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IPtheory

Volume 3: Issue 2

A Decade of Registered and Unregistered Design Rights Decisions in the UK: What Conclusions Can We Draw for the Future of Both Types of Rights?

Estelle Derclaye*

Introduction

This research was presented at the conference on the Future of Design Protection organized jointly by the Center for Intellectual Property Research of the Indiana University Maurer School of Law and the Oxford Intellectual Property Research Centre, which took place in Oxford on 2 November 2012. The title of the panel to which I was asked to contribute was "The Future of Hybrid Design Protection Systems: Registered v. Unregistered Rights." I review the future of registered and unregistered design rights in the United Kingdom (UK). For reasons of space, I do not review copyright. The UK is special as it is the only Member State of the European Union (EU) to have a national unregistered design right (UKUDR). With the introduction, about a decade ago, of the Design Directive and Design Regulation, the question is whether the UKUDR has lost its appeal. There are two levels in relation to designs: the national one and the European Union one. I will thus compare the situation between the UKUDR and the three rights introduced by the EU instruments, namely the Community registered design right (CRDR), the Community unregistered design right (CUDR), and the national design right as amended by the Design Directive (UKRDR) as the substantive law for these three rights is virtually the same.[1] In order to answer the question regarding the future of registered and unregistered design rights in the UK, one needs to analyse the case law. It would also be ideal to take into account non-litigated cases. But this would involve questioning the practitioners about any disputes their clients settled and any cease-and-desist letters they sent with effect and this may prove tricky simply because of confidentiality matters. The data gathered here therefore give only a partial answer to the question.

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1. The only main differences are that the CUDR is not a registered right and that it lasts for three years rather than five years, renewable up to twenty-five years maximum.

This Article analyses the case law of the courts of England and Wales since the introduction of the UKUDR in August 1989, the implementation of the Design Directive in October 2001, and the coming into force of the Design Regulation in March 2002. To this effect, two tables of the decisions were compiled, one listing the UKUDR decisions and the other, the decisions relating to the UKRDR, the CRDR, and the CUDR. The tables can be found in the appendices at the end of this Article. The tables list the name of the parties, the type of design, the date of the decision, the court and the judge(s) who handed down the decision, and whether or not the decision was reported. The tables do not make a comparison of all aspects of the rights as may have been discussed in the cases, but instead only list whether the design was found valid and/or infringed. The list of cases is complete as of November 1, 2012, to the best of my knowledge, but does not include any unreported cases not included one way or another in the legal databases.

The Article's first section presents aggregate data from these two tables, and then analyses this data and draws conclusions as to the effect of the introduction of the three new design rights on the UKUDR. The section ends by recapitulating the differences between the UKUDR and the CUDR, the CRDR, and the UKRDR. The second section takes two examples of cases where the UKUDR and the CUDR were litigated together to show that the differences between the two rights do matter and that relying on both rights greatly helps the right holder; if one right does not protect parts of her design, the other right can jump in. Likewise, if an action does not infringe one right, the very same action can very well infringe the other right. The last section draws conclusions of the above analyses for the future of unregistered and registered design rights in the UK.

Analysis of the Tables of Designs Decisions

The table below gives aggregate data from the two tables in the appendices.

	UKUDR	**UKRDR, CRDR and CUDR**
Number of cases	44 of which 9 appeals	26 of which 2 registry decisions; of which 7 appeals
Design valid[2]	36 of which 3 partly (81%)	20 (76%)
Design infringed[3]	22 of which 2 partly (50%)	10 (38%)
High Court	22	11
Patents County Court	12	5
Appealed	9 (20%)	7 (26%)
Type of design	Manufacturing sectors (22) >< consumer conscious sectors (12) Excluding appeals [4]	Manufacturing sectors (11) >< consumer conscious sectors (8) Excluding appeals

2. The *Bruhn Newtech Ltd. v. Datanetex Ltd.*, [2012] EWPCC 17, case is not included in these statistics as it only involved a question of ownership.
3. *Id.*
4. The symbol >< means, "as opposed to."

What conclusions can be drawn from this data?

A first thing must be noted: owing to approximately one decade separating the introduction of the UKRDR, the CRDR, and the CUDR, there has been around ten more years of litigation on the UKUDR (the first reported case dates from 1992) than on the UKRDR, the CRDR, and the CUDR (the first reported case dates from 2001). The overall statistics (all cases decided over the years) show that more cases are litigated on the UKUDR than on the UKRDR and the CRDR (almost double). If one compares only the last decade for both rights (2002–2012 included), then there are eighteen decisions on the UKRDR, the CUDR, and the CRDR against twenty-one for the UKUDR. This excludes the appeals. Of the cases, namely seven out of fifty-four decisions (excluding the appeals)[5], 13% were litigated on both fronts; that is, the UKUDR on the one hand and the UKRDR, the CRDR, or the CUDR on the other. There have been almost as many cases litigated on the UKRDR (twelve) than on the CRDR (eleven) (including the appeals). On the other hand, there have only been three cases litigated on the CUDR. If we separate the last decade in two, say from 1999 to 2005 and from 2006 to 2012 (and as of this study, 2012 was not yet over), the litigation has increased slightly in the second half of the decade in respect of the UKRDR and the CRDR: five until 2005 and the fourteen others from 2006 onwards (excluding the appeals). As to the UKUDR, twenty-one were litigated until 2005 included and the rest (fourteen) from 2006 onwards (excluding the appeals). So the litigation has gone down slightly for the UKUDR. However, it is probably too early to tell that the UKRDR/CRDR/CUDR have taken the UKUDR over. There is still a steady amount of cases litigated on the UKUDR.

