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PROTECTION CAPABILITY OF APPLIED ARTS WORKS

Till 12/13/2013 applied arts were considered in the German dogma and jurisprudence to be an integral part and a lower link of fine arts rather than an independent object of law. Protection of these works was seen at the level of registered design.

While copyright offers works of "real" art protection throughout the life of the author and further 70 years after his death, the design provides protection from illegitimate use by third parties for 25 years. This difference increased interest of authors to get their designs protected by the copyright law.

Such a submission of applied arts to fine art led to the so-called graded correlation between these objects that has been actively discussed in liturature by critics for a long period of time because of a possible inconsistency or even conflict with the directives and principles of the European law of intellectual property.

In German law there was a clear distinction between copyright protection, which was granted to the creations of fine art that didn't show any exact purpose, and protection of products, which were created in order to perform certain

functions – creations of applied arts. Works of applied arts could mainly benefit only the protection of registered design. For the copyright protection of designs their structure was to show a clear advantage compared with the average model design. In such a "clear advantage" an inequality between works of fine art and applied arts was formed (see the decision of the Federal Court of Germany "Silberdistel", "Seilzirkus", "Mantelmodell", etc.).

European Court of Justice in comparance with the former German practice provides the works of applied arts as well as the works of fine art the possibility of equal copyright protection use under the general condition of the “own intellectual creation” without demanding a different level of creativity from the works of applied arts, in contrast to German courts.

On 11/13/2013 The Federal Court of Germany has taken a decision in the case of "Bithday train" (see Bundesgerichtshof - "Geburtstagszug"), in which the Court, taking the European postulates into consideration changed the former prerequisites required to obtain copyright protection for the works of applied arts. The main criterion is now formulated as "own intellectual creation" which in circles of cognoscenti still could be perceived as art. The graded correlation of the two branches of art and formerly required clear advantage in comparence with the average model design were cancelled.

The other criterion to achieve copyright protection is creativity exceeding the functionality. Despite the fact that objects of design serve some purpose, their structure should not be completely dictated by technical grounds. After abstracting from all the features of the functional purpose of the object there still have to be "signs of art" which indicate a "personal expression" of the author. This formulation corresponds the European visions on protection capability of objects whose shape entirely owes the content of such creations (see European Court of Justice "BSA/ Kulturministerium").

"Personal expression" of the author does not fully correspond the European demands of the "personal note" (“personal stamp”) of the author’s work. While the "personal note" under the assumptions of scientists means that the author has a possibility of a choice while building the elements of the object construction, "personal expression" is much more demanding criterion and means that the work has to be so personal and dependent on the taste of the author, that only a certain author could create the exact object in its concrete form.

At first glance the decision of the Federal Court of Germany "Birthday train" puts the German regulation regarding copyright protection capability of the applied arts works in compatibility with European ideas, but it hasn’t been explained yet how union conform the concept of "personal expression" of the author is.