

2022 EU-Taiwan Seminar on Design Protection

Taiwan's View on the Protection of Copyright/Design of Interior Design

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Education Background & Academic Achievement



- Bachelor of Laws, **Soochow University**
 - School of Law, Judicial Practice Division
- Master of Laws, **American University**
 - Washington College of Law
- PhD in Science and Technology Law, **National Chiao-Tung University**
 - Graduate Institute of Management of Technology
- **Adjunct Assistant Professor**
 - at NCTU & NTHU Institute of Law for Science and Technology, NTUST College of Intellectual Property Studies, SHU&MCU College of Law, FCU Graduate Institute of Financial and Economic Law, CYCU, and CPU
 - with a focus in Trade Secret Act, Trademark Act, Copyright Act, and Intellectual Property
- **Senior Supervisor**
 - Taiwan Intellectual Property Office, Copyright Division
- **Senior Specialist**
 - Teacher Grievances Committee, Department of Technological and Vocational Education & the Counsellor Office of the Ministry of Education



Present Positions

- **Assistant Professor** at the School of Law, Soochow University
- **Adjunct Assistant Professor** at the Graduate Institute of Intellectual Property and Communication Technology Law, Shih Hsin University
- **Member the Copyright Regulatory and Mediation Board** of TIPO, Ministry of Economic Affairs
- **Copyright Consultant** at the Expert Consultation Committee of Ministry of Justice
- **IP Consultant** at the Ministry of Education, Ministry of Culture & Council of Indigenous Peoples
- **Host** of the Nonprofit website www.copyrightnote.org



Outline

- Copyright Protection for Interior Design
- Patent Rights Protection for Interior Design
- Protection for Interior Design stipulated in the Fair Trade Act
- Conclusion



Copyright Protection for Interior Design

Origin of the case

Plaintiff

Defendant

2015 Plaintiff alleges that the Defendant copied the design of five of its rooms



**Palais de
Chine
Hotel**

**Pretending to stay there,
the person in charge of the Defendant asked
to visit other rooms**

**6-7 related persons showed up suddenly, took
pictures, measured the rooms, and discussed
about the designs**



**Constitutes
Infringement of Copyright &
Violation of the Fair Trade Act**

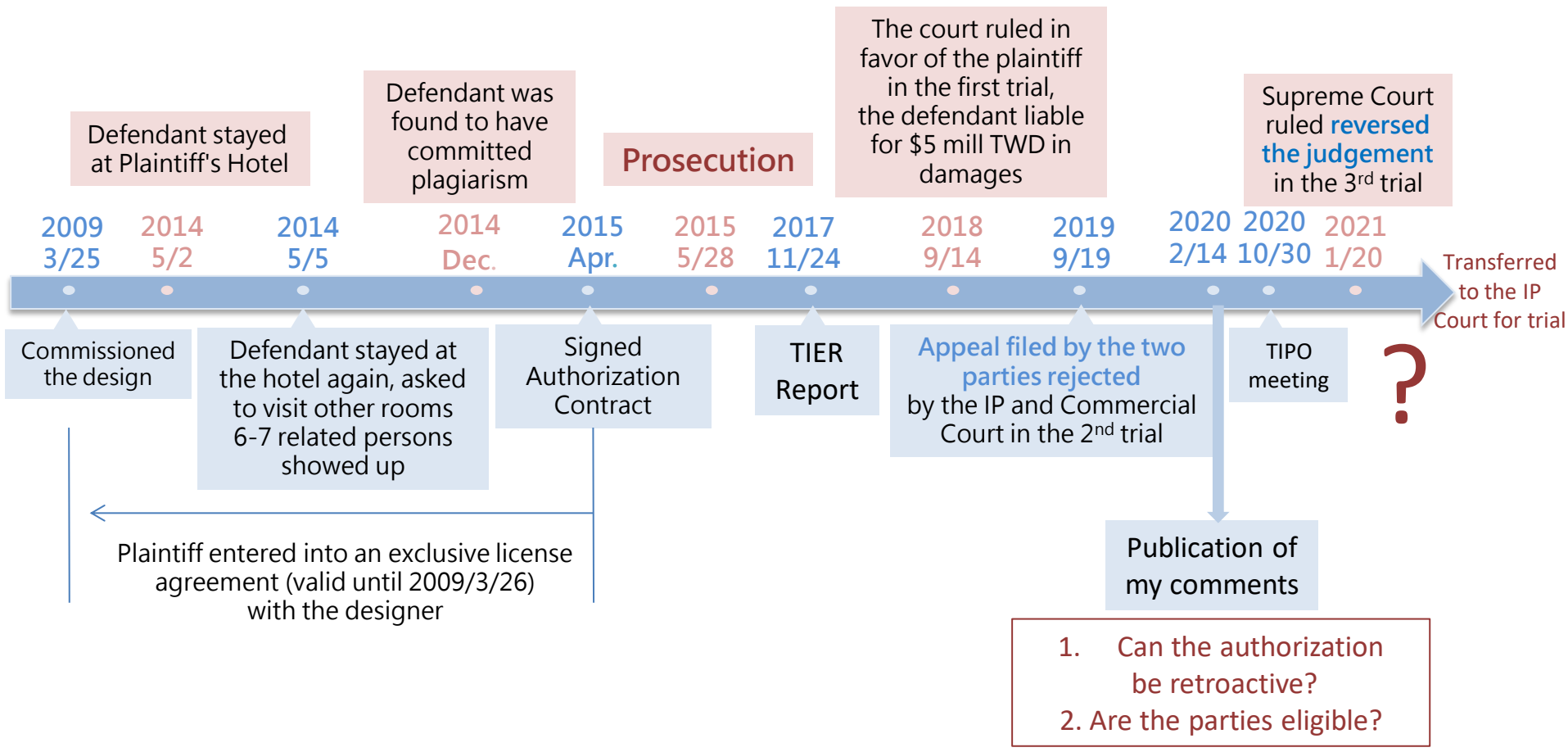
**space planning, walls, carpets, color palettes, materials used,
furniture selection & arrangement**

