
THE IMPORTANCE OF DESIGN LAW ACROSS VARIOUS NATIONS: DESIGN LEGISLATION IN INDIA, USA, AUSTRALIA

Adv. Anushka Kaushik, Shobhit University, Meerut

ABSTRACT

Intellectual property (IP) is legally safeguarded through mechanisms such as patents, copyrights, and trademarks, allowing individuals to gain recognition or financial rewards for their inventions or creations. Design embodies an individual's creativity and encompasses aspects like composition, shape, and pattern. This legal protection grants the inventor exclusive rights to their patented process, design, or invention for a specified duration, contingent upon a full disclosure of the invention. These rights are classified as incorporeal rights. However, design law also has its drawbacks in countries like India, the USA, and Australia. In cases of infringement, the original owner often faces prolonged delays in seeking justice, not only in India but also in the USA and Australia. There are costs associated with legal proceedings. The burden of proof for infringement lies with the original proprietor. Additionally, the financial and time commitments required can be significant negative factors. In some instances, the original owner may file a frivolous lawsuit against a defendant to promote their design or seek damages, among other reasons. As previously mentioned, every situation has both positive and negative aspects. The laws governing design are largely beneficial to the original owner. Historically, there were no specific regulations concerning designs or creativity. However, in the current landscape, numerous laws exist that address design and other related matters.

INTRODUCTION

Meaning of Intellectual Property Law And Its Types :

Intellectual property (IP) refers to the legal rights associated with a brand, invention, design, or any other type of creation owned by an individual or a business. Nearly every business possesses some form of IP, which can serve as a valuable asset.

Common categories of IP include:

Copyright – this safeguards written or published materials such as books, songs, films, online content, and artistic creations;

Patents – this secures commercial inventions, such as a new product or process developed by a business;

Industrial Designs – this pertains to the ideas or concepts regarding the features of shape, configuration, patterns, or color compositions applied to any article. The purpose of design is to enhance the aesthetic appeal of an industrial product to attract consumers. Any new and original design created for the decoration, shaping, and configuration of an industrial product is eligible for design registration. This protects designs, including drawings or computer-generated models;

Trademarks – this protects signs, symbols, logos, words, or sounds that differentiate your services from those of your competitors.

MEANING OF DESIGN LAW IN INDIA,USA AND AUSTRALIA

- **India**

Designs may be produced by professionals, encompassing engineered designs or architectural blueprints for various properties, as well as interior designs. The term 'design' does not necessarily imply adherence to specific instructions followed by designers; rather, it reflects their creative expression. Design represents the creativity expressed by an individual. It fundamentally involves enhancing the aesthetic appeal of objects and is applied across various

tasks. In simpler terms, it aims to make items more visually appealing, comfortable, or to enhance other attributes.¹

- **USA**

Designs are safeguarded under various categories of intellectual property law in the United States. According to Patent law, specific designs can be protected as design patents. Copyright law offers protection for designs classified as pictorial, graphic, and architectural works, as well as vessel designs, while trade dress acknowledges designs that have developed into a brand on their own. There is no standardized protection for designs across different industries, which would allow for consistent criteria for each design. Consequently, design rights in the US adopt a more fragmented approach, with each category addressing them in distinct ways, resulting in differing levels of protection and various challenges in obtaining any rights whatsoever.²

- **Australia**

The Act provides a streamlined registration process, simplifies enforcement and dispute resolution procedures, and includes strict eligibility and infringement tests with clear definitions. It establishes a two-step threshold test for design eligibility. A design must be both 'new' and 'distinctive' to qualify for registration. This means it cannot be identical to any design that has been disclosed anywhere in the world. This encompasses anything published globally or publicly utilized in Australia.³

Distinctive - this indicates that it must not be substantially similar in overall impression to any design previously disclosed anywhere in the world. This includes anything published globally or publicly used in Australia. Under this criterion, modifications to a design are irrelevant if the two designs still appear similar. The emphasis is placed on the similarities between the two designs rather than their differences. The Act also permits multiple designs to be submitted in a single application. Therefore, for an application containing one design, that design number will serve as the reference for applications with multiple designs, with each design receiving a distinct design number.

