

Response ID ANON-6TNE-VMEH-D

Submitted to Reviewing the designs framework: Call for views
Submitted on 2022-01-29 21:44:06

Introduction

1 What is your name?

Name:

[REDACTED]

2 What is your organisation?

Organisation:
N/A

3 What is your email address?

Email:

[REDACTED]

4 The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Yes

Respondent information

5 If you are an individual, are you?

A designer

If you have selected other please specify:

6 If you are responding on behalf of an organisation, are you?

Not Answered

If you selected other please specify:
N/A

7 In which main industry do you or your business operate?

Specialist design, e.g. fashion design, industrial design, graphic design

If you selected other please specify:

8 How many people does your business employ?

0-1

Registered designs - search and examination

9 Do you have views on whether the IPO should change examination practice for designs?

Please add your views here:

The efficiency and cost effectiveness of initial registration processes is of paramount importance. Introducing additional time or cost consequences to the process will inhibit release of creative output and further impede likelihood of success on release. Consequently any amendment that increases time frame and cost of the process will create a negative economic effect on the output of UK creativity. The negative consequence will particularly affect start up entities that may already have invested significantly in r&d and prototype development cycles. The onus on applicant considering novelty prior to application enables significant streamlining of registration processes and cost consequences. The efficacy of this could be aided by AI search reports compiled and delivered as part of the administration process after initial registration has occurred. The provision of this AI report then provides the interpretive backdrop of prior art upon which novelty can be rightfully considered and consequently enforced having thereby identified the specific areas of novelty inherent in the newly registered design.

The process thereby retains efficiency and cost effectiveness for fast release of creativity undertaken by low cashflow entities whose ideas and creativity may have significant GVA value which is at risk of being lost if the administration creates additional costs and timelags to a design release timetable that is highly pressured in terms of cashflow risks and is already prone to a high percentage rate of failure. Increasing the failure rate of creative start ups is not

in our interest for a successful innovation economy.

The above proposal enables the applicant to both get on with the job of releasing their creativity quickly and cheaply while being fully informed of interpretive risk areas regarding their output.

The IPO is further empowered where appropriate to refuse the application where the AI search demonstrates exact matched prior art or bad faith type preventative applications.

Legal interpretation of any enforcement actions are then well informed of prior art and novelty areas from the outset, upon which enforcement decisions are likely to be debated and made. The applicant is aware of the interpretive landscape of the novelty of their output from the outset. Value of novelty is better demonstrated with provision of the AI report thereby aiding licensing of designs and investor confidence in worth of exclusivity.

Terms of reference of any such AI report and scope of sources, specific nature of search algorithms would be important to manage inadvertent consequences of search report activities. Constant updating and management of the mechanism of the AI report would be necessary to keep up to date with the pace of technological change and data storage, sharing and scanning capacities. Ongoing flexibility and upgrading of this search system would have to be understood and incorporated into its ongoing administrative development.

Maintaining this as a world leading IP search facility and report process may add value to the IP economy as individual applications are thereby accompanied by a dependable prior art report clearly outlining novelty and likely future interpretations of novelty upon which value can be attributed and realised with increased confidence.

10 Do you think it would be useful to introduce any of the options outlined? (please select all that apply)

Prior art searching, Use of AI tools

Please provide more detail below:

Opposition periods could be targeted by fraudulent activities trying to undermine / access the novelty of another person's creative output. This may be difficult to manage coherently or effectively. Consider it more sensible for the administrators to issue the prior art report and take independent action where appropriate.

Simplifying the designs system

11 What form of designs protection works best for you at present?

Please add your views here:

Patents
Registered designs
Trademarks
Copyright

Continued creative output

12 Do the different and overlapping ways of protecting the appearance of a product present any issues to creators and users of the system? If you think the system could be simplified, we would like your views on how to do this.

Please add your views here:

The costs of international patents are cashflow crushing. Kills off many good projects and prevents effective commercialisation of years of creative effort.

The more registered designs can be utilised to protect start up innovations from unmanageable IP costs associated with patents the more potential value our creative economy can retain instead of losing entirely due to unnecessary administrative financial impediments of registering and filing their creative output.

Administration of an industry should not be exterminating such a significant percentage of its potential output.

IE if a globally synchronised design release service can form the basis for protection and further patent registrations then a modern system of administration has been achieved that appropriately serves the innovation and creative industry practitioners of the modern marketplace.