**The report of the Taiwan Institute of Economic Research
concluded that the two designs are highly similar**



**Sheraton
Taitung
Hotel**

Timeline



Procedural History – Civil Judgement Case Numbers



- Intellectual Property Court Ruling 104-Min-Zhu-Su-Zi No. 32 (2018.09.17)
- Intellectual Property Court Ruling 107-Min-Zhu-Shang-Zi No. 16
(2019.09.19)
- Supreme Court Ruling 109-Tai-Shang-Zi No.2725 (2021.01.20)
- Intellectual Property and Commercial Court Ruling 110-Min-Zhu-Geng-1-Zi
No.1 (Currently on trial)

Plaintiff's Evidence of Plagiarism of Defendant's Interior Design

Floor Standing Revolving Mirror

台東桂田酒店		君品酒店	
伯爵雙人房			豪華客房
尊爵雙人房			雅緻客房
爵士雙人房			行政豪華客房

Desk and Sink

台東桂田酒店		君品酒店	
伯爵雙人房			豪華客房
尊爵雙人房			雅緻客房
爵士雙人房			行政豪華客房

Plaintiff's Evidence of Plagiarism of Defendant's Interior Design

Wooden Nightstand




台東桂田酒店		君品酒店		
伯爵雙入房			豪華客房	
尊爵雙入房			雅緻客房	
爵士雙入房		無法比對，因行政豪華客房並無木製事務櫃。		行政豪華客房

Armchair

台東桂田酒店		君品酒店	
伯爵雙入房			豪華客房
尊爵雙入房			雅緻客房
爵士雙入房			行政豪華客房（不近似）

Plaintiff's Evidence of Plagiarism of Defendant's Interior Design

Chair

台東桂田酒店		君品酒店	
伯爵雙入房			豪華客房
尊爵雙入房			雅緻客房
爵士雙入房			行政豪華客房 (不近似)