¹Egyankosh.ac.in, <https://egyankosh.ac.in/bitstream/123456789/7095/1/Unit-9.pdf>, (26.June.2025)

² Iclg.com, iclg.com/practice-areas/designs-laws-and-regulations/usa, (last Visited 26.June.2025)

³ Ip Australia.gov.au, <https://www.ipaustralia.gov.au/design-rights/what-are-design-rights>, (last Visited 26.June.2025)

Comparison of laws

We have observed that the regulations concerning design in India, the USA, and Australia are quite stringent. The concept of design is consistent across these nations, emphasizing that it must be new and unique. In the USA and India, design laws provide protection under their respective acts. However, Australian law introduces a two-step threshold test to determine a design's eligibility. For a design to be registered, it must be both 'new' and 'distinctive.' These terms, 'new' and 'distinctive,' are specifically defined. Similarly, Indian law also clarifies the meanings of originality and uniqueness within the act.

REGISTRATION IN USA, INDIA, AND AUSTRALIA

Registration in the USA

Preparing a successful design patent application and engaging with the USPTO until a patent is granted (i.e., prosecuting the design patent application) necessitates an understanding of patent laws and regulations, as well as familiarity with USPTO practices and procedures. Although the Office advises hiring a registered patent attorney or patent agent to file and prosecute applications, a well-informed applicant may effectively prosecute their own application. For further details, please refer to our Pro Se Assistance Program. The drawing disclosure is a vital component of a design patent application as it illustrates the claimed design. It is crucial for the applicant to provide a set of drawings (or photographs) of the utmost quality that adhere to the rules and policies regarding the drawing disclosure of a design patent application. Modifications to these drawings after the application has been submitted that introduce new matter are prohibited (35 U.S.C. 132, 35 U.S.C. 112(a)). It is in the applicant's best interest to ensure that the drawing disclosure is both clear and complete before filing the application, as an incomplete or inadequately prepared drawing may lead to a critically defective disclosure that cannot be converted into a patent. It is advisable for the applicant to engage the services of a professional draftsman who specializes in creating design patent drawings. This guide includes examples of acceptable drawings and drawing disclosures.⁴

Registration in India

A design can only be approved for registration if it is unique. Previous publications are not

⁴ [Uspto.gov,https://www.uspto.gov/patents/basics/apply/design-patent](https://www.uspto.gov/patents/basics/apply/design-patent),(last Visited 26. June.2025)

acceptable. The design should be appreciated solely through visual means. The method or process of its creation and application is not relevant. It must not include artistic works, trademarks, or property marks. There must be significant differences between your design and any designs that have already been registered. Designs that are similar or bear a resemblance to existing designs, even if only slightly different, do not qualify for registration.

Registration in Australia

A design is considered new and distinctive when compared to prior art. Prior art encompasses designs that have been publicly used in Australia, designs published either in Australia or abroad, and designs disclosed in earlier registrations. An application for a registered design must be submitted before any public disclosure of the product or its commercial use, otherwise, it will be deemed invalid.

Comparison of Laws

Under U.S. law, an individual is not required to reside in the United States or maintain an office or address there; only the inventor can register the design, not the company. In Indian law, artistic works, trademarks, or property marks are excluded. Designs that are similar or resemble existing designs, even if only slightly different, do not qualify for registration. According to Australian law, an application for a registered design must be filed before any public disclosure or commercial use of the product occurs, or it will be invalid. The term 'prior art' is used in relation to design.

DURATION OF CERTIFICATE IN INDIA AS COMPARED TO USA AND AUSTRALIA

- **In India**

The owner can register their design for a period of 15 years. Initially, it is for 10 years, but by paying a fee of Rs. 2000 to the controller, the owner can extend it to 15 years, provided this is done before the registration expires.

- **In USA**

In the USA, the duration of design patent protection is 14 years from the date of grant. This

term cannot be renewed.