The statistics concerning validity are slightly better for the UKUDR than for the UKRDR, the CRDR and the CUDR: around 81% against 76% were found valid. Concerning infringement, the picture is slightly more favourable for the UKUDR as half were found infringed as opposed to 38% of the UKRDR, the CRDR, and the CUDR. The ratio of designs found valid and infringed is almost one and a half times more than those found valid but not infringed in relation to the UKUDR, whereas it is about the same for the RDR, the CUDR, and the CRDR.[6] This higher ratio for UKUDR may explain why claimants like to rely on this right. These statistics also reflect the easier test of infringement in the UKUDR than in the CRDR, the UKRDR, and the CUDR (see below table comparing the legal provisions in the two types of rights). Therefore, not too surprisingly, more decisions concerning the CRDR, the UKRDR, and the CUDR were appealed (26%) than the UKUDR (20%).

A far higher proportion of cases litigated under the UKUDR concerned the manufacturing sectors (twenty-two) in comparison with those concerning the consumer conscious sectors[7] (twelve) than under the UKRDR, the CRDR, and the CUDR. Only eleven cases litigated

5. 54 = 44 + 26 – (9+7 appeals).
6. UKUDR: 11(valid but not infringed) >< 21 (valid and infringed); UKRDR, CRDR, and CUDR: 7 (valid but not infringed) >< 10 (valid and infringed). These statistics include the appeals.
7. For instance, toys, textiles, and fashion.

under the three latter rights concerned the manufacturing sectors in comparison with eight which concerned the consumer conscious sectors.[8] At first sight, this does not appear surprising, as UKUDR does not include surface decoration. However, of the eight UKRDR/CUDR/CRDR decisions, only one dealt with surface decoration (computer icon). This data therefore is in contrast with the positions of the two sectors during the consultations before the introduction of the new EU design rights.[9] The registered regime has also interested the consumer-conscious sectors[10] and they find it equally useful to litigate on the basis of the registered rights. All the cases where CUDR was litigated, funnily enough, concerned bags of some sort: luggage (*Landor*), handbags (*J Choo*) and bait bags (*Bailey*). Since there are only three decisions on the CUDR, it is difficult to draw conclusions. Two of them were more to do with fashion, or at least not long lasting products, which makes sense since the CUDR lasts only for three years. There are probably not many cases litigated on the CUDR, as for one to litigate within three years of marketing the product, it may already be too late for an infringement to occur, or if it does occur, too late to initiate proceedings to stop it. Thus the CUDR claims will often be "damages only" claims. Of course, this does not take into account any settlements and cease-and-desist letters, so it does not mean that the CUDR is not useful.

In conclusion, it seems that it is more useful for a designer to sue on the basis of the UKUDR than on registered rights, but it may simply reflect the fact that not all designers register their designs. It is also clear that the UKUDR is preferred to the CUDR. Notwithstanding this, both registered and unregistered rights are well alive. The only right which is not as alive in the United Kingdom is the CUDR, at least as far as statistics from litigation can give a flavour of what the real picture is. In order to understand why the UKUDR is so attractive to designers, it is useful to draw a table comparing its aspects with those of the UKRDR, the CRDR, and the CUDR. Table 1 on the next page highlights in bold the main differences between the UKUDR on the one hand and the UKRDR, the CRDR, and the CUDR on the other. In the third column, total overlap means that one right absorbs the other. Partial means that there is some overlap, but also that there are some differences between the two rights.

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8. These statistics exclude the appeals. Consumer-conscious items in UKUDR cases: furniture, luggage, umbrella case (two), umbrella, phone case, handbag, clothes (three), pendant, cycling helmet. Consumer conscious items in UKRDR, CUDR, and CRDR cases: luggage, umbrella case, handbag, clothing (poncho), computer icon, tablet, computer games console, air freshener.
9. The manufacturing sector favoured a registration system akin to the patent system while the consumer-conscious industries favoured an anti-copying right akin to copyright. *See* Uma Suthersanen, Design law: European Union and United States of America 262 n.13-004 (2d ed. 2010).
10. This is proved at least for the Community right by the Office of Harmonization for the International Market (OHIM) statistics. Clothing is the sector registering the highest number of Community designs after furnishing. *See* P. Maier's contribution at the conference organised by the universities of Oxford and Indiana in November 2012, available at http://ip.law.indiana.edu/wp-content/uploads/2012/11/Oxford-2012-Maier1.pdf.
11. Bailey *(t/a Elite Angling products)* v. Haynes *(t/a RAGS)* [2006] EWPCC 5, [2007] FSR 10.

