The position of ECTA on the proposal for a possible classification of the Locarno System introducing visual features on the example of class 6

The purpose of this paper is to consider the suggestion to add universal, visual based criteria to the existing Locarno Classification. It deals in particular with the examples for such visual based criteria as exemplified for Locarno class 6. We shall first briefly deal with the advantages and disadvantages of this proposal before we develop how to overcome certain shortcomings of the proposal.

1.   **The proposed classification on the example of class 6 (furniture)**

We see the advantages and disadvantages of the proposal for universal visual based criteria as exemplified for class 6 as follows:

(a)   Advantages

The introduction of visual indicators enables a search which can display a list of all similar designs, regardless of the respective function of the actual product. In principal, this is clearly helpful since the question, whether a design fulfils the requirement of novelty, is frequently decided upon by taking into account prior art from all classes. Likewise, the scope of protection of a design may extend to all products which have a similar appearance, design based criteria would clearly improve the effectiveness of searches. **Therefore we would agree that there is a need to supplement the given Locarno product classes by visual design based features.** Moreover, using universal criteria, which could be applied to all classes, would reduce the costs of reclassification and simplify the handling of the new system - as opposed to introducing visual criteria which differ depending on the product based class.

(b)   Disadvantages

However, as with every visual criterion, the difficulty that the decision of the respective design indicator can only be taken subjectively remains. In relation to the proposed classification we therefore see the problem that - due to the existence of some quite detailed subclasses and the variety of design features within every respective product - a design could fall under several indicators of the same criterion. This would cause inconsistent classifications and in connection with that searches which will not display the whole list of relevant designs. Secondly, although the proposed features might work on the example of furniture, it is in question, whether they could also serve as suitable visual criteria in separating designs of all other classes. Additionally there might not be a need to apply all the proposed universal features to all product classes.

2.   **Issues**

There are a few issues related to this proposal that we would like to discuss in a bit more detail before suggesting some changes.

(a)   Distinctiveness/Relevance of the visual features

Regarding the issue of distinctiveness, especially the "surface" criteria might cause conflicts. For example, the frame of a chair might consist of metal showing a smooth surface, while leather is used as the material for the seat, which in itself has a reticule structure. In such a case it solely depends on the subjective view of the user whether the design would be classified under the surface class XF (Leather), XC (Nets, Holes), or XA (Smooth) of the proposal. An example from the feature "ornamentation" (W) would be a design displaying a human face in connection with the picture of a certain animal. Should such a design be classified under WF (Heads/Faces), WD (Animals and animal like forms) WH (Other bother parts human & animal) or WE (Humans and human like forms)?

(b)   Universal applicability of the criteria

We have some doubts whether for example, a criteria such as *"surface"* would be a help in separating designs from product class 16 (Photographic, cinematographic and optical apparatus). Since the surface of almost all of these goods will consist of smooth metal or plastic, it would be a waste of costs and time to apply the criteria to this class. Moreover, an ornamentation criteria like *"Heads and Faces"* (class WF of the proposal) may be useful for indexing ornamentations from product class 6 (furniture) or 2 (Articles of clothing and haberdashery) but would certainly not serve as the best solution for designs from class 24 (medical and laboratory equipment).

3.   **ECTA's proposal of 5 September 2008**

By position paper of 5 September 2008 we made a proposal for some possible changes of the Locarno System. A copy of this paper is attached. At the backround of the risk of inconsistent classifications, its cost-intensiveness and the great burden it imposes on users we expressed reservation regarding the implementation of a complicated feature based system. Bearing in mind that a new system must be easy to handle for the typical user (the public, practitioner and examiner) and should not be too cost intensive, we proposed to supplement the given Locarno Classification by one single dominant design feature for every product. Moreover we suggested that such a feature should be implemented in a descriptive rather than encoded form. Additionally we made the remark that the Vienna Classification which is currently used for the identification of figurative marks and therefore already familiar to most users could serve as a possible classification of the feature "ornamentation".