- **In Australia**

In Australia, the maximum term of design protection is 10 years. A renewal is necessary after 5 years from the filing date. Once a design registration expires or lapses due to non-payment of the renewal fee, others are free to make, use, or sell the design.

As observed, Indian law regarding design is more favorable than the design laws in Australia and the USA. The Indian design act provides a longer duration of protection compared to both the design act and the Copyright act in these countries.

INFRINGEMENT OF DESIGN IN INDIA, USA AND AUSTRALIA

Infringement of Right

The term 'infringement' is most commonly used to refer to the violation of rights protected by Copyright, patent, or trademark. The unauthorized production, sale, or distribution of an item that is protected by copyright, patent, or trademark is considered an infringement.

Infringement of Design in India

A registered design is violated by an individual who, without the approval of the design's owner, applies, imports, or publishes the design or any deceptive or clear imitation of it. The aforementioned actions constitute design piracy only under the following conditions. It occurs while copyright exists for any design. The design is applied or imitated without the consent of the registered owner.

It is intended for sale, rather than for personal or private use.

The items must belong to the same category in which the design is registered.

Cases in India

- **M/S. Whirlpool Of India Ltd. v. M/S. Videocon Industries Ltd.⁵**

⁵ 2014 (58) PTC 1 (Bom).

Facts

In this instance, Whirlpool had two trademarks registered. Subsequently, Videocon registered a design that shared the same features, configuration, and shape as the Plaintiff, Whirlpool, which was clearly recognizable as a replica at first glance. Videocon argued that since they had already registered their design, they could not be held accountable for infringement or passing off, which they claimed was not applicable to registered designs.⁶

The Court determined that there was a resemblance between the designs of the plaintiff and the defendant. The defendant, Videocon, was found liable for both infringement and passing off of the Plaintiff's design.⁷

- **Veerplast Houseware vs Bonjour International⁸**

The design intended for registration or use for sale must not exhibit “fraudulent or obvious imitation” of a registered design unless written consent has been obtained from the registered owner of that design. The Court deemed this particular requirement necessary from the perspective of the “average knowledgeable customer with imperfect recollection.”⁹

- **Snehlata C. Gupte vs. Union of India (UOI) and Ors.¹⁰**

Facts

The patent specifications related to the two applications were published in the official gazette on November 20, 2004, in accordance with Section 11A of the Patents Act, 1970 (the Act). At that time, Section 25 of the Act had not yet been amended. According to Section 25 of the unamended Act, any opposition to the granting of a patent had to be submitted within four months from the date of advertisement (publication), a period that could be extended by one month if the Controller was satisfied with the reasons provided for the delay. Pre-grant oppositions to the patent were dismissed on the basis of being time-barred. The counsel for the

⁶ The legal lock.com, <https://thelegallock.com/test/case-brief-whirlpool-of-india-ltd-vs-videocon-industries-ltd/>, (Last Visited 26.June.2025)

⁷ The legal lock.com, <https://thelegallock.com/test/case-brief-whirlpool-of-india-ltd-vs-videocon-industries-ltd/>, (Last Visited 26.June.2025)

⁸ CS(OS) No. 1181/2011

⁹ The laws.com, <https://www.the-laws.com/Encyclopedia/browse/Case?caseId=101102185100&title=veerplast-houseware-private-ltd-vs-bonjour-international>

¹⁰ MANU/DE/1637/2010; 2010:DHC:3449

party contended that a patent is not deemed granted until an entry to that effect is recorded in the Register.¹¹

Legal Issue

When can we consider a patent to be granted under the Patents Act, 1970?¹²

The Court noted that the date on which a patent is granted is essential for establishing the timeframe within which a pre-grant opposition must be submitted according to Section 25(1) of the Act. Following the amendment to the Act, particularly Section 25(1), effective from January 1, 2005, a notable change has occurred in this context. Before this amendment, Section 25(1) required that a pre-grant opposition be filed within four months from the date of the advertisement announcing the acceptance of the complete specification. This advertisement, which was published in the official gazette, was governed by Section 23 of the Act prior to its amendment. Additionally, the Controller could grant a further maximum extension of one month for submitting the pre-grant opposition. It is important to note that such opposition could only be initiated by a "person interested".¹³ The sealing of the patent and its registration in the Register are meant to be ministerial actions that signify the grant of the patent, which occurs at a stage prior to these ministerial actions. Consequently, for the purposes of Section 43(1) of the Act, a patent is considered "granted" on the date when the Controller issues a final Order to that effect in the file.¹⁴