Table 1.

	UDR	UKRDR/CUDR/CRDR	OVERLAP
Subject matter	**Aspect** of shape or configuration of whole or part of **article** => **Not surface decoration, be it 2D or 3D**	**Appearance** of the whole or a part of a **product** => 2D and 3D	Total
Excluded subject-matter	- **Method or principle of construction** - **must-fit** (article = anything, broad interpretation possible) - must-match features - ideas	- **solely dictated by technical function** - **'must-fit'** (interconnection features: product, stricter wording and interpretation + exception for modular systems) - must-match features (UKRDR) - **immoral designs** - ideas - **additional grounds of invalidity/refusal**	Partial
Protection requirements	- **Fixation** - **Not copied** - Original (SSJL) - Not commonplace **in the field (UK)** - **Qualification**	- Novelty (**reasonable Community knowledge in sector concerned)** - Individual character (different overall impression) - **Visibility for component parts**	Partial
Ownership	- Designer is owner of right - Commissioned D = commissioner - D made by employee = employer	- Designer is owner of right - Commissioned D = commissioner - D made by employee = employer	Total
Scope of protection / infringement	- Substantially copy article to the design **for commercial purposes** - **Secondary infringement**	- Use – not a different overall impression, taking into account the designer's degree of freedom - Secondary infringement = national law	Total except for secondary infringement
	Person to whom design is directed (*Bailey*: average user)	**Informed user (not average consumer nor expert)**	None

Rights	Anti-copying	Using/Making or anti-copying if CUDR	Total
Exceptions	- None but non-commercial use is ok - **Licences of right during last 5 years**	- Private and non commercial use - Experimental use - Reproduction for teaching and citation (under certain conditions) - Exception to facilitate foreign transport	Partial
Duration	10-15 years (but licences or right possible as above)	3 years (CUDR) – 5 to 25 years (UKRDR/CRDR)	Total (for RDR, only if renewal)

Table 1 shows differences of scope in the four rights. Sometimes the UKUDR is stronger and sometimes the other three rights are stronger, thus showing it is advantageous for the claimant to rely on both unregistered design rights. The following section illustrates this by giving actual examples (two litigated cases) where the claimant relied on both the UKUDR and the CUDR.

Cases Where the UKUDR and the UKRDR, the CUDR or the CRDR Were Litigated Together

In the *Bailey* case,[11] the claimant sued on both the UKUDR and the CUDR. The design was a ladder-resistant micromesh for a bait bag, made of polyvinyl alcohol. The designer used the Atlas warp stitch method to make the micromesh. The main issue in the case was whether the design was a method or principle of construction under the UKUDR and whether it was solely dictated by technical function under the CUDR. The court held that it was a method of construction and thus excluded under the UKUDR but it was not solely dictated by its function and therefore the CUDR subsisted.[12] The following passages of the judgment illustrate well the differences between the exclusions:

I have come to the conclusion, not without hesitation in the light of my finding on originality, that this is a case where the statutory exclusion bites. The *basic* appearance of this design is generated by the Atlas warp stitch method and though its appearance may slightly differ from product to product, in truth the design right will inevitably cover a "method or principle of construction."

The action based on UKUDR therefore fails.[13]

12. The design was held original and not commonplace as well as new and having individual character but as there was no copying, there was no infringement of the CUDR.
13. *Bailey* at ¶¶ 68–69 (emphasis in original).

Article 8.1 is I think, to be construed narrowly. Since the Elite Design is not the only design which is capable of achieving *to a degree* this useful function for anglers, the Design is not in my view, caught by the exclusion and this objection therefore fails.[14]

In *Landor & Hawa International Ltd. v. Azure Designs*,[15] the case turned upon same exclusions as in *Bailey*. In 2002, Landor, a manufacturer for suitcases and bags, designed an expander section for use in a rigid suitcase. It claimed a UKUDR and a CUDR in the expander design. The panel, by means of a peripheral zip, allows the suitcase to become more capacious by upward expansion. In 2003, Azure started selling expander suitcases and Landor sued for infringement. The issues were whether the design was a method or principle of construction under the UKUDR and whether it was solely dictated by technical function under the CUDR. But in this case, both the UKUDR and the CUDR subsisted; the design was not excluded by either exception. The design was in part capricious. There were other ways of making a suitcase expandable.[16] However, in that case the Court of Appeal settled on the luggage manufacturer as the person to whom the design was directed when applying the test of infringement. However, other cases have used the average user,[17] which cannot have the same view as the manufacturer of the product. The court in *Albert Packaging*, the latest reported case discussing this issue,[18] simply says it is not an expert in the design field in question. That may exclude the product's manufacturer but until the Court of Appeal is called to decide on the issue again, the test is uncertain. The test definitely favours the holder of the UKUDR over the holder of a UKRDR, a CRDR, or a CUDR as the informed user will pay attention to detail and will more often see differences in the defendant's design, which will give it a different overall impression.

