protection simply because the alleged infringer would be able to reproduce hundreds of drawings of similar bolts and it would be difficult to prove that he, in fact, copied the plaintiff's bolt.

How does the owner of the copyright "prove" his copyright? It is one of the great advantages of British law that copyright exists inherently in the drawings and the articles made from them. It is not necessary for there to be any marking, registration or any other legal step until an infringement suit. Nevertheless, there are a number of steps which should be taken as a necessary protection at all times for the owner of copyright. In the first instance, the drawings must be retained.<sup>10</sup> This means the original drawings, and these should be carefully identified by date and by draftsman. If the draftsman is an employee who prepares drawings on the instructions of his employer then there is no problem as to the entitlement of the employer to his employee's productions. If the drawings are made on contract, more difficult questions

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<sup>10</sup>See, however, *Tangrose Eng'r Ltd. v. High-Low Storage Systems*, note 6 *supra*, where secondary evidence of the drawings was held admissible.

might arise. For example, if an outside designer or draftsman has to be retained, there should be a clear, if brief, letter setting out that the drawings are prepared on the instructions of the instructing party and that all copyright passes to that party.

When there is a suspicion that copying has taken place two questions must always be asked.

1. Can copying be proved?
2. Is the alleged copy in fact a copy under copyright law, i.e., is it a substantial copy?

In many instances copying can be readily proved. For instance, in the famous *Swish* case<sup>11</sup> there was clear proof that the plaintiff's products had been provided to another firm for them to copy. However much more difficult questions might arise if the copier were, for instance, a foreign company. One would have to prove that the marketing of the plaintiff's products was done in such a manner that it was likely that the alleged copier had obtained these products and, therefore, probably copied them.<sup>12</sup> Here, again, the courts will take into account the similarity of the products. If the products are sufficiently similar the burden of proof will pass to the defendant to prove that he did not, in fact, copy.<sup>13</sup> In *Tangrose v. High-Low*<sup>14</sup> the court stated that the defendants were at least put on enquiry as to the evidence of the plaintiff's copyright and should be presumed to have knowledge of the existence of a copyright.

A defense can always exist that there was no copying. Evidence could be brought as to the custom in the trade, e.g. showing how a particular construction would, perhaps, naturally arise from certain given concepts. In a case in which this writer was involved, there were two boats which had substantial similarities. The defendant was able to prove that what he had taken were certain basic concepts of the plaintiff's boat, e.g., arrangements for cabins within the hull, location of the steering wheel, etc., and with these in mind had designed a slightly larger boat. The similarities, the defendant argued, stemmed from the concepts of particular general arrangements within the boat which were too general to be the subject of copyright. The defendant also argued that the drawings, which were typical ship architectural drawings, were virtually impossible to read, even for an engineer not used to boat construction, and that it was almost impossible to visualize the final shape of the boat from the drawings. The above matter should be contrasted with the *Dorling v. Honnor* case<sup>15</sup> where the court rather specifically indicated that

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<sup>11</sup>See note 3 *supra*.

<sup>12</sup>For typical problems, see *J. C. Gleeson v. H. R. Denne Ltd.* [1975] R.P.C. 471.

<sup>13</sup>See also *Infabrics v. Jaytex* note 27 *infra*; *Dorling v. Honnor* [1964] R.P.C. 160. This case has been argued as having created "Design Copyright" even before the 1968 Act. *King Features Syndicate Inc. v. D&M Kleeman Ltd.*, House of Lords, 58 R.P.C. 207.

<sup>14</sup>See note 6 *supra*.

<sup>15</sup>*Dorling v. Honnor*, note 13 *supra*.

they had some acquaintance with ships' drawings and would be able to visualize the boat from the elementary drawings used.

The next question must inherently be: How close must a copy be? Useful guidance on this point can be found from the general law on copyright.<sup>16</sup> Also, a typical test was stated in 1895 in *Baines*<sup>17</sup> as follows: "A copy is that which comes so near to the original as to suggest the original to the mind of every person seeing it."

To what extent can expert evidence be pertinent on this issue? As already indicated, expert testimony cannot be given that one product is a copy of another. However, an expert witness can emphasize that certain aspects of the copied article are not functional or that the existence of alternatives to a given design suggests that the chance of choosing this particular design is inherently unlikely unless it was copied.

The general question of copyright enforcement and court procedure is not an appropriate topic for discussion at this time. However, two issues might be mentioned which are important to the owner of a design copyright.

First, particularly in copyright, the so-called Anton Pilar Order<sup>18</sup> has been commonly used. By this order a court will permit the plaintiff entry, without previous notice, into certain premises of a defendant to secure proof of copying, particularly if there is any risk that the evidence might be destroyed. The scope of this order has recently been circumscribed by the Court of Appeal<sup>19</sup> to limit the order to exclude questions or requirements for disclosure of documents which would put the proposed defendant in danger of self-incrimination.