- **Aloys Wobben and Ors. vs. Yogesh Mehra and Ors.**¹⁵

Appellant No. 1 (Aloys Wobben) is a scientist and engineer. The Appellant asserts ownership and possession of numerous intellectual property rights, holding approximately 100 patents in India. In the wind turbine sector, he claims to rank among the top three manufacturers globally. The manufacturing process in question is conducted by the Appellant under the name of Enercon GmbH. Appellant No. 2 (Wobben Properties GmbH) has obtained the right, title, and

¹¹Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-snehlata-gupte-union-of-india>, (Last Visited 26.June.2025)

¹²Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-snehlata-gupte-union-of-india>, (Last Visited 26. June. 2025)

¹³Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-snehlata-gupte-union-of-india>, (Last Visited 26.June.2025)

¹⁴ Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-snehlata-gupte-union-of-india>, (Last Visited 26.June.2025)

¹⁵ MANU/SC/0519/2014, 2014 INSC 416

interest in all Indian registered designs and patents (including pending registrations) belonging to Dr. Aloys Wobben through an assignment agreement dated January 5, 2012. The Enercon Group states that it employs over 8,000 individuals worldwide, and in India, the Appellant is executing the aforementioned manufacturing process through a joint venture with Yogesh Mehra and Ajay Mehra (Respondent Nos. 1 and 2). This Indian enterprise operates under the trade name Enercon India Limited (Respondent No. 3). Enercon India Limited (Respondent No. 3) was established in 1994 as a joint venture between Enercon GmbH and Respondent Nos. 1 and 2. Initially, Enercon India Limited conducted its manufacturing process in accordance with licenses granted by the Appellant. The Appellant contends that the licenses for utilizing technical know-how were conferred upon Enercon India Limited through written agreements. The Appellant claims that despite the termination of all intellectual property license agreements with the Respondents, they continued to utilize the Appellant's patents and, consequently, the intellectual property rights belonging to the Appellant without proper authorization. This conduct by the Respondents has caused significant harm to the Appellant, as his technical know-how was being exploited without compensation or permission. The Respondents submitted "revocation petitions" to the Intellectual Property Appellate Board (Appellate Board) under Section 64(1) of the Patents Act, 1970 (Patents Act) in January 2009. Through the aforementioned petitions, Respondent 3 (Enercon India Limited) requested the cancellation of the patents owned by the Appellant. Dissatisfied with Enercon India Limited's actions in approaching the Appellate Board, the Appellant (Dr. Aloys Wobben) initiated several "patent infringement lawsuits."¹⁶

Legal Issue

Can a 'counter-claim' be initiated regarding the same cause of action for which a 'revocation petition' is currently under consideration?¹⁷

The Court noted that a 'counter-claim' functions as an independent legal action, thus it cannot be permitted to advance if the Defendant has already filed a suit against the Plaintiff concerning the identical cause of action. If the Respondents, acting as 'any person interested', submitted a 'revocation petition' prior to the filing of an 'infringement suit', they are not allowed to initiate

¹⁶ Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-alloys-wobben-yogesh-mehra>, (Last Visited 25.June.2025)

¹⁷ Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-alloys-wobben-yogesh-mehra>, (Last Visited 25.June.2025)

a 'counter-claim' based on the same cause of action. The logical conclusion in this scenario is that the validity of the patent grant must be assessed within the 'revocation petition'. Consequently, in this context, while the 'revocation petition' may proceed, the 'counter-claim' cannot be allowed to continue. Therefore, when a matter is already under consideration between the same parties in a Court with the authority to resolve it, a subsequently filed suit on the same issue involving the same parties cannot be permitted to move forward.¹⁸

Design Infringement in the USA

In the United States, the patent statute governs designs, as outlined in 35 USC § 171 Chapter 16. This statute provides protection for new, original, and ornamental designs of articles. Similar to other jurisdictions, the design patent in the US protects only the visual aspects of a design, not its functionality. Chapter 28 of 35 USC § 171 addresses patent infringement, defining it as the unauthorized making, using, offering, or selling of a patented design. Infringement also includes attempts to infringe a design and the sale of components of patented articles.