In conclusion, as these decisions show, it is advantageous for the claimant to use both rights not only in theory but also in practice. If she does not win on the basis of one right, she can on basis of the other.

What future for unregistered design rights?

In 2003, I wrote that there was a "glimmer of hope" that the UKUDR will remain attractive to designers because of some of its features that the CUDR does not have.[19] The statistics on litigated cases show that this prediction has been more than correct. The statistics confirm what we already knew: both rights have advantages and disadvantages which differ for each right so that they are

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14. *Id*. at ¶ 75 (emphasis in original).
15. [2006] FSR 22, *aff'd* [2007] FSR 9 (CA).
16. Note however that subsequently, in *Dyson Ltd. v. Vax Ltd*., [2010] FSR 39, Arnold, J. held that the narrow interpretation of the exclusion of designs "solely dictated by function" in *Landor* should not be followed. Judge Birss Q.C. agreed with Arnold in *Samsung Elecs. v. Apple,* [2012] EWHC (Pat) 1882. However, the position on this question has become fully entrenched at the OHIM, *see Samsung*, at ¶ 38.
17. The average angler in *Bailey*, supra note 11, for instance.
18. Albert Packaging v. Nampak Cartons & Healthcare, [2011] EWPCC 15, [2011] FSR 32.
19. Estelle Derclaye, *The British Unregistered Design Right: Will It Survive Its New Community Counterpart to Influence Future European Case Law?*,10 Colum. J. Eur. L. 265, 294 (2004).

both here to stay. While both the UKUDR and the CUDR have a future, that of the CUDR may be less bright simply because it lasts less long. The CUDR has at least seven advantages[20] over the UKUDR.[21] (1) surface decoration is protectable; (2), because of the narrow definition of product, the interconnection exclusion will not apply to "living parts" (humans, animals, or even plants) as opposed to the application to design parts which must fit with "living parts" in UKUDR; (3) designs of modular systems will be protected by the CUDR, but not by the UKUDR; (4), as shown in *Bailey*, the exclusion for designs solely dictated by function is less exclusive than the exclusion of methods and principles of construction; (5) nowhere is it required that the design be recorded in a design document (but obviously, somehow the owner will have to prove prior existence); (6)there is no need to be a qualifying person to benefit from the CUDR; (7) it can be transformed into a CRDR during the grace period of twelve months from disclosure. The CUDR's five disadvantages are as follows: (1) the design needs to be an appearance whereas in the UKUDR case law, courts have allowed design in detail which can be something which is not an appearance;[22] (2) the criterion of visibility for complex products restricts the subject-matter of protection; (3) the CUDR does not last as long; (4) the rights are more limited as there are more exceptions to them; and (5) the concept of informed user plays against the owner of the CUDR at the level of infringement. The fact that it applies all over the EU can be an advantage (infringed everywhere with a single proceeding) or a disadvantage (invalid everywhere with a single proceeding).

This picture is not complete. To predict the future of both rights, one also needs to consider the proposals of the UK government for reforming the UKUDR. Following the Hargreaves review,[23] the UK Intellectual Property Office (UKIPO) issued a consultation on the Reform of the UK Designs Legal Framework, which ended on October 2, 2012. In the document, the UKIPO proposes to retain the UKUDR but harmonise it so it is closer to the CUDR.[24] In summary, the proposed changes are as follows.[25] The UKIPO proposes to restrict the definition of design by deleting the terms "any aspect" in the expression "any aspect of shape and configuration" in section 213(2) of the UK copyright act (CDPA) because it is too protective of the design right owners. Indeed, as the case law has shown, they "can easily establish that a new and competing design infringes theirs by basing that claim on a very small and 'cropped' part of their design."[26] This arguably restricts market entry by new designers and thus unduly stifles competition. However, I am really not sure this change would achieve the aim sought by the UKIPO if it decides upon reading the replies to the consultation that removing those terms is what it should

20. I have not examined the potential procedural advantages.
21. For more detail about the advantages and disadvantages of both rights, see *supra* note 19, at 293.
22. *See, e.g.*, Ocular Sciences v. Aspect Vision Care, [1997] RPC 289 (UKUDR subsisted in the dimensions of a contact lens).
23. Ian Hargreaves, *Digital Opportunity: A Review of Intellectual Property and Growth* (May 2011), *available at* http://www.ipo.gov.uk/ipreview.htm.
24. *Consultations on the Reform of the UK Designs Legal Framework*, Intellectual Property Office (Sept. 2012), *available at* http://www.ipo.gov.uk/pro-policy/consult/consult-closed/consult-closed-2012/consult-2012-designs.htm, at 8 [hereinafter Consultation Document].
25. Of course, these are subject to the replies to the consultation which may swing the government the other way.
26. Consultation Document, *supra* note 24, at 9.