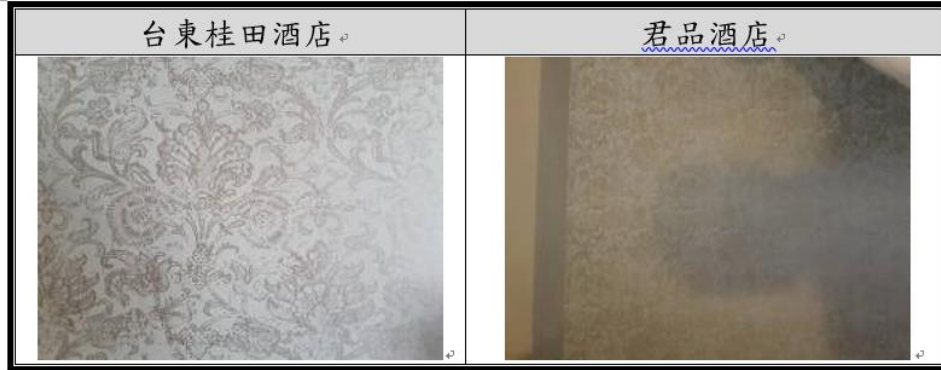
Hotel Mini Bar

台東桂田酒店		君品酒店	
伯爵雙入房			豪華客房
尊爵雙入房			雅緻客房
爵士雙入房			行政豪華客房

Plaintiff's Evidence of Plagiarism of Defendant's Interior Design

Sloped Square
Lamp Shade

Wallpaper



Plaintiff's Evidence of Plagiarism of Defendant's Interior Design

Headboard

	台東桂田酒店	君品酒店	
伯爵雙人房			豪華客房
尊爵雙人房			雅緻客房
爵士雙人房			行政豪華客房（不近似）

Floor Lamp & Lamp Shade

	台東桂田酒店	君品酒店	
伯爵雙人房			豪華客房
尊爵雙人房			雅緻客房

Plaintiff's evidence of plagiarism of Defendant's interior design

Overall Room Design - from the Angle of the Entryway



Wall-mounted Mirror & Wooden Shelf for Toiletries





Copyright Protection for Interior Design

- What **type of copyright work** is interior design?
- Architectural work v. Graphical work
- Reproduce v. Implement
- Reproduced copyrighted work v. Construction Results
- Reproduction v. Reconstruction
- Its protection includes the right to prevent reproduction but not the right to prohibit duplication of construction.

What type of copyright work is interior design?

Copyright Act

Article 5

- For the purposes of this act, "works" shall include the following:
 - 1.Oral and literary works.
 - 2.Musical works.
 - 3.Dramatic and choreographic works.
 - 4.Artistic works.
 - 5.Photographic works.
 - 6.Pictorial and graphical works. (including maps, graphs, technology or construction drawings, and other pictorial and graphical works)
 - 7.Audiovisual works.
 - 8.Sound recordings.
 - 9.Architectural works. (including architectural drawings, models, architecture, and other architectural work)
 - 10.Computer programs.

The examples and content of each category of works set forth in the preceding paragraph shall be prescribed by the competent authority.

Definition of Reproduction

- "Reproduce" means to reproduce directly, indirectly, permanently, or temporarily a work by means of printing, reprography, sound recording, video recording, photography, handwritten notes, or otherwise. This definition also applies to the sound recording or video recording of scripts, musical works, or works of similar nature during their performance or broadcast, and also **includes the construction of an architectural structure based on architectural plans or models.** (Copyright Act Article 3.1.5)
- Production of a physical object based on its design constitutes "implementation" and not "reproduction." Therefore, there is no need to acquire authorization from the copyright owner of the graphical work; said act does not constitute a "reconstruction" infringement.
- Apart from the reproduction of a structure based on another architectural work, to specifically grant architectural works copyright protection, Article 3.1.5 of the Copyright Act also clearly defined "implementing" a "**construction of an architectural structure based on architectural plans or models**" as an act of "**reproduction.**"



Taiwan High Court Kaohsiung Branch Court Civil Procedure Ruling 97-Shang-Yi-Zi No.162

- Although “interior design drawings” are considered **graphical works**, the Copyright Act only protects the creative expression of drawings and not the right or the result of any construction based on the drawing. In other words, the copyright owner of an interior design drawing may only **prohibit others from copying the drawing**, but not the action of completing the implementation of interior decoration according to the drawing or a photo of the interior decoration.
- **Interpretation: The reproduction of graphical works constitutes copyright infringement, but proceeding with the construction that follows a design does not.**



Taiwan Intellectual Property Office, Ministry of Economic Affairs Ruling Zhi-Zu-Zi No. 09700007070
(2018/02/20)

- The "Design and Decoration Illustrations" inquired in the letter should be identified according to its method of expression and specific content of individual cases with reference to the above description. In other words, questions regarding the application of copyright law such as whether the creation is protected by the Act and the recognition of the type of work shall be weighed in accordance with the intent of the Act and is not related to whether the design and decoration drawings were drawn in accordance with relevant building code and standards.
- In practice, there are cases in which courts have ruled that design patterns for decoration projects are graphical works protected by the Act (Taipei District Court, Taiwan, 95-Yi-Zi No. 2941 and Kaohsiung District Court, Taiwan, 96-Jian-Shang-Zi No. 558).
- Interpretation: Although industrial design drawings are drawn in accordance with building code and standards, they remain graphical works.