Section 127 details both direct and indirect infringement. Direct infringement includes the unauthorized importation of patented products (35 U.S.C. § 271(a)) and the unauthorized importation of products resulting from a patented process (35 U.S.C. § 271(a)). Indirect infringement holds liable those who assist another in directly infringing a registered design (35 U.S.C. § 271(b)) or contribute to the infringement (35 U.S.C. § 271(c)). This emphasizes the most prevalent form of infringement, where the infringer's awareness of the actions taken is established to confirm infringement. Evidence of intent is also required to demonstrate contribution to infringement. The statute does not extend protection to unregistered designs. To secure protection against infringement and obtain any design patent rights, it is essential to submit a patent application.

Cases in the USA

- **Apple V. Samsung¹⁹**

Apple issued a warning to Samsung, expressing its belief that the Korean firm was violating

¹⁸Manupatra Academy, <https://www.manupatracademy.com/home/subject-wise-case-guide-law-students-alloys-wobben-yogesh-mehra>, (Last Visited 25.June.2025)

¹⁹ 11-CV-01846-LHK

Apple's patents. The patent dispute began in 2011 when Apple accused Samsung of "slavishly" replicating the iPhone design. In response, Samsung filed a lawsuit against Apple, claiming that Apple had infringed on Samsung's software patents. This led to a prolonged series of legal battles, with numerous cases filed regarding various patents. Ultimately, a US jury ruled in favor of Apple, determining that Samsung owed Apple over \$1.05 billion for copying specific features of the iPhone and iPad. However, in a retrial, this amount was reduced to \$600 million due to a "jury error." Additionally, the jury found that Samsung should pay Apple more than \$290 million for violating the company's patents. In one trial, a jury concluded that both Apple and Samsung had infringed on each other's patents, resulting in Apple receiving \$120 million and Samsung being awarded \$160,000. Meanwhile, both companies opted to dismiss all patent cases outside the United States. Samsung agreed to pay Apple \$548 million to resolve the original patent infringement claim filed in 2011. By this point, none of the 16 infringing smartphones were still on the market. The case eventually reached the US Supreme Court, where Samsung contested the lower court's decision that mandated Samsung pay 100% of the profits generated from its smartphone business, amounting to nearly \$399 million. The Supreme Court, however, overturned this ruling and remanded the case to lower courts, stating that requiring full profit payment was incorrect, as the infringed patents represented only a minor portion of the devices, not the entire devices. Ultimately, a US jury ordered Samsung to compensate Apple \$539 million for the damages incurred from "copying features of the original iPhone." Samsung paid this amount after both companies agreed to cease litigation outside the US.²⁰

- **Crocs v. International Trade Commission**²¹

The Federal District Court of Maryland in Victor Stanley determined that the manufacturers of a park bench violated a previous design patent because "an ordinary observer, familiar with prior art designs, would find it difficult to distinguish them in a side-by-side comparison without unusually careful effort." The figure below illustrates a side-by-side comparison of the products. Although the prior art in Victor Stanley included a looped armrest and curved bench legs, both the '623 patent and the infringing design showcased pronounced curvature of the

²⁰ ComplianceCalendar.in, [https://www.compliancecalendar.in/learn/apple-inc-v-samsung-electronics-co-2012-landmark-case-in-patent-infringement-law#:~:text=in%20global%20markets-,Background%20of%20the%20Case,\(Last Visited 25.June.2025\)](https://www.compliancecalendar.in/learn/apple-inc-v-samsung-electronics-co-2012-landmark-case-in-patent-infringement-law#:~:text=in%20global%20markets-,Background%20of%20the%20Case,(Last%20Visited%2025.June.2025))