do. This is because it will still be possible to protect parts of designs because the wording of the EU instruments requires so.[27] If the UKUDR regime is aligned with EU law, this will not change the situation in the UKUDR law. Another change the UKIPO envisages is to amend section 213(4) of the CDPA to broaden the design field for the test of commonplaceness to the European Economic Area; at the moment it is limited to the UK. One of the reasons given is that it "makes it less likely that designers in the UK will unintentionally infringe a UK unregistered design right, when they are building upon ideas that they may have taken from elsewhere in the EU."[28] Finally, the UKIPO proposes that the CDPA clearly excludes ideas form the UKUDR protection.[29] While this is a cosmetic change, it is welcome as a clarifying reminder. If the proposals are adopted, the UKUDR would be closer to the CUDR but its length would not change. This would make the CUDR even less appealing than it is today. However, these proposals do not reform other exclusions such as methods of construction nor the infringement test so it is still attractive for a claimant to sue on both the CUDR and the UKUDR in a case like *Bailey* or *Landor*. At present, if Parliament adopts the UKIPO proposed changes, the future of both rights is still secured.

Putting aside the consultation, as there is not yet a bill based on the replies to it, is the status quo good or bad? Should designers be able to rely on both the UKUDR and the CUDR? It is both a general and complex question which cannot be answered without addressing all intellectual property rights: namely, copyright, registered and unregistered design rights, but also trademark law, patents, and unfair competition. In the UK, thankfully, the overlap between copyright, unregistered, and registered design rights is already in some ways regulated, albeit not fully.[30] So, some rules exist but more can and should be done to avoid the negative consequences of overlaps, namely regime clashes and over-protection.[31] I will not repeat what I said elsewhere,[32] but in the field of designs, in addition to the changes that the UKIPO suggests, harmonisation of the exceptions would be a start as well as "eliminating" the level overlaps (combination of a national and EU-wide right).[33] ■

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27. See table comparing the provisions of the UKUDR with those of the CRDR, CUDR, and UKRDR, above.
28. Consultation Document, *supra* note 24, at 11.
29. *Id*. at 12.
30. *See* §§ 51–53, 236 of the CDPA. Note however that section 52 has disappeared with the adoption of the Enterprise and Regulatory Reform Act 2013, available at http://www.legislation.gov.uk/ukpga/2013/24/contents/enacted. For a detailed overview of the rules regulating overlaps between registered designs, unregistered designs, and copyright in the UK, *see, e.g*., Estelle Derclaye & Matthias Leistner, Intellectual Property Overlaps: A European Perspective 77–83 (2011).
31. *See* Derclaye & Leistner, *supra* note 30, at 318, 331–32.
32. *Id*.
33. Total elimination may be too drastic as there may be reasons to keep national rights because some markets are only national and not regional or global. But a rule could be enacted to the effect that one right cannot co-exist at the same time with the other. The design right owner would elect either the national right or the Community right. *Id*. at 332. Richard Arnold is more drastic and proposes in respect to the UKUDR, that the UK could lobby for an increase in the term of Community design right and then abolish UKUDR or alternatively, for a replacement of the existing CUDR with a UK clone of the CUDR but lasting longer than the current three years, available at http://ip.law.indiana.edu/wp-content/uploads/2012/11/Jesus-College-powerpoint1.pdf.