Our administration systems should empower and protect our creative workers not punitively charge them into bankruptcy for daring to try to be creative. A unified release system could go some way to enabling this lofty concept

13 Are there terms in the Registered Designs Act which would benefit from clarification or guidance e.g. "get up"?

Please add your views here:

A term that is flexible in its interpretation is useful in this act as it allows the consideration of novel content not yet defined by our vocabulary. New innovations or creativity may utilise that which has not been termed before.

14 Please share any issues you or your clients have experienced in relation to the changes to disclosure requirements for unregistered designs since the end of the transition period (31 December 2020).

Please add your views here:

15 Would any of the options outlined, such as simultaneous disclosure, address this issue? Are there any other ways of addressing the lack of reciprocal recognition for unregistered designs in the UK and EU? If so, please provide details on how they may work in practice.

Please add your views here:

Modern technology is changing the constructs that formed historic geopolitical boundaries. The world is now the marketplace. Either government administration's recognise this and adapt accordingly or the emerging technologies of modern commerce and monopolisation will overtake the prior functions of geopolitical governance.

The concept of creating a simultaneous release portal capable of registration capacity across multiple geographic areas is thereby an appropriate and necessary direction of travel to manage a period of flux in the landscape of geopolitics and international commerce. This concept should be embraced in the boldest possible sense.

A release portal concept (eg synchronised printers in each geographic region across the world) should be examined, developed and constructed to afford the maximum potential protections for applicants on a international basis. Creating a release portal that operates effectively in this way could add additional value to applications made through it thereby making the UK the go to place to register your creative outputs. This system should be made to operate in a efficient and cost effective manner for the applicant enabling easy registration and synchronised global release with the operation of the system enabling further registrations of IP protections in various synchronised areas based upon this initial synchronised release,

Such a process would be fit for purpose in what is now a global marketplace.

Legal validity may be challenged by competitor states / countries but where the basis of the release is a physical document produced in that country of origin the opportunity for legal debate of data validity is significantly reduced. The synchronised printing of documents that cannot be interpreted in their entirety until they have all finished printing further reduces the capacity for legal debate regarding the exact timing of the novel release and consequent validity of IP applications based upon this release.

Future technologies

16 How can the current system better meet the needs of a digital environment and future technologies?

Please add your views here:

Synchronised Global release capacity and a designs for sale service enabling a single point of creative output information for worldwide based investors to buy into emerging creative projects.and there licensing potentials.

This may increase the percentage of success in UK released creative project outcomes.

17 Are areas such as digital designs and 4D printed products adequately protected by the current system?

Please add your views here:

18 Do you think it would be useful to introduce any of the options outlined? These include extending supplementary unregistered design to cover computer generated designs, filing of digital representations and ceasing accepting physical specimens.

Please add your views here:

Medium development is ongoing and application capacity should not restrict only to use of pen and paper where digital forming now dominates the economy and has surpassed the descriptive capacity of pen and paper.

Digital file submission should be considered and appropriately developed (subject to safeguarding against 4d software applications amending their nature post application)

Physical specimen application should be continued. There will likely come a time where a creative output cannot be adequately described by a digital submission in the same way the digital submissions cannot now be adequately described by pen and paper.

19 What are your views on the protection of computer-generated designs?

Please add your views here:

Better regulation

20 Should UK law have an express deferment provision and how long should it be?

Please add your views here:

The deferment provision should be extended and legally protected as much as conceptually and practically possible.

The current administrative timelines are needlessly punitive on emergent creative outputs and force the abandonment on may inventive steps as early commercialisation cannot keep pace with administration costs. In this way our current administrative system causes the failure of many otherwise successful creative projects making IP costs andirect.cause of abandonment of high value rights.

This maladministration approach costs us millions of pounds in lost projects that could have been successfully developed without the fast onset of punitive and unnafordable IP registration and upkeep costs.

The system does not serve the creative industry or our society in this respect.

It should be considered that at the point of public release creative persons may have spent many years and very significant resources preparing a creative outcome for public release. At the point of public release they have been working in necessary secrecy and unable as yet to get manufacture prototypes ready, compare quotes of manufacture options, undertake any marketing or develop potential partnerships. It is entirely unrealistic to expect projects to be able to compete all of the necessary tasks of a release process in less than a year and then produce market and sell enough product to meet the cashflow requirements of upcoming IP registration costs.

Our current system thereby kills off creative projects and costs us significant lost revenue potential and lost creative efforts through forcing abandonment on IP's at an early, unrealistic and often unmanageable timescale.

These projects are killed off simply as we wish to charge them an enormous amount of money to keep a piece of paper in a file. This is maladministration.