²¹ 598 F.3d 1294 (Fed. Cir. 2010)

legs, which was the key distinguishing feature of the '623 patent and the prior art.²²

Infringement of design in Australia

A person commits infringement of a registered design if, during the registration period of the design, and without the license or authority of the registered owner of the design, the individual:

- (a) creates or proposes to create a product that features a design registered, which reflects a design that is either identical to or significantly similar in overall impression to the registered design; or
- (b) brings such a product into Australia for the purpose of sale, or for use in any trade or business; or
- (c) sells, rents, or otherwise transfers, or proposes to sell, rent, or otherwise transfer, such a product; or
- (d) utilizes such a product in any manner for the purposes of any trade or business; or
- (e) retains such a product with the intention of performing any of the actions described in paragraph (c) or (d).

Cases in Australia

- **Firma Group Australia Pty Ltd v Byrne & Davidson Doors²³**

Firmagroup Australia Pty registered a design for a 'combination handle and lock for shutter doors'. The innovative product was replicated by Byrne & Davidson, leading Firmagroup to file a lawsuit for design infringement. The High Court determined that the 'combination handle and lock for shutter doors' represented 'an idea of shape or configuration', which is 'expressed by those features', and was 'too broad to receive statutory protection'. The Court subsequently limited the monopoly to the specific, unique appearance. Additionally, it stated that 'No design should be interpreted in a way that grants its owner a monopoly over a method or principle of

²²Lexology.com,<https://www.lexology.com/library/detail.aspx?g=6b5e2b56-7c16-4e1e-800f-70b0133a810f>, (Last Visited 26.June.2025)

²³ (1987) 180 CLR 483

construction.’ The defendant successfully demonstrated that his product was sufficiently distinct, and therefore did not infringe upon Firma Groups design.²⁴

Comparison of Laws

In Indian law, a registered design is considered infringed if a person, without the consent of the design's proprietor, applies, imports, or publishes the design or any fraudulent or obvious imitation of it. In American law, protection is granted for a new, original, and ornamental design of an article. Similar to other jurisdictions, the design patent in the US protects only the visual design aspects of the article, not its functionality. Section 127 details both direct and indirect infringement. US law specifically addresses both direct and indirect infringement. In Australian law, any use of the design by an individual constitutes an infringement.

Remedies for Design in India

The registered owner of a design has various remedies at their disposal. These remedies include seeking an injunction to halt further infringement, claiming damages to recover losses, and possibly pursuing the delivery up or destruction of infringing items. Furthermore, in instances of fraudulent or blatant imitation, the infringer may be liable for a penalty not exceeding Rs. 25,000 for each violation, with a cumulative cap of Rs. 50,000 for any single design.²⁵

- **Injunction:**

A registered owner can request an injunction from the court to prevent the infringing party from continuing to reproduce, sell, or import the infringing design. This injunction may be either temporary (interlocutory) or permanent, depending on the specific circumstances.²⁶

- **Damages:**

The registered owner can seek damages to compensate for the losses incurred as a result of the infringement. The damages may be calculated based on the actual loss experienced by the owner or the profits gained by the infringer from the infringing actions. In certain situations,

²⁴Mcintoship.com, <https://mcintoship.com.au/infringement-designs-section>, (Last Visited 26.June.2025)

²⁵ The Legal School.in, <https://thelegalschool.in/blog/infringement-of-design>, (Last Visited 29.June.2025)

²⁶ Iiprd.wordpress.com, <https://iiprd.wordpress.com/2024/02/22/design-piracy-and-its-remedies-under-the-designs-act-2000/#:~:text=Criminal%20Remedies:%20in%20case%20the,the%20accused%20in%20certain%20cases.>, (Last Visited 29. June.2025)

the court may award a specific amount (for instance, Rs. 25,000 per violation, with a maximum of Rs. 50,000 for one design) as stipulated in the Act.²⁷