APPENDIX 1 – UKUDR TABLE

No.	Name	Design type	Date	Court	Judge(s)	Valid	Infringed	Reported	Also RDR
1	**C&H Engineering v. F Klucznik & Sons Ltd (no.1)**	Pig fender	23-Jan-92	Chancery Division	Aldous, J.	Yes	No	Yes	No
2	**Amoena v. Trulife**	Breast prosthesis	25-May-95	Chancery Division	Jonathan Sumption Q.C.	Yes	No	No	No
3	**Ocular Sciences Ltd v. Aspect Vision Care Ltd**	Eye lens	11-Nov-96	Chancery Division	Laddie J .	No	No	Yes	No
4	**Renaissance Design v. Greenscreen**	Cycling mask	1996	Patents County Court	Ford J.	Yes	n/a	No	No
5	**Electronic Techniques (Anglia) Ltd v. Critchley Components Ltd**	Transformers	28-Nov-96	Chancery Division	Laddie J.	No	No	Yes	No
6	**Parker v Tidball**	Leather phone case	24-Jan-97	Chancery Division	Robert Englehart Q.C.	Yes (partly)	Yes	Yes	No
7	**Farmers Build Ltd (In Liquidation) v. Carier Bulk Materials Handling Ltd**	Slurry separator	26-Mar-97	Chancery Division	Rattee J.	Yes	No	Yes	No
8	**Farmers Build Ltd (In Liquidation) v. Carier Bulk Materials Handling Ltd**	Slurry Separator	3-Dec-98	Court of Appeal (Civil Division)	Simon Brown, L.J.; Mummery, L.J.; Sir Christopher Slade	Yes	Yes	Yes	No
9	**Mark Wilkinson Furniture Ltd v. "Woodcraft Designs (Radcliffe) Ltd"**	Furniture	30-Jul-97	Chancery Division	Jonathan Parker, J.	Yes (partly)	Yes	Yes	No
10	**Baby Dan AS v. Brevi Srl**	Baby barrier	20-Oct-98	Chancery Division	David Young Q.C.	Yes	Yes	Yes	No
11	**Jo y Jo Ltd v. Matalan Retail Ltd**	Clothes	31-Mar-99	Chancery Division	Rattee, J.	Yes (partly)	No	Yes	No
12	**Scholes Windows Ltd v. Magnet Ltd**	Windows	5-Nov-99	Chancery Division (Patents Court)	N Underhill Q.C.	No	No	Yes	No
13	**Scholes Windows Ltd v. Magnet Ltd**	Windows	11-Apr-01	Court of Appeal (Civil Division)	Rix, L.J.; Mummery, L.J.; Peter Gibson, L.J.	No	/	Yes	No
14	**A Fulton Co Ltd v. Grant Barnett & Co Ltd**	Ladies' folding umbrella	5-Oct-00	Chancery Division	Park, J.	Yes	Yes	Yes	No
15	**Guild v. Eskandar**	Clothes	2-Feb-01	Chancery Division	Rimer J.	Yes	Yes	Yes	No
16	**Guild v. Eskandar**	Clothes	14-Mar-02	Court of Appeal (Civil Division)	Sir Andrew Morritt V.C.; Robert Walker, L.J.; Rix, L.J.	Yes	No	Yes	No
17	**L Woolley Jewellers Ltd v. A&A Jewellery Ltd (No.1)**	Pendant	14-Dec-01	Patent County Court	Fysh Q.C.	Yes	Yes	No	No
18	**L Woolley Jewellers Ltd v. A&A Jewellery Ltd (No.1)**	Pendant	31-Jul-02	Court of Appeal	Thorpe, L.J.; Robert Walker, L.J.; Arden, L.J.	Yes	Remanded (see L Woolley No. 2)	Yes	No
19	**A Fulton Co Ltd v. Totes Isotoner (UK) Ltd**	Umbrella case	31-Oct-02	Patents County Court	Michael Fysh Q.C.	Yes	Yes	Yes	Yes

20	**A Fulton Co Ltd v. Totes Isotoner (UK) Ltd**	Umbrella case	4-Nov-03	Court of Appeal (Civil Division)	Lord Phillips of Worth Matravers, M.R.; Kennedy, L.J.; Jacob, L.J.	Yes	Yes	Yes	No
21	**Lambretta Clothing Co Ltd v. Teddy Smith (UK) Ltd** **Lambretta Clothing Co Ltd v. Next Retail Plc**	Track top	23-May-03	Chancery Division	Etherton, J.	No	No	Yes	No
22	**Lambretta Clothing Co Ltd v. Teddy Smith (UK) Ltd** **Lambretta Clothing Co Ltd v. Next Retail Plc**	Track top	15-Jul-04	Court of Appeal (Civil Division)	Sedley, L.J.; Mance, L.J.; Jacob, L.J.	No	No	Yes	No
23	**L Woolley Jewellers Ltd v. A&A Jewellery Ltd (no.2)**	Pendant	30-Jun-03	Patents County Court	Fysh Q.C.	Yes	Yes	Yes	No
24	**Sales v. Stromberg**	Articles designed to contain imploded water (pendant)	26-Jul-05	Chancery Division	Roger Wyand Q.C.	Yes	Yes (partly)	Yes	No
25	**Ultraframe (UK) Ltd v. Eurocell Building Plastics Ltd**	Conservatory construction system	22-Jul-04	Chancery Division (Patents Court)	Kitchin, J.	Yes	Yes	Yes	No
26	**Ultraframe (UK) Ltd v. Eurocell Building Plastics Ltd**	Conservatory construction system	24-Jun-05	Court of Appeal (Civil Division)	Mummery L.J.; Jacob L.J.; Neuberger L.J.	Yes	Yes	Yes	No
27	**Dyson Ltd v. Qualtex (UK) Ltd**	Vacuum cleaners	21-Dec-04	Chancery Division	Mann J.	Yes	Yes	Yes	No
28	**Dyson Ltd v. Qualtex (UK) Ltd**	Vacuum cleaners	8-Mar-06	Court of Appeal (Civil Division)	Tuckey, L.J.; Jacob, L.J.; Lloyd, L.J.	Yes	Yes	Yes	No
29	**Landor & Hawa International Ltd v. Azure Designs Ltd**	Luggage	28-Nov-05	Patents County Court	Michael Fysh Q.C.	Yes	Yes	Yes	Yes
30	**Landor & Hawa International Ltd v. Azure Designs Ltd**	Luggage	28-Jul-06	Court of Appeal (Civil Division)	May L.J., Neuberger L.J., Wilson J.	Yes	Yes	Yes	Yes
31	**Helmet Integrated Systems Ltd v. Tunnard**	Firefighters' helmet	10-Feb-06	Patents County Court	Fysh Q.C.	Yes	No	Yes	No
32	**BSW Ltd v. Balltec Ltd**	Tools	11-Apr-06	Chancery Division (Patents Court)	Patten J.	Yes	No	Yes	No
33	**Bailey (t/a Elite Angling Products) v. Haynes (t/a RAGS)**	Bait bag	1-Oct-06	Patents County Court	Fysh Q.C.	No	No	Yes	Yes
34	**J Choo (Jersey) Ltd v. Towerstone Ltd**	Handbag	16-Jan-08	Chancery Division	Floyd J.	Yes	Yes	Yes	Yes
35	**Rolawn Ltd v. Turfmech Machinery Ltd**	Wide area mower	7-May-08	Chancery Division	Mann J.	Yes	No	Yes	Yes
36	**Virgin Atlantic Airways Ltd v. Premium Aircraft Interiors Group**	Aircraft seating system	21-Jan-09	Chancery Division (Patents Court)	Lewison J.	Yes	No	Yes	No
37	**Grimme Landmaschinenfabrik GmbH & Co KG v. Scott (t/a Scotts Potato Machinery)**	Potato separating machine	3-Nov-09	Chancery Division (Patents Court)	Floyd J.	Yes	Yes (partly)	Yes	No