Taiwan Intellectual Property Office, Ministry of Economic Affairs Zhi-Zu-Zi No. 09700007070 Ruling
(2018/02/20)

- In addition, the above-mentioned judicial practice also recognizes that in the event that a graphical work is transformed into a three-dimensional form, if the concept expressed in the work is made into a physical object by means of construction according to the dimensions, specifications, or structural drawings indicated in the graphical work, it is an act of "**implementation**" and not a reproduction.
- The "physical appearance of the completed construction" mentioned in the letter is an act of "implementation," as mentioned above, instead of the act of reproduction as referred to in the Act. Either does a third party's action of taking pictures of the completed decorations and posting them on the internet involve the exploitation of copyrighted works as stipulated in the Act.
- Interpretation: **Graphical works are copyrighted works. Constructions based on the graphical works are not reproduced works. Photography taken of the completed construction does not constitute exploitation of graphical works (viz. "reproduction").**



Intellectual Property Court Ruling 104-Min-Zhu-Su-Zi No. 32 (first trial) (2018.09.17)

- “Should an interior design creation demonstrate originality, it shall be established as 'other architectural works' under the Copyright Act and enjoy the same protection as 'architectural works.' Therefore, the scope of protection of interior design works shall include interior design drawings and physical objects of interior design (expression of interior design as a whole).”
- The interior design of Palais de Chine Hotel is a complete creation. **Plaintiff is unable to prove** its "originality" and whether the interior design of the two parties “as a whole” constitutes a substantial similarity. Therefore, Defendant could not be found guilty in terms of committing copyright infringement to the interior design of the hotel room in dispute, as there is insufficient proof.
- Defendant, the Queena Plaza Hotel, copied the room type and interior design of Plaintiff's Palais de Chine Hotel in violation of **Article 25 of the Fair Trade Act** and was ruled liable for \$5 mill TWD in damages.



Taiwan Intellectual Property Office, Ministry of Economic Affairs Ruling Zhi-Zu-Zi No. 10716009930
(2018/10/01)

Item 9, Subparagraph 2 of the Examples of Each Type of Works Under Paragraph 1, Article 5 of the Copyright Act has defined “architectural works” as “architectural design drawings, architectural models, buildings, and other architectural works,” mainly to protect the “appearance” or “structure” of a building that possesses both originality and creativity. Therefore, the answer to question 1, the scope of architectural work protection, **does not include interior design construction or furniture.**

Interpretation: **The scope of “architectural works” protection mainly protects the “appearance” or “structure” of a building.**



Taiwan Intellectual Property Office, Ministry of Economic Affairs Ruling Zhi-Zu-Zi No. 10716009930
(2018/02/20)

Interior design drawings are deemed “graphical works” protected by the Copyright Act if they are of originality (not plagiarized from other's work), of creativity (of a certain level of creativity), and are marked with dimensions, specifications, or structure. The unauthorized reproduction of a “graphical work” from a “flat surface to a flat surface” (e.g., copying) is an infringement of the “reproduction right” of the owner of the copyrighted work; however, if the reproduction is classified as “flat surface to a three-dimensional surface,” i.e., **a physical interior decoration completed through referencing the markings on the design plans, said action shall be an “implementation” that does not involve exploitation of the copyrighted work.** Therefore, to answer question 2, if Hotel B uses the exact same design and decoration as Hotel A due to its exceptional aesthetic in their decorations, except for the case of direct “flat surface to a flat surface” reproduction of the design drawings of Hotel A, Hotel B **has not infringed upon the copyright of architectural works or graphic works of Hotel A.**“

Interpretation: **Imitation of interior decoration does not involve the use of copyrighted works.**



Taiwan Intellectual Property Office, Ministry of Economic Affairs e-mail
Ruling No. 1000817d (2011/08/17)

- Interior design drawings are “graphical works” protected by the Copyright Act. Interior decoration completed in accordance with the specifications, methods, or procedures of the interior design drawings is an act of creating a 3D object from the concept expressed in the work, constructed according to the dimensions, specifications, or structural drawings indicated in the work. It does not involve the act of utilizing the copyright of the work; no new work is created.
- Interpretation: Constructions that follow construction drawings constitute as “utilizing the concept” and not “reproduction.” The result of the construction is not copyrighted work.