Second, the courts seem more in favor of issuing interlocutory injunctions in copyright cases, at least where the plaintiff has an established market and the defendant is a new participant in the market, and there is evidence of copying. This especially might be true if there were any danger that the public might be confused by the defendant's article into believing that they were purchasing the plaintiff's product, although this is more akin to the question of passing-off.<sup>20</sup>

Design copyright can be transferred from the owner of the original copyright in the drawings to others, and it should be emphasized that the assignment must be in writing.<sup>21</sup>

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<sup>16</sup>See *Tinsley v. Lacy*, 1 [1863] H & M 747; *West v. Francis* [1822] 24 R.R. 541, mentioned in *King Features*. See also *King Features*, note 13 *supra*.

<sup>17</sup>*Hanfstaengl v. H. R. Baines & Co. Ltd.* [1895] A.C. 20, 28.

<sup>18</sup>*Anton Pilar v. K. G. B. Mfg. Process Ltd.*, [1976] Ch. 55.

<sup>19</sup>*Rank Film Distrib. Ltd. v. Video Information Centre* (L.T.R. Feb. 16, 1980), criticized by Mr. Justice Whitford in *International Electronics v. Weight Data Ltd.*, (L.T.R. March 13, 1980). See also *Y v. S. Court of Appeal*, 1980 Industrial Property Newsletter, vol. 3, Aug. 1980.

<sup>20</sup>See *Tangrose v. High-Low*, note 6 *supra*. Plaintiffs' "monopoly" would be destroyed unless defendant stopped copying.

<sup>21</sup>Copyright Act 1956, section 36(3).

Equally, copyright can be licensed or transferred. Copyright drawings can be part of a general license of know-how and trade secrets and technical information.

The original drawing need not have been made in Great Britain. For example, a Finnish company, Fiskars, has successfully sued on the basis of a drawing for scissors which was originally prepared in Finland.<sup>22</sup>

In relation to foreign work, one might have to take account of the law in another country as to the owner of the copyright. This is a rather controversial issue. On the one hand, the various international conventions obligate a country to give to foreigners the same treatment as it gives to its own nationals.<sup>23</sup> The question has arisen, however, whether this applies to ownership of the copyright or whether the issue of ownership should be determined by the law of the country in which the drawing was originally created. This is further evidence of the necessity of having written evidence of title. For that reason, it is desirable to emphasize ownership on a drawing by placing on every drawing the copyright symbol ©, the name of the owner of the copyright and the year.

The term of the protection for design copyright is also controversial. Generally copyright protection lasts fifty years from the death of the artist for "artistic works," i.e. drawings. It must be emphasized that the transition provisions of the 1956 Copyright Act are quite complex in their treatment of drawings prepared before 1956. With regard to design copyright, however, a special term of fifteen years from first sale of the product may apply. The relevant section 10 of the 1956 Act refers to the registerability under the Registered Designs Act. The term of fifteen years might be held to apply only to those items which could have been registered under the Registered Design Act, but were not so registered. However, if an article is functional in nature, and appearance is solely determined by function, then it cannot be registered under the Act and a fifty-year term may apply.

The question of the term of design copyright was considered in *Vernon & Co. (Pulp Products) v. Universal Pulp Containers*.<sup>24</sup> This case involved a termination clause and whether an obligation not to make or sell for two years was notifiable to the Registrar under the Restrictive Trade Practices Act, 1956, and if not notified was void.

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<sup>22</sup>The Drapers Record, 24 July, 1974 at 7. See also *Rexnord Inc. v. Rollerchain Distrib.*, [1979] Fleet Street Reports 119, where a foreign supplier who indemnified the British infringer was joined in the action.

<sup>23</sup>See, e.g., Article 5(1) of the Berne Convention for the protection of literary and artistic works, reproduced in UNITED INTERNATIONAL BUREAUX FOR THE PROTECTION OF INTELLECTUAL PROPERTY, BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS; texts. See also the Universal Copyright Convention, T.I.A.S. No. 3324, 6 U.S.T. 2731.

<sup>24</sup>*Vernon & Co. (Pulp Products) Ltd. v. Universal Pulp Containers Ltd*; High Court Feb. 6, 1980, interlocutory proceedings, [1980] Fleet Street Reports 179. In this connection see *AMP v Utilux* [1970] R.P.C. 397 and *Lamson Industries' Application* [1978] R.P.C. 1.

With regard to possible qualification for registration as design, it was held that the plaintiff had an arguable case that the articles were only functional. The court observed, "I hope it will not be thought unkind if I say that I would not expect anyone to explain 'Oh what a beautiful bed-pan' when they first see one of Vernon's products."