38	**Red Spider TechNology v. Omega Completions TechNology**	Valve	21-Jan-10	Chancery Division	Mann J.	Valid in part	No	Yes	No
39	**Lenric C21 Ltd v. Tesco Stores Ltd**	"Bunny Warren" product	5-May-11	Patents County Court	Birss Q.C.	Yes	n/a	Abandoned claim	No
40	**Albert Packaging Ltd v. Nampak Cartons & Healthcare Ltd**	Carton for tortilla wraps	2-Jun-11	Patents County Court	Birss Q.C.	Yes	No	Yes	No
41	**Pro-Tec Covers Ltd v. Specialised Covers Ltd**	Caravan towing covers	18-Oct-11	Patents County Court	Richard Meade Q.C.	Yes	No	No	No
42	**Ifejika v. Ifejika**	Contact lens cleaning device	23-Nov-11	Patents County Court	Birss Q.C.	No (RDR) Yes (UDR)	Yes (UDR)	Yes	Yes
43	**Bruhn Newtech v. Datanetex**	Device used to predict hazards	18-Apr-12	Patents County Court	John Baldwin Q.C.	n/a	n/a The only issue was ownership	Yes	No
44	**Pendle Metalwares v. Walter Page**	Cigarette bin	31-Jul-12	Chancery Division	Stuart Isaacs Q.C.	Yes	Yes	No	Yes

NB: This table does not include Dahlia Fashion Co. v. Broadcast Session, [2012] EWPCC (Civ) 23, as it was a summary judgement and nothing was decided.

The statistics are: clothing, 16 May 2012, Patents county court, Birss Q.C., reported, yes.