Taiwan Intellectual Property Office, Ministry of Economic Affairs e-mail Ruling No.
1010720 (2012/07/20)

- The interior design company's photo of the completed design of your home should be a photographic work protected by the Copyright Act, and the photographer or his/her company should enjoy the copyright of the photo from the time the photo is taken. The **homeowner** who provided the scene for photography **does not have the copyright to the photo**; therefore, the interior design company's act of putting the photo taken on the company's calendar does not constitute an infringement of copyright.
- Interpretation:
- **A homeowner cannot claim constructions that follow the photography of the interior design results have infringed upon his/her copyright.**
- **The construction results are not copyrighted work; the photographs were taken by others.**



Taiwan Intellectual Property Office, Ministry of Economic Affairs Ruling 107-Min-Zu-Shang-Zi No. 16 (Second trial)(2019/09/19)

- Architectural works include the interior and exterior of a building, and the "interior design" of a building is classified as "other architectural works" in the definition of architectural works. Plaintiff was the exclusive licensee of the disputed work, and Defendant infringed upon the reproduction right of the disputed work. At the same time, Defendant Greaten Group violated Article 25 of the Fair Trade Act.



Intellectual Property Court Civil Procedure Ruling 108-Min-Zu-Su-Zi No. 124

- Same court, different opinions (2020/10/06)

- Architectural works' artistic expression is protected from illegal use, but its architectural styles, techniques, construction methods, etc., are not. Therefore, the scope of protection of architectural works **does not include interior design decoration and functional furniture**. Thus, the Copyright Act protects "interior design drawings" of interiors as "graphic works," which are **not covered by "architectural works."** Accordingly, the main distinction between "interior design drawings" protected by "graphical works" and "architectural design drawings" in "architectural works" should be that "architectural design drawings" focus on the interior design of a building - the building structure as the core of the expression - rather than on the detailed planning or construction methods of the interior decoration. This should fall within the scope of "Interior Design Drawings."



- Same court, different opinions (2020/10/06)

- The interior design floor plan in dispute is a "graphical work," and the sample house in dispute is not the subject of independent protection under copyright law. As mentioned above, the interior decoration of the dormitory completed by the defendant New Green Building Company(新綠築公司) or Fu-Yeh Engineering Company(富野工程行) in accordance with the floor plan of the project at issue or the construction method of the sample house at issue was only an act of "implementation," and not "reproduction." Plaintiff thus cannot seek to claim infringement of its copyright.
- Interpretation: The "architectural design drawing" protects the building structure, and interior decorations belongs to "interior design drawing."
- Construction according to the drawings or sample houses is an act of "implementation" and does not constitute an infringement of the reproduction rights of the drawings.

- Authorization is non-retroactive
- No prior infringement will be pursued after settlement.
- Can be utilized after acquiring authorization.
- Interior design is graphical work, not architectural work.
- Imitation of a room type does not constitute copyright infringement.
- Imitation of a room may violate the Fair Trade Act.

智財法裁判簡評

回溯授權能否取得將室內設計 當作建築著作保護之訴訟適格之爭議

—智財法院 107 年度民著上字第 16 號、
104 年度民著訴字第 32 號判決—

著作權法
§ 51-9
1998/1

章忠信◎東吳大學法學院助理教授

Taiwan Law Journal

著作權法 103-9 1998/1

相關裁判

一、案由事實

原告雲朗觀光股份有限公司（以下稱雲朗公司）為「君品酒店」經營者，委託十月室內裝修有限公司（以下稱十月公司）為酒店住房室內設計，並取得該設計之專屬授權。被告朱某為被告桂田豐悅酒店股份有限公司（以下稱桂田公司）負責人，經營臺東桂田喜來登酒店（以下稱臺東桂田酒店），藉先後入住原告「君品酒店」之「行政豪華客房」，並要求參觀「雅緻客房」之機會，使隨行人員對各住房內部設計、家具、家飾擺設佈局，進行拍照及實地量測後，複製於臺東桂田酒店住房設計，包含牆面材質運用、配置設計、家具佈置擺設等。原告以此起訴，主張被告朱某及桂田公司侵害其建築著作之著作權，並有違反公平交易法情事，要求被告等應連帶賠償 500 萬元，被告桂田公司應將住房房型及構成近似之物品拆除及移除，不得再提供消費者居住使用、不得使用侵害之住房設計照片、刪除網頁及訂房