If, therefore, an item could not be registered under any circumstances, then it would appear that protection would be for fifty years. If it could have been the subject of registration but was not, simply because the owner did not choose to secure such registration, the protection is only for fifteen years. There is a viewpoint that, theoretically, any article could be regarded as being at least possibly registerable and, therefore, subject to a term of protection of fifteen years rather than fifty.

Another important issue in regard to enforcement is the issue of damages. Copyright differs from other forms of industrial property in that, in addition to the normal provisions for damages by way of loss of profits or account of profits, conversion damages are available.<sup>25</sup> By being awarded conversion damages, the owner of the copyright is then entitled to the full value of the misused property. This is obviously considerably more than any simple profit. Conversion damages can apply to the final sales price of the defendant's product. Conversion damages were awarded in the industrial copyright case *L. B. Plastics v. Swish*.<sup>26</sup> As in other areas of copyright, the prospect of conversion damages can be a considerable deterrent to the possible copier.

The problem of the seller of infringing articles has been compounded by *Infabrics v. Jaytex*,<sup>27</sup> which imposes a separate liability on the seller of infringing articles even if the seller does not know that he is infringing. Moreover, at least in respect of the circumstances of the case (importation from Hong Kong), the defendants were under an obligation to investigate copyright and a defense of innocence was not available, rendering the defendant liable to conversion damages.

Outside of Great Britain, there are two jurisdictions, Hong Kong and New Zealand, which are known to have a similar law.<sup>28</sup> South Africa appears to have a law<sup>29</sup> giving an effect similar to United Kingdom law. Investigations in

<sup>25</sup>Copyright Act, 1956, section 18. See also Torts (Interference with Contracts) Act 1977.

<sup>26</sup>See note 3 *supra*.

<sup>27</sup>*Infabrics v. Jaytex*, High Court [1978] Fleet Street Reports 584, *partially reversed* by court of appeal (T.L.R. Feb. 21, 1980).

<sup>28</sup>There have been a number of successful suits in Hong Kong. The United Kingdom 1956 Copyright Act has definitely applied in Hong Kong since 1978. In New Zealand, section 20 of the New Zealand Copyright Act 1962 has been construed liberally. See *Johnson & Assoc. v. Bucko Enterprises I N.Z.L.R.* 311.

<sup>29</sup>Although sections 11(2) and (3) of the South African Copyright Act of 1965 were construed as corresponding to the older section 10 of the United Kingdom Act and thus preventing design copyright protection, opinion on the newly revised 1978 Act is that design copyright is protected.

other Commonwealth countries, such as Canada, Australia and even Ireland<sup>30</sup> have not revealed any corresponding protection because of the differences in the copyright laws of those countries. This is also true of the United States. In other countries, there is a remedy against "slavish" copying, but this is based on a theory of unfair competition and would require that the slavish copy to some extent confuses the public as to the origin of the article.

It should be emphasized, however, that where there is artistic merit, remedies may be available.

In regard to conflict between design copyright and patents or registered designs, it is probably possible to have all three types of protection on different aspects of the article. The patent would protect the functional concept involved; the registered design would protect any artistic decoration or shape; and design copyright would protect certain internal structures not visible in the illustrations of the registered design. Securing of a registered design would prevent exercise of design copyright protection for the outward appearance. This would probably be academic because the registered design protection would be sufficient in itself.

It can be argued that the design copyright protection is specific to the working drawings and is not vitiated by the generalized protection of registered design. The Copyright Act (section 10) indicates that copyright exists but is not enforceable. To do anything within the scope of the registered design "as extended to all associated designs and articles" is not infringement of the copyright. The terms "scope" and "associated" are both difficult to construe.

In the recent *Catnic* case,<sup>31</sup> the High Court held that to take out a patent with drawings which essentially show the shape of the final article renders it impossible to rely on similar drawings for design copyright purposes because the owner of the copyright has, in a sense, dedicated them to the public by taking out the patent. Unfortunately, although this case was appealed, the Court of Appeals did not consider this issue and barely commented upon it. Because, in that particular case, the patent was held to be invalid, the owner of the rights found himself without any protection. This case has been severely criticized on the ground that the drawings which were the subject of the patent were not directly related to the working drawings from which the final, copied article was manufactured. Thus, it is argued that the manufac-

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There may even be protection despite *registration* of the design, a policy that would be more liberal than the United Kingdom law. The law is perhaps retrospective in resuscitating previously unenforceable copyrights.

<sup>30</sup>Opinion from Australia indicates that section 77 of the Copyright Act 1968/73 does not provide protection similar to section 10 of the United Kingdom Copyright Act. Similar opinion has been received from Ireland and Canada.