APPENDIX 2 – UKRDR, CRDR, AND CUDR TABLE

No.	Name		Design type	Date	Court	Judge(s)	Valid	Infringed	Reported	Other right
1	**Apple Computer Inc v. Design Registry** **Also known as:** **Apple Computer Inc's Design Applications**	UKRDR	Computer icons	24-Oct-01	High Court (Chancery Division)	Jacob J.	yes	no	yes	
2	**JCM Seating Solutions Ltd v. James Leckey Designs Ltd**	UKRDR	Seating system	27-Mar-02	Chancery Division	Pumfrey J.	no	no	yes	
3	**A Fulton Co Ltd v. Totes Isotoner (UK) Ltd**	UKRDR	Umbrella case	31-Oct-02	Patents County Court	Michael Fysh Q.C.	yes	yes	yes	Also UKUDR
4	**A Fulton Co Ltd v. Totes Isotoner (UK) Ltd**	UKRDR	Umbrella case	4-Nov-03	Court of Appeal	Lord Phillips MR, Kennedy LJ, Jacob LJ	yes	yes	yes	Also UKUDR
5	**Woodhouse UK Plc v. Architectural Lighting Systems (t/a Aquila Design)**	CRDR	Electrical street lantern	25-Jul-05	Patents County Court	Fysh Q.C.	no	no	yes	Also UKUDR
6	**Landor & Hawa International Ltd v. Azure Designs Ltd**	CUDR	Luggage	28-Nov-05	Patents County Court	Michael Fysh Q.C.	yes	yes	yes	Also UKUDR
7	**Landor & Hawa International Ltd v. Azure Designs Ltd**	CUDR	Luggage	28-Jul-06	Court of Appeal (Civil Division)	May L.J., Neuberger L.J., Wilson J.	yes	yes	yes	Also UKUDR
8	**Bailey (t/a Elite Angling Products) v. Haynes (t/a RAGS)**	CUDR	Bait bag	1-Oct-06	Patents County Court	Fysh Q.C.	no	no	yes	Also UKUDR
9	**KK Sony Computer Entertainment v. Pacific Game Technology (Holding) Ltd**	UKRDR and CRDR	Computer games console	18-Oct-06	Chancery Division (Patents Court)	Fysh Q.C.	yes	yes	yes	
10	**Procter & Gamble Co v. Reckitt Benckiser (UK) Ltd**	CRDR	Spray fresheners	13-Dec-06	Chancery Division (Patents Court)	Lewison J.	yes	yes	yes	
11	**Procter & Gamble Co v. Reckitt Benckiser (UK) Ltd**	CRDR	Spray fresheners	10-Oct-07	Court of Appeal (Civil Division)	May, L.J.; Dyson, L.J.; Jacob, L.J.	yes	no	yes	
12	**Walton v. Zap Ltd**	UKRDR	Poncho	22-Jan-07	Designs Registry	James A.	yes	/	yes	
13	**Green Lane Products Ltd v. PMS International Group Plc**	CRDR	Spiky plastic balls	19-Jul-07	Chancery Division (Patents Court)	Lewison J.	no	no	yes	
14	**Green Lane Products Ltd v. PMS International Group Plc**	CRDR	Spiky plastic balls	23-Apr-08	Court of Appeal (Civil Division)	Ward, L.J.; Jacob, L.J.; Rimer, L.J.	no	no	yes	
15	**J Choo (Jersey) Ltd v. Towerstone Ltd**	CRDR	Handbag	16-Jan-08	Chancery Division	Floyd, J	yes	yes	yes	Also CUDR
16	**Rolawn Ltd v. Turfmech Machinery Ltd**	UKRDR	Wide area mower	7-May-08	Chancery Division	Mann J.	yes	no	yes	Also UKUDR

17	**Central Vista (M) Sdn Bhd v. Pemi Trade sro**	UKRDR	Liquid confectionery products	18-May-09	Designs Registry	Edward Smith	yes	/	yes	
18	**Dyson Ltd v. Vax Ltd**	UKRDR	Vacuum cleaner	29-Jul-10	Chancery Division (Patents Court)	Arnold J.	yes	no	yes	
19	**Dyson Ltd v. Vax Ltd**	UKRDR	Vacuum cleaner	27-Oct-11	Court of Appeal (Civil Division)	Jackson, L.J.; Black, L.J.; Sir Robin Jacob	yes	no	yes	
20	**Ifejika v. Ifejika** **Ifejika v. Lens Care** **LtdIfejika v. Lens Care Ltd**	UKRDR	Contact lens cleaning device	23-Jul-09	High Court	HHJ Fysh	no	n/a	yes	Also UKUDR but not in issue - see 2011 case
21	**Ifejika v. Ifejika** **Ifejika v. Lens Care** **LtdIfejika v. Lens Care Ltd**	UKRDR	Contact lens cleaning device	25-May-10	Court of Appeal (Civil Division)	Maurice Kay, L.J.; Rix, L.J.; Patten, L.J.	yes	n/a	yes	Also UKUDR but not in issue - see 2011 case
22	**Samsung Electronics v. Apple**	CRDR	Tablet	18-Jul-12	Chancery Division (Patents Court)	Birss Q.C.	yes	no	yes	
23	**Samsung Electronics v. Apple**	CRDR	Tablet	18-Oct-12	Court of Appeal	Longmore L.J., Kitchin L.J.; and Jacob L.J.	yes	no	yes	
24	**Bayerische Motoren Werke Aktiengesellschaft v. Round & Metal Ltd**	CRDR	Car wheels	27-Jul-12	Chancery Division (Patents Court)	Arnold J.	yes	yes	yes	
25	**Pendle Metalwares Ltd (t/a Thomas Barker & Son) v. Walter Page (Safeway's) Ltd**	CRDR	Cigarette bin	31-Jul-12	Chancery Division	Stuart Isaacs Q.C.	yes	yes	no	Also UKUDR
26	**Mainetti v. Hangerlogic**	UKRDR	Garment hangers	24-Oct-12	Patents County court	Mr Recorder Ian Purvis, Q.C.	yes	yes	yes	