



SCREENING CHAPTER 7 INTELLECTUAL PROPERTY LAW

AGENDA ITEM XIX: DESIGNS

**Country Session: The Republic of TURKEY
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Legal framework

- Decree Law No: 554 Pertaining to the Protection of Industrial Designs, 27 June 1995
- By-law Implementing the Decree Law, 5 November 1995 (as amended on 7 February 2006)



International agreements

- Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs (2005)
- Locarno Agreement Establishing an International Classification for Industrial Designs (1998)



Design rights

The Decree Law governs registered design rights.

Unregistered designs are subject to general provisions
(Law on Intellectual and Artistic Works,
Commercial Code – unfair competition).



Main features of design protection system

- Registration system (not including novelty search)
- Publication of registered designs
- Opposition by third parties (within 6 months after publication)
- 5 year protection term (extendable up to 25 years)
- Deferment of publication (for up to 30 months)
- Multiple application
- Invalidity proceedings
- Infringement cases and penal provisions



Definitions

Design (Article 3(a))

The appearance of the whole or a part of a product or its ornamentation resulting from various features such as; lines, contours, shape, colour, texture, material, elasticity or other characteristics perceived by the human senses.



Definitions (cont.)

Product (Article 3(b))

Any industrial or handicraft item, including parts of a complex system, sets, packaging, get-ups, graphic symbols and typographic typefaces, but excluding computer programs and topographies of integrated circuits.



Protection requirements

The legislation provides protection for a design which

- is new

and

- has individual character



Novelty (Article 6)

A design shall be considered new if no identical design has been made available to the public before the date of filing, or if priority is claimed, the date of priority.

Individual Character (Article 7)

A design shall be considered to have individual character if the overall impression it produces on the informed user is significantly different from the overall impression produced on such a user by any design which has been made available to the public before the date of filing, or if priority is claimed, the date of priority.



Grace period

The legislation introduces a twelve month grace period for design applications.

Exclusion from protection

- designs which are solely dictated by the technical function
- designs of interconnections
- designs which are contrary to public order or to morality as is generally accepted



Scope of protection

Any design which significantly produces a similar overall impression on the informed user shall be included in the scope of protection.



Term of protection

- 5 years from the date of filing
- Right holder may extend the term for up to 25 years



Rightholder (Article 13)

The right to the design shall vest in the designer or his successor in title.

- joint proprietorship
- entitlement under employment (employee's designs)
- designs of academics



Exclusive rights

The holder of the design right has exclusive rights to use it.

Third parties, **without the consent of the rightholder**, can not make, put on the market, sell, offer, import, put to commercial use or keep in stock for these purposes, the product in which the design is incorporated or to which it is applied.



Limitation of rights

- acts done privately and for non-commercial purposes
- acts done for experimental purposes
- acts of reproduction for the purposes of making citations or of teaching
- the equipment on ships and aircraft registered in a third country, as well as spare parts and accessories for repairing and execution of the repairs

Limitation of rights (cont.)

Use of a protected design for the purpose of repair of a complex product so as to restore its original appearance, after three years from the first putting on the market shall not be considered as infringement of rights where

- the product incorporating the design or to which the design is applied constitutes a component part of that complex product, and
- the public is not misled as to the origin of the product



Application requirements

To accord a filing date;

- a request for registration
- a representation of the design

Other compulsory elements;

- description of the design
- payment of fees
- power of attorney (if a representative is assigned)
- priority document (if priority is claimed)

An application may contain;

- a request for deferment of publication (for up to 30 months)



