



CET WORKING DOCUMENT

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EXECUTIVE SUMMARY

Presently 15 out of 31 countries reported by the Groups claim to have protection of spare parts e.g. do not have the right of repair. However six (6) of the countries claiming to have protection are EU states who may be forced to eliminate such protection depending on the outcome of the proceedings at the EU Parliament on the proposed amendments to Directive 98/71.

The debate over the protection of spare parts is very political and FICPI should not enter the fray other than to ensure that the information being put forward to legislators and the public is accurate and fair.



Report on Protection of Industrial Design and Spare Parts/Right of Repair Exception

1. The detailed report of the Questionnaire results was submitted to the FICPI ExCo in Amsterdam, June 3-6, 2007. That report provided a survey of the responses received from 31 National Groups and provides a comparison of the varied legal approaches to protecting or making exceptions to protection of Industrial Designs in what amounts to spare parts. The present Report proposes to draw conclusions from the survey.
2. The first general conclusion to draw from the survey is that there are as many attempts to deal with the issue of spare parts (also read right to repair) as there are respondents. The second general conclusion is that while almost half the countries reported by the Groups claim to have Industrial design protection for spare parts, at least six such countries are part of the European Community and will be obliged to amend their National Laws to conform to the EU Directive 98/71 when it is eventually amended. The latest version of the Draft European Parliament Legislative Resolution (6.12.2006) would provide protection to the owner of an Industrial Design for a limited period with member states having the right to introduce a form of automatic compulsory license following the period of exclusivity. The limited term is proposed to end with the end of a model cycle. In other words if the amendments are adopted all EU states will in effect not have protection for spare parts. (At the time of writing there are reports of movement at the EU parliament towards a resolution.)
3. Countries that profess to provide Industrial Design protection for articles "dictated solely by function" such as South Africa and Australia have probably the most severe provisions on exceptions to protection of spare parts.
4. The controversy surrounding the exception of Industrial Design protection was created obviously from the automobile industry. The commercial considerations of trade in after-market parts for automobiles are considerable and have created two very strong political lobbies, namely the automotive industry and insurance lobbies. These two lobbies have been equally active in every country where the issue of protection of Industrial Design in spare parts is raised. The political forces involved is no greater than in the United States where a stand-alone Industrial Design law has been blocked for more than a century and the EU where Directive 98/71 continues to be in limbo.
5. While FICPI should normally be in favour of fair and equitable protection of Intellectual Property Rights for inventors, designers and owners of such rights we do not recommend that FICPI enter the political battles that represent the spare parts issue. FICPI should however monitor the progress of statutory developments of such Industrial Design laws around the world and ensure that information provided to governments and the public is accurate and objective.