<sup>31</sup>*Catnic v. Hill & Smith*, High Court, [1978] Fleet Street Reports 405, Court of Appeal [1979] F.S.R. 619.

turing drawings have their own artistic content regardless of the contents of the drawings for the patent. As guidance in this complicated issue at the present time it is suggested that: Any drawings which are used for a patent should be as clearly distinguished as possible from the line of drawings used for preparing the working drawings and, as far as possible, should not show the actual appearance of an article to be manufactured.

The application of design copyright has been particularly important in the spare parts industry as evidenced by a number of suits brought by British Leyland.<sup>32</sup> Design copyright is significant in the spare parts field, because spare parts rarely have any "artistic merit" and must be exact reproductions of the originals for them to fit into the correct positions. Copying is very easy to prove. By design copyright protection, spare parts can be separately protected in addition to any total protection which might exist over the original assembly.

One must be careful, however, that no implied licenses are created. In *Solar Thompson Engineering v. Barton*,<sup>33</sup> the court held that, because there was a license under a patent on pulleys, this implied a license under copyright for the manufacture of spare parts.

The issue of spare parts has created a potential problem under Articles 30-36 of the Treaty of Rome<sup>34</sup> and the prohibition of "artificial restraints." Article 36 specifically reserves the rights created by patents, trademarks and copyright, but in other fields of law there have been holdings by the European Court that "artificial regulations" can be struck down by the court and rendered ineffective. The issue has been raised as to whether the British Design Copyright Law, which is unusual in its nature as compared to the laws of the other members of the Common Market, is an artificial restraint and is hindering entry into Britain of competitors from other European countries. Of course, the opposing argument is that it is equally effective against both British and non-British competitors and is, therefore, not discriminatory. This issue has been raised, and although accepted as a potential defense by one court in the *British Leyland* cases,<sup>35</sup> has now been rejected.<sup>36</sup> The doctrine has also been considered, and apparently rejected, by the European

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<sup>32</sup>See, e.g., *British Leyland Motor Corp. v. Wyatt Interpart Co., Ltd.* [1979] Fleet Street Reports at 39, 583 and 591 and the proceeding listed in *British Leyland v. T. I. Silencers*, note 36 *infra*.

<sup>33</sup>*Solar Thompson Eng'g v. Barton* [1977] R.P.C. 537. See also *British Northrop*, note 5 *supra*.

<sup>34</sup>*Treaty Establishing the European Economic Community, signed at Rome, March 25, 1957*, 51 AM. J. INT'L L. 865 (1957).

<sup>35</sup>See *British Leyland*, note 32 *supra*.

<sup>36</sup>*British Leyland Motor Corp. v. T. I. Silencers Ltd.*, 28 Comm. Mkt. L. R. 332. Mr. Justice Walton struck out the defenses based on Articles 30, 34, 36, 85 and 86 of EEC Treaty, *supra* note 34, holding that the normal enforcement of copyrights unaccompanied by "sinister features" is covered by Article 36(1).

Commission; it is now before the European Court.<sup>37</sup> From other cases in the area of competition law it seems likely that the present attitude of at least the European Court would be to uphold national rights providing they have a genuine basis in the national law, particularly a law which existed before Britain joined the Common Market, even though that law is somewhat unusual. Thus, the famous trademark case, *Terrapin*,<sup>38</sup> supports the view that the unique British law on design copyright will not be struck down.

### Summary

Design copyright in Great Britain provides a valuable protection which goes beyond the better known protection of patents and registered designs. Indeed, from some viewpoints, design copyright may be the most valuable tool available to the manufacturer because of its unique attributes in covering the actual manufactured good. While design copyright cannot replace patent protection, there must be some question as to whether registered design protection is justified so long as design copyright law exists. Design copyright can be readily licensed or assigned and used as a separate tool from the licensing of patents. Finally, it must be emphasized that design copyright is not the only copyright which applies in industry and there may be circumstances in which other aspects of copyright, including "artistic craftsmanship," may be significant.

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<sup>37</sup>See O. J. EUR. COMM. (No. C 176) (July 15, 1980), case 146/80, *Armstrong Patents Co. Ltd. v. EEC Comm.* The court is requested to annul a decision of the Commission of April 21, 1980 refusing to investigate matters under Articles 30-36. Plaintiff alleges, "it may be abuse of dominant position to indulge in litigation covered by Articles 30-36 and Commission has power to interpret these Articles."

<sup>38</sup>*Terrapin (Overseas) Ltd. v. Terranova* [1976] E. Comm. Ct. J. Rep. 1039, [1976] 2 Comm. Mkt. L.R. 482 and see *EMI Records Ltd. v. CBS United Kingdom Ltd.* [1976] E. Comm. Ct. J. Rep. 811, [1976] 2 Comm. Mkt. L. R. 235.