At the point of release no one in the world knows what this creative step is or can do. An enormous amount of marketing is required to prove efficacy, demonstrate potential value, estimate worth, interest investors, commence investment, develop manufacture capacity, order first manufacture run, distribute, commence sales, generate positive cashflow, begin amassing IP investment capacity.

This cannot be reasonably expected to be completed in 12 months. Particularly when innovations may take longer than 12 months to publicly demonstrate and where global manufacture lead times may be unable to deliver the manufactured product in time to meet a 12 month deadline.

Extending and legally enforcing deferment provisions to support instead of cripple creative practitioners, coupled with synchronised release and dependable IP reports will create a significant advantage to designers and creators filing their work from the UK.

Use the very best legal advisors to set this up. The EU will try and kick for a long time yet. The release framework should be devised for the long-term international IP marketplace and be robust enough in its legal formation to withstand and outlast predictable adverse actions from competitive states / governance areas.

21 What information, if any, should be published in relation to a deferred design?

Please add your views here:

22 Is there a need for specific provisions for prior use or to deal with co-pending applications?

Please add your views here:

Enforcement

23 What are your views on the effectiveness of the UK's enforcement framework?

Please add your views here:

Unaffordable for small entities or emergent market areas.

Viability of enforcement underpins IP value. Without viable enforcement IP's are not worth filing and either cannot be easily sold or licensed, or are significantly devalued.

Suggest considering formation of a CPS type entity focused on IP enforcement for small / emergent entities or market areas. To operate on a no win no fee basis with resultant fines being split 50/50 between the respective applicants and the IPO.

Reinvestment of fines generated through this format to go into the IPO for development and furtherance of the UK IP system.

Traditional legislative routes remain open for larger entities able to afford their own representation.

This system has multiple benefits.

Strengthens and enforces the UK IP environment.

Protects emergent technologies from infringement by existing monopolies / corporate entities etc.

Funds future IPO development and ongoing management.

Creates an increased talent pool of IP legal specialists operative from the UK, further enhancing the UK as the optimal registration location for international IP's.

Critically plugs an important point of failure in the current IP system.

Retains far higher values in creativity originating from or registered from the UK.

Could assist trade deal negotiations.

Fines issued must be sufficient to deter wrongdoing by infringing others IP rights. If fines are lower than the worth of the infringement the system fails and it makes financial sense to risk infringement for gain.

The marketplace is now global and the IPO should aim to become the leading international centre for IP development, registration and enforcement, creating the environment that all innovators and creatives wish to access and utilise for commercialisation of their outputs.

Supporting the basic functions of both registration and enforcement with structural interventions could go a long way toward achieving this.

The current system could be seen to penalise those who engage in creative process by entailing obviously unaffordable administration, registration and enforcement requirements. This is nonsensical as 100% of our economic outputs are dependent on such creative processes.

A supportive approach toward administration of emergent technologies and creative outputs is then prerequisite to maximise the economic benefit to wider society and would constitute the appropriate relationship between statutory and private sector activity within the innovation environment.

24 How could it be improved to help small businesses and individual designers enforce their rights?

Please add your views here:

Please refer to answer above.

It is good to see the IPO here addressing these current weaknesses in the administration of the IP system.

Potentially structurally fixing these weaknesses with effective statutory service interventions from the IPO will make the most significant financial difference to the long term outputs of this sector.

Loosing high value creativity through insisting on obviously unmanageable and unaffordable administration requirements makes no rational sense whatsoever and obviously loses us significant potential societal income and economic advantages.

Forcing abandonment of potentially valuable IP's is not a sensible strategic plan despite being our current systemised likelihood outcome.

25 What has been your experience of the introduction of criminal sanctions for registered designs?

Please add your views here:

26 What are your thoughts on extending criminal sanctions to unregistered designs and what economic evidence do you have to support your view?

Please add your views here:

Go massive fines route instead. Use them to fund IPO activity and set up a CPS style enforcement structure to support small entities / emergent technologies.

Incorporate this in conjunction with the international synchronisation of registration. Format the system to enable co working with other geographic regions enhancing international efficacy of enforcement capability and actions.

All the governments are broke after covid. Offering a system that helps governments run effective IP services and fund them may be attractive. Lead this process. Chase key case law objectives and resultant high consequence fines to achieve effective international disincentive for infringement and solid well funded IP services among participating countries.

The economic evidence I have is that the public purse is empty and the IPO and their international counterparts are all going to be underfunded and overworked and ineffective if they do not do something excellent to keep the IP ship sailing strongly through the post covid economic storms likely to hit public sector funded activities.