

# Preface

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The European Union (EU) constitutes an important exception to the general legislative disinterest in design protection and the traditional *either* copyright *or* patent style protection approach. Following a Directive from 1998 and a Regulation in 2001 all EU countries have thus provided for harmonized national systems for the protection of design alongside a pan-EU design protection scheme. The EU design legislation is based on a truly unique concept for the protection for designs: *The Design Approach*.

The Design Approach is aimed at defining and demarcating the unique place for industrial design in the spectrum of intellectual property law, allowing the legislator to overcome the copyright v. patent approach dilemma. To do so the EU model combined well known concepts with true legal innovations such as the Unregistered Community Design and novel protection criteria such as individual character.

The EU design system and its ‘third way’ between traditional concepts has now been in place for over a decade and a body of case law is slowly emerging from the EU courts and from national jurisprudence.

The combination of a brand new legal model for the protection of a whole class of products and national and EU case law represents a unique opportunity to observe law in the making *ab initio*. Examining the system that is unfolding literally before our eyes thus not only provides valuable insights into the working and development of design law as a discrete field of law but in the making of law as such.

In recent years, we editors have attended meetings of scholars from the EU and the US during which the concepts of design protection have been discussed. These meetings have confirmed the uniqueness of the EU design system and its international status as the ‘bench mark’ for a thoroughly reasoned approach towards design legislation.

The overall theme of this book is therefore searching for the Design Approach. To do so it expands from the intentions of the framers of the system with a stump in the history of European and American design systems to the impact of the Design Approach on present EU law, including national systems. In moving along the book explores a number of questions, some of which are unique to design law, such as interaction

with legal protection provided in adjacent areas, in particular in copyright (and unfair competition) law. These also shed a light on broader issues such as the overall balancing of interests of intellectual property protection.

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