網站上之侵害住房設計照片。同時，被告等應連帶負擔費用，將本件判決書內容刊登於各媒體。

本案有諸多爭點，惟下列三點最具討論價值，為本文所欲探討者，分別如下：

- (一)原告就本件主張著作權侵害部分，是否為適格之當事人？
- (二)被告是否侵害原告著作權之著作權？其又以君品酒店之特定房型之室內設計，是否為著作權保護客體，作為判斷之前提。
- (三)被告桂田公司有無足以影響交易秩序之欺騙或顯失公平之行為，構成違反公平交易法第 25 條規定？

二、判決要旨

本案智慧財產法院 107 年 09 月 14 日之 104 年民著訴字第 32 號第一審民事判決認定，君品酒店內部整體之室內設計為一個完整之創作，原告就君品酒店房型設計以外部分之室內設計的創作過程及原創性等，未提出相關之舉證，法



Supreme Court Civil Ruling 109-Tai-Shang-Zi No.2725 (third trial) (110.01.20)

- The originality of the work at issue is relevant to whether the Appellee is able to claim copyright economic rights, which should have been reviewed and determined. The original decision did not state the reason for not taking the Appellant's defense method, and the evidence presented and directly deemed that the disputed work shall be an **architectural work** protected by copyright law, making said decision a matter to be reconsidered.
- Did the Ray Chen International CO., LIMITED assign any of its claims for damages originally for the Appellant to the Appellee? The Court should also investigate whether the Appellee can claim for infringement of intellectual property rights. The original decision is criticized for having hastily decided that the Appellee can claim the copyright of the disputed work merely by considering the **changes made** to the content of the contract.



Supreme Court Civil Ruling 109-Tai-Shang-Zi No.2725 (third trial) (110.01.20)

- Article 25 of the Fair Trade Act applies in the event that the conduct of the business is deceptive or unfair, harms effective competition in the market, or is sufficient to affect the order of trade.
- Intellectual Property and Commercial Court Ruling 110-Min-Zhu-Geng-1-Zi No.1 (Currently on trial)



TIPO Consultation Meeting(2020.10.30)

經濟部智慧財產局

室內設計涉及之著作權討論會議議程

壹、時 間：109 年 10 月 30 日(五)上午 9 時 30 分

貳、地 點：本局 19 樓簡報室

參、主 席：張副局長玉英

肆、背景說明

Resolution: Opinions have been consistent. Interior design works are deemed graphical works.



Patent Rights Protection for Interior Design

Design Patent of the Patent Act

§121



- "Design" means the creation made in respect of the shape, pattern, color, or any combination thereof, of **an article** as a whole or in part by **visual appeal**.
- For computer generated icons (Icons) and graphic user interface (GUI) applied to an article, an application may also be filed pursuant to this Act for obtaining a design patent.
- The Copyright Act - copyright protection is automatic from the moment a work is created
- The Patent Act – patent rights protected upon successful application (examining the qualifications - industrial applicability, novelty, creativity, etc.)



Patent Examination Guidelines(2020/11/1)

- Part III Chapter 2: What are Design Patents?
- "Design" means the creation made in respect of the shape, pattern, color, or any combination thereof, of an **article** as a whole or in part by **visual** appeal.
- The design is applied to any product that can be reproduced by a production process, including those made by industry or by hand, as well as the design of buildings, bridges, or **interior spatial design**. (TIPO's view)
- In addition to the protection of design patents for individual kitchen cabinets, tables and chairs, and lighting fixtures used in the interior design, the design itself may also be the subject of design patent protection.