- **Delivery Up or Destruction:**

The court may direct the infringer to deliver the infringing items for destruction or forfeiture. This action ensures that the infringing items are removed from the market and cannot be utilized further.²⁸

- **Seizure of Infringing Goods:**

The court can also issue an order for the seizure of infringing goods, typically through a court-appointed commissioner. This action prevents the further distribution or sale of the infringing products.²⁹

- **Criminal Remedies:**

In cases of intentional or severe infringement, the infringer may also face criminal penalties, including fines and imprisonment. However, criminal remedies are less frequently applied in design infringement cases compared to other forms of intellectual property rights.³⁰

Remedies for design in the USA

If a design patent is infringed, the patent holder can opt for traditional patent remedies as outlined in 35 U.S.C. § 284 (which guarantees damages that are at least a reasonable royalty), or they can seek the infringer's profits as per 35 U.S.C. § 289, which specifies:

Whoever, during the duration of a design patent, without the owner's license, (1) applies the patented design, or any similar imitation, to any manufactured article for sale, or (2) sells or offers for sale any manufactured article to which such design or imitation has been applied,

²⁷ The Legal School.in, <https://thelegalschool.in/blog/infringement-of-design>, (Last Visited 29.June.2025)

²⁸ Intellect Vidhya.com, <https://intellectvidhya.com/design-infringement-in-india/?amp=1>, (Last Visited 29.June.2025)

²⁹ The Legal School.in, <https://thelegalschool.in/blog/infringement-of-design>, (Last Visited 29.June.2025)

³⁰ Iiprd.wordpress.com, <https://iiprd.wordpress.com/2024/02/22/design-piracy-and-its-remedies-under-the-designs-act-2000/#:~:text=Criminal%20Remedies:%20in%20case%20the,the%20accused%20in%20certain%20cases.>, (Last Visited 29. June.2025)

shall be liable to the owner for the total profit made, but not less than \$250, which can be recovered in any United States district court with jurisdiction over the parties involved.³¹

This section does not limit, reduce, or undermine any other remedies available to a patent owner under this title, but the owner cannot recover profits from the infringement more than once.³²

Remedies for design in Australia

Infringement of design

Remedies for infringement

Section 75: (1) Without limiting the relief that a court may grant in infringement proceedings, the relief may include:

- (a) an injunction subject to such terms as the court thinks fit; and
- (b) at the option of the plaintiff--damages or an account of profits.

Relief for defendant--infringement before date of registration

(1A) To the extent that the infringement proceedings relate to an infringement occurring before the date on which the design was registered, the court may:

- (a) refuse to award damages; or
- (b) reduce the damages that would otherwise be awarded; or
- (c) refuse to make an order for an account of profits;

if the defendant satisfies the court that, at the time of the infringement, the defendant was not aware, and could not reasonably have been expected to be aware, that an application in respect of the design had been filed under section 21.

³¹Law.Cornell.edu, <https://www.law.cornell.edu/uscode/text/35/289>, (last Visited 29.June.2025)

³² BitLaw.com, <https://www.bitlaw.com/source/35usc/289.html#:~:text=289%20Additional%20remedy%20for%20infringement,profit%20made%20from%20the%20infringement.>, (Last Visited 29.June 2025)

Relief for defendant--infringement on or after date of registration

(2) To the extent that the infringement proceedings relate to an infringement occurring on or after the date on which the design was registered, the court may refuse to award damages, reduce the damages that would otherwise be awarded, or refuse to make an order for an account of profits, if the defendant satisfies the court:

(a) in the case of primary infringement:

(i) that at the time of the infringement, the defendant was not aware that the design was registered; and

(ii) that before that time, the defendant had taken all reasonable steps to ascertain whether the design was registered; or

(b) in the case of secondary infringement--that at the time of the infringement, the defendant was not aware, and could not reasonably have been expected to be aware, that the design was registered.

Additional damages

(3) The court may award such additional damages as it considers appropriate, having regard to the flagrancy of the infringement and all other relevant matters.