4.   **Reconciling of the proposals**

On the bases of our position paper of 5 September 2008 and reconciling the proposal on the example of furniture the following points seem to be important for a successful improvement of the Locarno Classification which has the aim of introducing visual features into the system.

(a)   Implementation of visual based features

To improve the effectiveness of searches, there generally is a need to supplement the product classes of the given Locarno system by some design based criteria. Such criteria should be incorporated into the given system. **In our opinion it may be a useful solution to implement the new features in a form of descriptive subclasses** (e.g. Rectilinear - geometrical, Rectilinear - asymmetrical ....) **to the main classes** (1,2,..6) **of the Locarno System**.

(i)   General characteristics of the visual features

In order to achieve the goal of keeping the new system simple and easy to handle, one should aim to develop **universal criteria which could be applied to at least a great number of the Locarno product classes. However, since the function of the respective product often dictates its design, it could be reasonable to allow certain differences in the configuration of the visual features which depend on the main product class.** As a suggestion **every main product class may be supplemented by at least one but not more than three visual based features.**

To be able to provide unambiguous classifications of the designs, it is important to keep a high degree of distinctiveness between the different visual indicators and to go for more general terms rather than to split up the feature in a variety of very detailed subclasses.

(1)   Shape as an universal visual feature

At least "Shape" seems to be one of the characteristic features of every design. Therefore this could serve as a universal criteria applied to all classes. Thereby the catalogue of shape indicators could vary depending on the respective main class (e.g. *"human form"* might be a useful category for class 6 (furniture) whereas it is not necessary to include it in the list for products of class 16 (photographic, cinematographic and optical apparatus). Technically such a restriction would not cause too much problems. A search engine could be easily programmed in the following way: after naming the relevant product classes in a first step the program could in a second step display the corresponding list of key words for visual features, from which the user could then chose the ones he is interested in.

(2)   Other visual features

Another visual feature which could be applied to a range of classes could be "**ornamentation"**. The Vienna Classification might be a help to establish suitable categories within this feature. However, in order to keep the distinctiveness between the categories, we would suggest to simplify and reduce the classes of the Vienna Classification to a great extend. The "ornamentation" feature with its class-depending catalogue of indicators might be applicable to all classes except Class 8 (Tools and hardware); Class 13 (Equipment for production, distribution or transformation of electricity) and Class 23 (Fluid distribution equipment, sanitary, heating, ventilation and air-conditioning equipment, solid fuel).

Moreover the feature **"surface/material"** might be useful to identify designs from product classes like Class 2 (Articles of clothing and haberdashery), Class 3 (Travel Goods...), Class 6 (Furnishing) and Class 7 (Household goods). Concerning this feature in order to avoid inconsistent classifications it would be important to include a category called "mixed" into the catalogue of indicators

If, with regard to certain product classes, these features should not be sufficient to identity the designs, one could think about the implementation of some specific features applying only to a certain product class. E.g. concerning class 26 (lighting apparatus) a design feature referring to the nature of the light would be suitable.

(ii)   Suggestion for visual features on the example of class 6 (furniture)

Applying the criteria stated above on the example of class 6 (furniture) we would reconcile the given proposal as follows and suggest some visual features:

A.   SHAPE

divided into the following categories:

- Rectilinear - geometrical

- Rectilinear - asymmetrical

- Curvilinear - geometrical

- Curvilinear - asymmetrical

- cubic

- orbital

- Known objects (e.g. humans, plants animals, celestial bodies)

B. ORNAMENTATION

- plain

- mixed

- Striped/spotted/checked

- Humans/ Animals/other creatures

- Plants and plant like motives

- Celestial bodies/Natural phenomena/Landscapes

- Heraldy/Coins/Emblems

- Other known objects (e.g. vehicles, devices....)

C. SURFACE MATERIAL

- Mixed

- Textile

- Leather

- Metal

- Plastic

Leopold von Gerlach

27 February 2009