Patent Examination Guidelines(2020/11/1)

- Part III Chapter 8: Portion of a Design

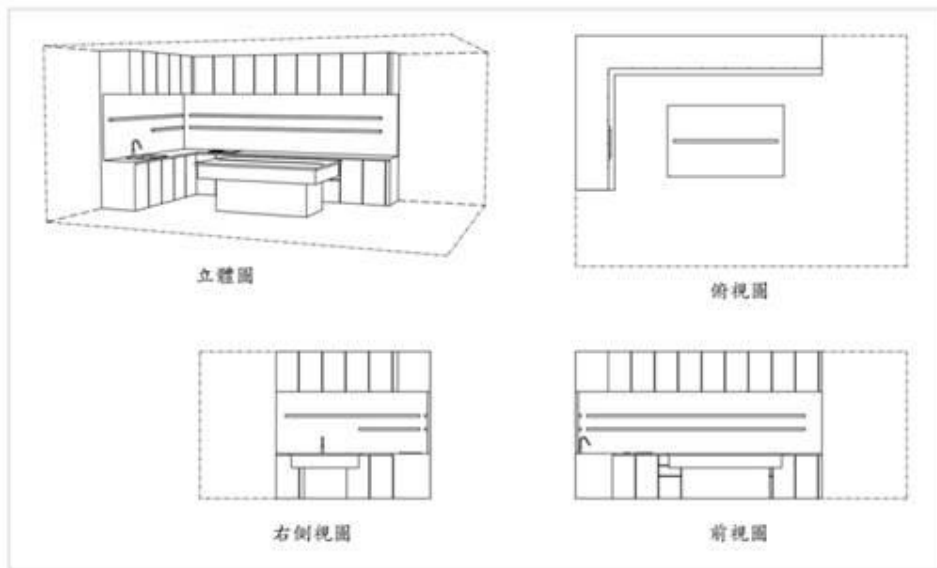
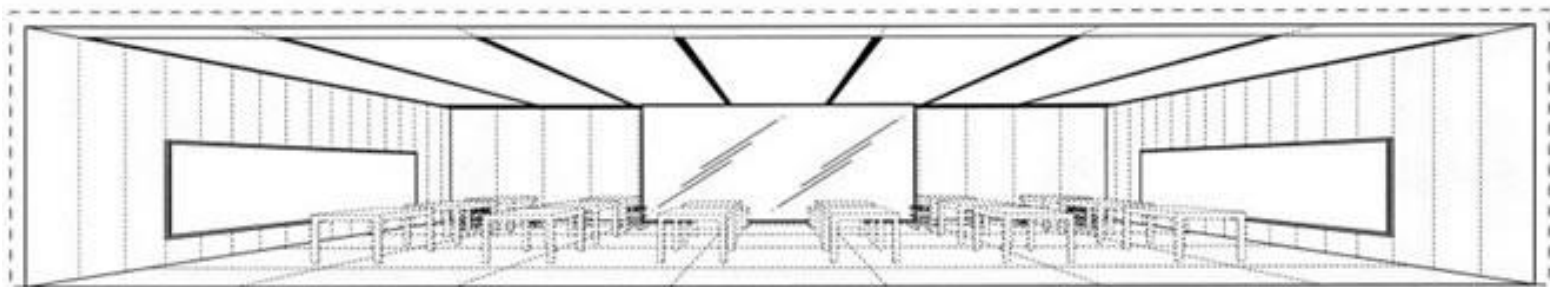


圖 8-7 「廚房之部分」

Apple “PORTION OF A ROOM” Design Patent (2017)

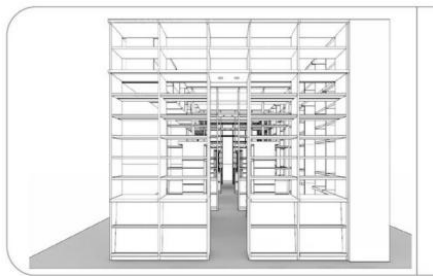
Publication/Patent Number D182009



前外立體圖
(代表圖)

Requirements for Design Patents Descriptions and Drawings(2022/02)

- “Spatial design” is the differentiating factor between “architectural design” and “interior design”
- One-point perspective illustrations are commonly used as they better present visual effects of interior design



4-22 以一點透視法來繪製室內設計

Requirements for Design Patents Descriptions and Drawings(2022/02)

- By omitting parts of the walls or through cross-section drawings, interior design illustrations are able to demonstrate the design layout and configuration