Prima facie evidence

(4) It is prima facie evidence that the defendant was aware that the design was registered if the product embodying the registered design to which the infringement proceedings relate, or the packaging of the product, is marked so as to indicate registration of the design.³³

Definitions

(5) In this section:

"primary infringement" means infringement of a kind mentioned in paragraph 71(1)(a).

³³ Design Act, 2003, Sec. 75, No.147, Acts of Parliament, 2003 (Australia)

"Secondary infringement" means infringement of a kind mentioned in paragraph 71(1)(b), (c), (d) or (e).

Conclusion

Numerous designs can also grant the author copyrights. Countries like India, the USA, and Australia have developed robust laws to safeguard the designs of original owners. Every work has both positive and negative effects. These laws protect the owner's hard work and creativity. Owners have the right to register their designs for protection. A valuable design will always be recognized not just in one country but globally. The design protection systems in India, the USA, and Australia aim to protect the aesthetic and non-functional features of products, yet they vary in their methodologies, scope, and procedural details. Although the fundamental principles of design protection are alike, each country India, the USA, and Australia exhibits its own legal traditions and economic priorities within its design legislation. Recently, both the USA and Australia have made efforts to modernize their systems and align them with international best practices, whereas India's framework remains strong but adheres to a more traditional approach. As global trade and digital products continue to expand, it is anticipated that further harmonization and modernization will occur across all three jurisdictions.

References

- Manupatra Academy, <https://www.manupatracademy.com>, (Last Visited 25.June.2025)
- ComplianceCalendar.in, <https://www.compliancecalendar.in/learn/apple-inc-v-samsung-electronics-co-2012-landmark-case-in-patent-infringement-law#:~:text=in%20global%20markets.,Background%20of%20the%20Case>, (Last Visited 25.June.2025)
- Thelaws.com, <https://www.thelaws.com/Encyclopedia/browse/Case?caseId=101102185100&title=> (last Visited 26.June.2025)
- Lexology.com, <https://www.lexology.com/library/detail.aspx?g=6b5e2b56-7c16-4e1e-800f-70b0133a810f>, (Last Visited 26.June.2025)
- McIntoship.com, <https://mcintoship.com.au/infringement-designs-section>, (Last Visited 26.June.2025)
- Egyankosh.ac.in, <https://egyankosh.ac.in/bitstream/123456789/7095/1/Unit-9.pdf>, (26.June.2025)
- Iclg.com, [iclg.com/practice-areas/designs-laws-and-regulations/usa](https://www.iclg.com/practice-areas/designs-laws-and-regulations/usa), (last Visited 26.June.2025)
- IpAustralia.gov.au, <https://www.ipaustralia.gov.au/design-rights/what-are-design-rights>, (last Visited 26.June.2025)
- Uspto.gov, <https://www.uspto.gov/patents/basics/apply/design-patent>, (last Visited 26.June.2025)
- The legallock.com, <https://thelegallock.com/test/case-brief-whirlpool-of-india-ltd-vs-videocon-industries-ltd/>, (Last Visited 26.June.2025)
- Baxterip.com, <https://www.baxterip.com.au/registered-designs> (Last Visited 29.June.2025)
- IntellectVidhya.com, <https://intellectvidhya.com/design-infringement-in-india/?amp=1>, (Last Visited 29.June.2025)
- Law.Cornell.edu, <https://www.law.cornell.edu/uscode/text/35/289>, (last Visited 29.June.2025)
- Design Act, 2003, Sec. 75, No.147, Acts of Parliament, 2003 (Australia)

- The Legal School.in, <https://thelegalschool.in/blog/infringement-of-design>, (Last Visited 29.June.2025)
- Iiprd.wordpress.com, <https://iiprd.wordpress.com/2024/02/22/design-piracy-and-its-remedies-under-the-designs-act-2000/#:~:text=Criminal%20Remedies:%20in%20case%20the,the%20accused%20in%20certain%20cases.>, (Last Visited 29. June.2025)