



The Dendrobium hypercar. Image courtesy of Vanda Electrics Pte Ltd.



THE FUTURE OF DESIGN, DESIGN FOR THE FUTURE

REGISTERED DESIGNS (AMENDMENT) ACT 2017 AND
DESIGN LAW REFORM CONFERENCE

A note from Indranee Rajah S.C., Senior Minister of State for Law and Finance

“ People think ... that the designers are handed this box and told, ‘Make it look good!’ That’s not what we think design is. It’s not just what it looks like and feels like. Design is how it works. ”

Steve Jobs

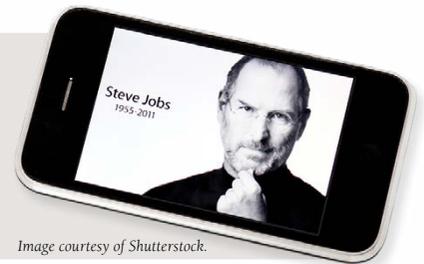


Image courtesy of Shutterstock.

Steve Jobs said this more than a decade ago, when he was talking about the Apple iPod. He, more than others, recognised that design and Intellectual Property (IP) are an integral part of any product and add to its value. It was this fundamental understanding that catapulted Apple products to their iconic and global best-selling status. Today, design continues to drive the growth of the world’s most innovative companies.

On 19 September, I delivered the Keynote Address at the Design Law Reform Conference convened by the National University of Singapore (NUS) E.W. Barker Centre for Law and Business and the Oxford Intellectual Property Research Centre at the University of Oxford.

In attendance were IP practitioners, IP officials from the region, academics, students, and members of the design community. The conference was a platform for them to share their perspectives on design protection and how it supports businesses.

Three video excerpts of the full speech are available at this link:

- (a) Part 1: Design and Design Thinking Drive Growth in the Future Economy - vimeo.com/237349398
- (b) Part 2: Key Law Changes that Protect Design - vimeo.com/237349564



The UB+ EUPHO E3 Speaker. Image courtesy of UB+.

- (c) Part 3: IP Protection & Commercialisation - Questions Designers and Lawyers Should Ask - vimeo.com/237349672, and
 - (d) The full speech can be accessed at www.mlaw.gov.sg.
- Key points of the speech are set out below.

DESIGN WILL DRIVE THE FUTURE ECONOMY

Design has an increasingly important role in Singapore's future economy. Design allows a company to enhance the value of its products, and gain a competitive edge over its rivals. In this way, companies generate higher profits, create good jobs, and contribute to Singapore's growth.

Singaporean companies are harnessing the transformative powers of design to develop eye-catching and appealing products, while putting Singapore on the world stage.

Examples of products developed in Singapore that have pushed the boundaries of design include Vanda Electric's Dendrobium electric hypercar and Motochimp e-bike, and the UB+ EUPHO E3 speaker designed by local startup TGI Technology.

REGISTERED DESIGNS (AMENDMENT) ACT 2017

Our designers should be encouraged and supported.

How do we do that?

We need to ensure that we have a design protection regime that is robust, relevant, and useful to businesses. To that end, Parliament passed the Registered Designs (Amendment) Act 2017 in May. The Act can be found at statutes.agc.gov.sg and my Second Reading speech in Parliament can be found at www.mlaw.gov.sg.

Some of the key amendments are as follow:

More types of designs can be protected

We are broadening the scope of protection under the Registered Designs Act ("RDA") in three ways.

First, we have clarified that designs of handmade articles can be protected. This gives greater certainty to, for example, blog shop owners and other freelance artisans who make handmade items like jewellery in small quantities for a niche market.

Second, we will allow colours as a design feature to be protected.

Third, we will allow designs of non-physical products to be protected. We are already seeing non-physical products on the market – for example, virtual computer keyboards and virtual piano

keyboards that are projected by light onto a surface. As such virtual products become more common, our registered designs regime will be ready to protect their designs.

Designer is default owner of a commissioned design

Currently, when a design is created under commission, the person commissioning the design is treated as the owner of the design by default, unless there is an agreement otherwise.

We have switched this around. Under the new regime, the designer and not the commissioning party is regarded as the owner of the design by default, unless the parties agree otherwise by contract. We are doing this to signal that creativity is important and recognised. We hope this encourages designers to scale greater heights.

Grace period provision will be broadened and lengthened

Generally, a design must be new before it can be registered. If a design is publicly disclosed before the application to register it has been filed, it will not be considered new and therefore cannot be validly registered.

Currently, the RDA provides a 6-month grace period from public disclosure for a few narrow situations. For example, if the design was displayed at one of a few recognised international exhibitions, it can still be registered if the application is filed within 6 months from the date of the opening of the exhibition.

The amendments will give designers greater leeway by:

- (i) extending the grace period from 6 to 12 months; and
- (ii) expanding the situations under which the grace period may be relied upon to include any disclosure originating from the designer. This can now cover, for example, disclosure by designers to investors, business partners or customers at various trade exhibitions.

INNOVATION IS MORE THAN IP PROTECTION

The Act is part of our efforts to continually enhance the IP protection regime in Singapore and support designers. But IP protection is only one step in the innovation journey. Innovation is fundamentally about bringing ideas to the market. Thus, what a company does with its IP rights is equally, if not more, important. A company must have a sound IP protection and commercialisation strategy to support its business strategy. For example, companies should consider:

a) What to protect:

What are the essential ideas or features that are crucial to the success of the business? What is the best way to protect them?



The Vapure compact steam washer for home use designed and exhibited by Nanyang Polytechnic School of Design students.



The Twig 3-in-1 convertible seat post, mudguard, saddle bag and back light designed and exhibited by Nanyang Polytechnic School of Design students. Images courtesy of Nanyang Polytechnic.

b) Where IP should be protected:

Where are the key export markets and manufacturing and R&D locations?

c) How to use and commercialise the IP:

What is the business model? What is the mode of distribution? Should you licence or assign your IP? Can your IP be used to raise funds? Do you have resources to enforce if needed? If not, should you consider IP insurance?

HOW IP PRACTITIONERS CAN SUPPORT CLIENTS

Businesses may not have answers to all these questions. This is where IP practitioners come in – to blend the understanding of the legal and technical issues with business knowledge, and advise businesses on how they can use their IP to grow.

Furthermore, companies often have to look beyond Singapore as the local market is small. This requires familiarity with the IP regimes of foreign jurisdictions and IP practitioners are well-placed to advise accordingly.

Designers and clients may also need advice on how the Registered Designs (Amendment) Act 2017 affects their IP strategies. For example:

a) With the broadened scope of protection, design applicants may need guidance on how to register new types of designs and secure optimal protection for their designs.

b) Practitioners should remind their clients that while a 12-month broad grace period is available in Singapore, public disclosures of designs could still jeopardise applications in other jurisdictions with shorter or no grace periods. Practitioners may wish to advise their clients on the availability, scope and length of the grace period in jurisdictions of interest (e.g. key markets and manufacturing sites), and help clients adjust their filing strategies accordingly.

Singapore is entering an exciting phase of economic growth, where innovation and design take centre stage. The success of our economy rests on our ability to generate good ideas, and capture value from these ideas. IP practitioners are an important part of this process.



*The Opening Session of the Design Law Reform Conference.
Images courtesy of National University of Singapore.*

*– Indranee Rajah S.C., Senior Minister of State for Law and Finance
10 October 2017*