圖 4-24

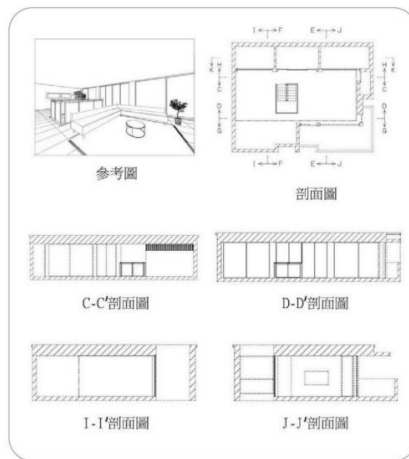
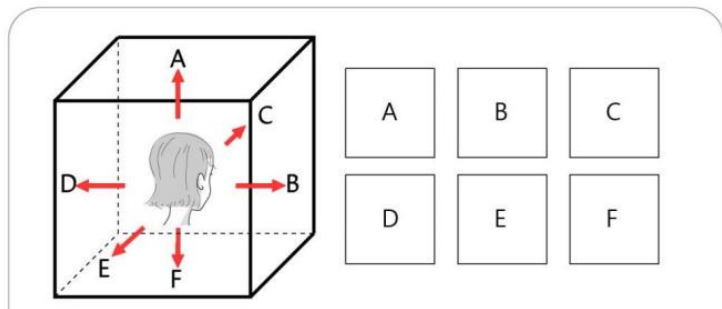


圖 4-25

Requirements for Design Patents Descriptions and Drawings(2022/02)

- The point-of-view is also required to be set within the space to demonstrate the “interior perspective” orthographic view of an interior design illustration



A- bottom view interior perspective
B- right-side view interior perspective
C- front view interior perspective
D- left-side view interior perspective
E- back view interior perspective
F- top view interior perspective



Protection for Interior Design stipulated in the Fair Trade Act



Fair Trade Act

- In addition to what is provided for in this Act, no enterprise shall otherwise have any deceptive or obviously unfair conduct that is able to affect trading order. (§25)
- Any enterprise that violates any of the provisions of this Act and thereby infringes upon the rights and interests of another shall be liable for the damages arising therefrom. (§30)
- Interpretation:
 - **deceptive conduct**: Consumers mistake hotels the two parties run as the same hotel. (?)
 - **obviously unfair conduct** : Plagiarism of the room type design commissioned by another competitor (?)



Supreme Court Civil Ruling 109-Tai-Shang-Zi No.2725 (third trial) (110.01.20)

- Article 25 of the Fair Trade Law is a general regulation of unfair conduct, and its judgment is based on the following.
 - The transaction behavior of the conductor and the counterparty
 - Whether the effective competition in the market is hindered.
- the exploitation of the results of its efforts by heavily plagiarizing the appearance or symbols of others' well-known products and actively taking advantage of others' well-known advertisements or business reputation, etc.
- engaging in trading in a manner that actively deceives or passively conceals material trading information that is likely to cause confusion
- In consideration of the overall transaction order, it is considered that it has caused an extreme imbalance in the distribution of interests or the risk-bearing between the two parties in civil legal relations.

Fair Trade Act



- Interior design of hotel rooms is not protected by the Fair Trade Act in hotels that have their own service marks.
- Does plagiarizing the same interior design constitute "deceptive or obviously unfair conduct that is able to affect trading order" stipulated in Article 25 of the Fair Trade Act?
- The Fair Trade Commission's Principles for Handling Article 25 Cases under the Fair Trade Act (公平交易法第二十五條案件之處理原則) (hereinafter referred to as the "Principles") stipulated in the second article that the Commission shall consider "able to affect trading order" a criterion before applying Article 25 of the Fair Trade Act to said cases.
- To determine whether an act is "able to affect trading order," according to Article 5 of the Principles, the number of victims, amount and degree of damage caused, method and means used, frequency and scale of said act, reciprocity of information between the perpetrator and the counterparty, trading habits, and industrial characteristics shall be taken into consideration.



Conclusion

- Interior design is the implementation of graphical works and not architectural works.
- The scope of design patent protection does not exclude interior design works. That being said, for interior design works to be granted design patents, applications need to be filed and substantive examinations must be passed.
- Plagiarizing interior design does not constitute an infringement of graphical or architectural work copyright and may not constitute a violation of the Fair Trade Act.
- Not protecting general interior design works is to encourage continuous innovation.
- Branding (renowned designers or exceptional hotel service) can be a marketing strategy for interior designs.



Thank you!