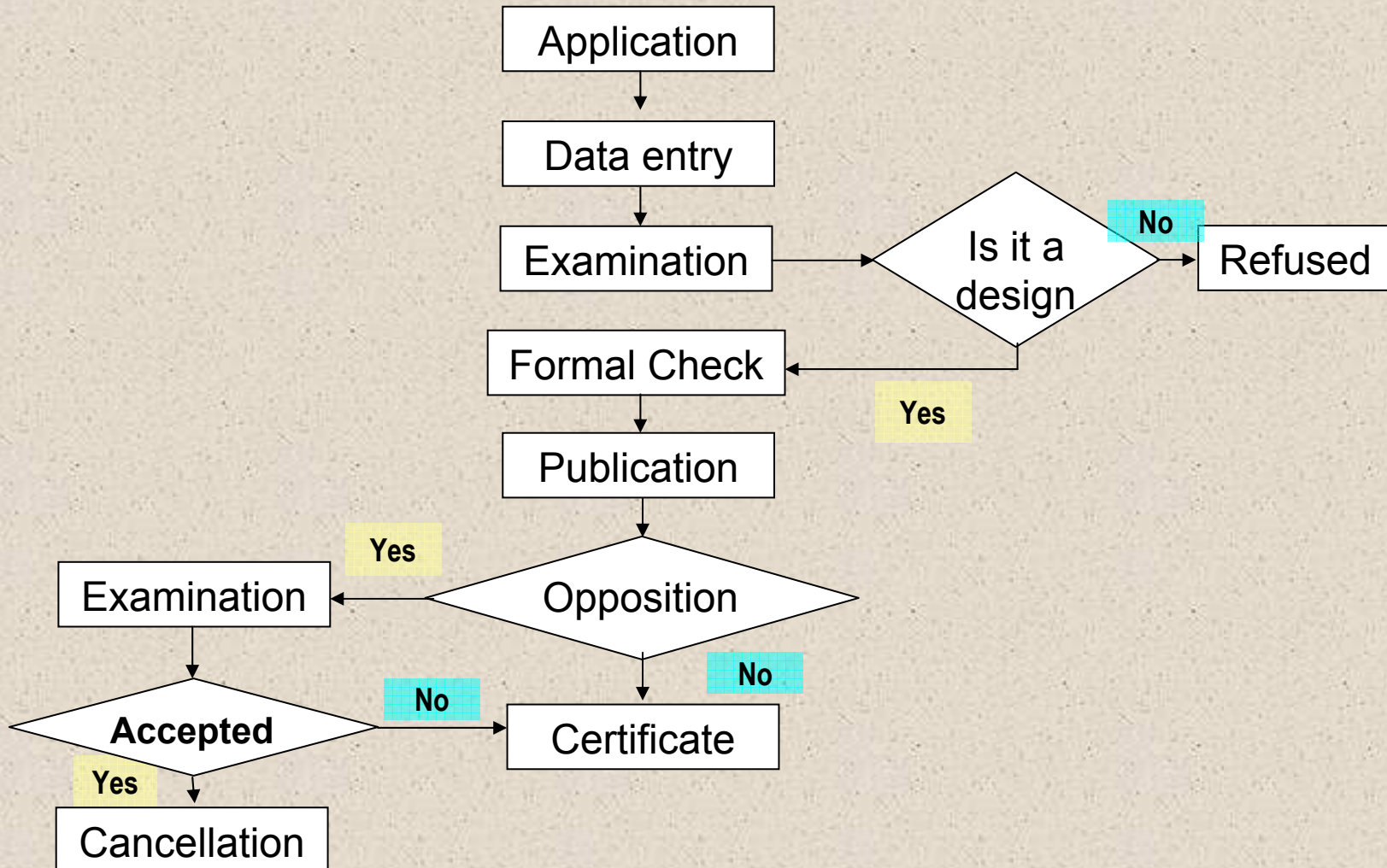
Classification

Locarno Classification

Multiple application

Several designs may be combined in one application.
The products (except for ornamentation) shall

- belong to the same sub-class, or
- belong to the same set or composition of items, or
- be the parts of a complex product, or
- compose a get-up





Examination

As to whether it complies with the definition of design. (ground for refusal)

Formal check;

- elements of the application
- priority documents (if priority is claimed)



Registration and publication

An application which has been accorded a filing date shall be entered in the Design Register.

Upon registration the design shall be published in the Official Industrial Designs Bulletin.



Deferment of publication

The applicant may request, when filing the application, that the publication be deferred for a period not exceeding 30 months from the date of filing, or date of priority.



Opposition procedure

- Third parties may submit an opposition for cancellation of registration, within six months after the publication.
- Opposition is communicated to the owner of the registered design.

Opposition procedure (cont.)

- Oppositions are examined by the Re-examination and Evaluation Board
- Decision of the Board is entered in the Register (Final decision of TPI)
- This decision can be brought to the court, within two months after its notification



Grounds for invalidity

- the design is not eligible for protection (novelty, individual character)
- applicant is not entitled to the design right
- there exists a conflicting design which has been made available to the public at a later date but having an earlier date of filing



Termination of rights

The design right shall terminate if;

- the period of protection has expired, or
- the right has been surrendered



Years	APPLICATIONS			DESIGNS		
	Domestic	Foreign	Total	Domestic	Foreign	Total
2000	2.200	263	2.463	10.023	587	10.610
2001	2.557	274	2.831	13.299	537	13.836
2002	3.630	274	3.904	19.787	637	20.424
2003	3.998	286	4.284	21.778	706	22.484
2004	4.528	373	4.901	23.168	1.128	24.296
2005	4.928	406	5.334	26.822	1.228	28.050



THANK YOU FOR YOUR ATTENTION