



FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FÖDERATION
VON PATENTANWÄLTEN

DESIGN PROTECTION



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INTRO: Consumer demand for the most innovative products continues to grow. While this growth has occurred, companies are seeing their industrial designs simulated faster and more often. Are infringers getting away with it? Which countries have design patent or registration systems that enable effective grant and enforcement of design rights? Which countries could do better? And what do users want from a design protection and/or an enforcement perspective?

How to navigate design-related issues?

TOPIC #1: Why is design important?



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- Who is KUKA?
- Situation in industrial robotics
 - yesterday's concept: humanless factory
 - today's concept: man robot collaboration
 - Need for filing design application also for industrial robots



Who is KUKA?

- Germany's largest producer of industrial robots
- Founded 1898 as „**K**eller und **K**nappich Augsburg“ for producing acetylene-gas. Later development of acetylene welding.
- 1973 production of the first industrial robot at KUKA
- 2014 about 8500 employees worldwide generating about 2 billion € total revenue.



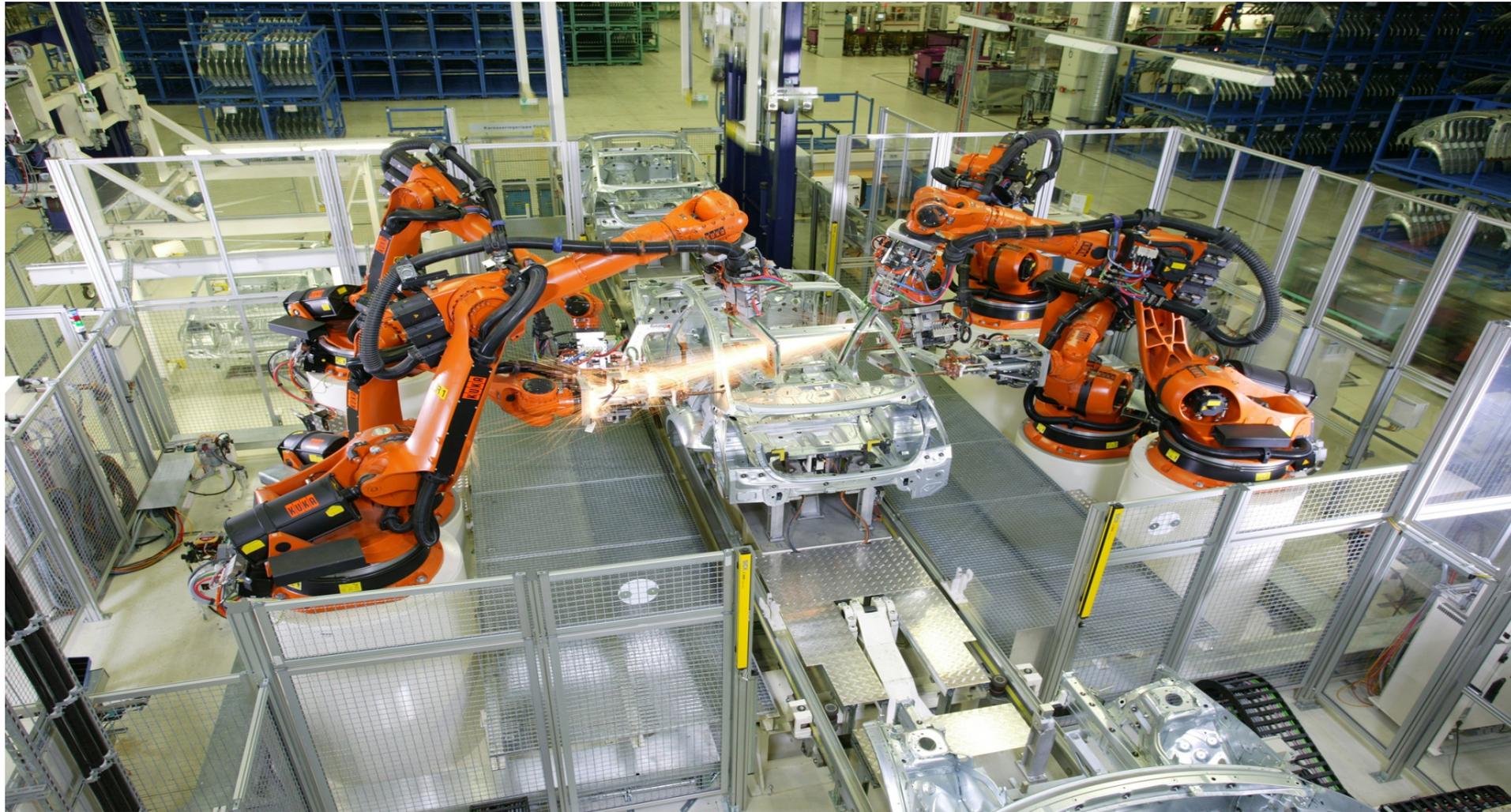
Bringing humans and robots together (in 3 minutes)



Yesterday's concept of manufacturing ...



... humanless operation of robots behind a security fence.



Today's concept: Human Robot Collaboration





reddot award
product design

KR 240 K „Quantec“

2012



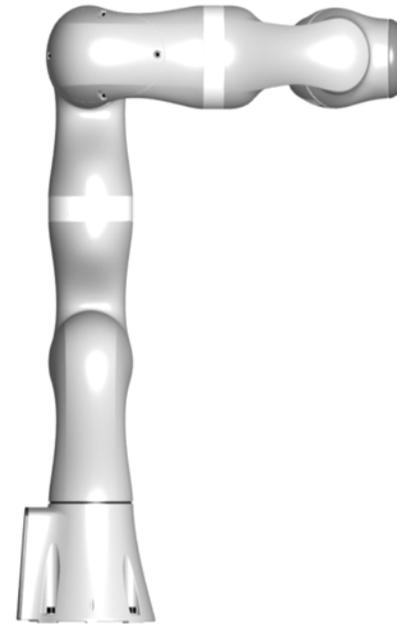
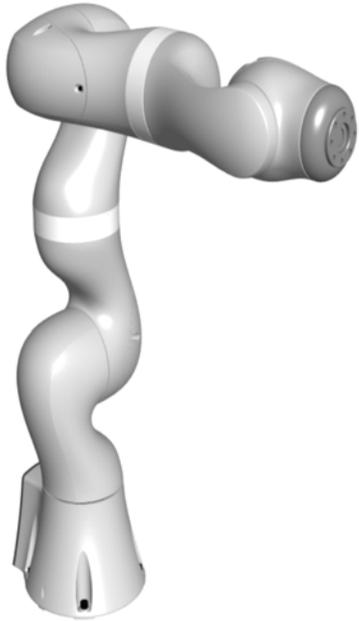
reddot award
product design

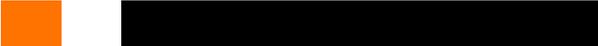
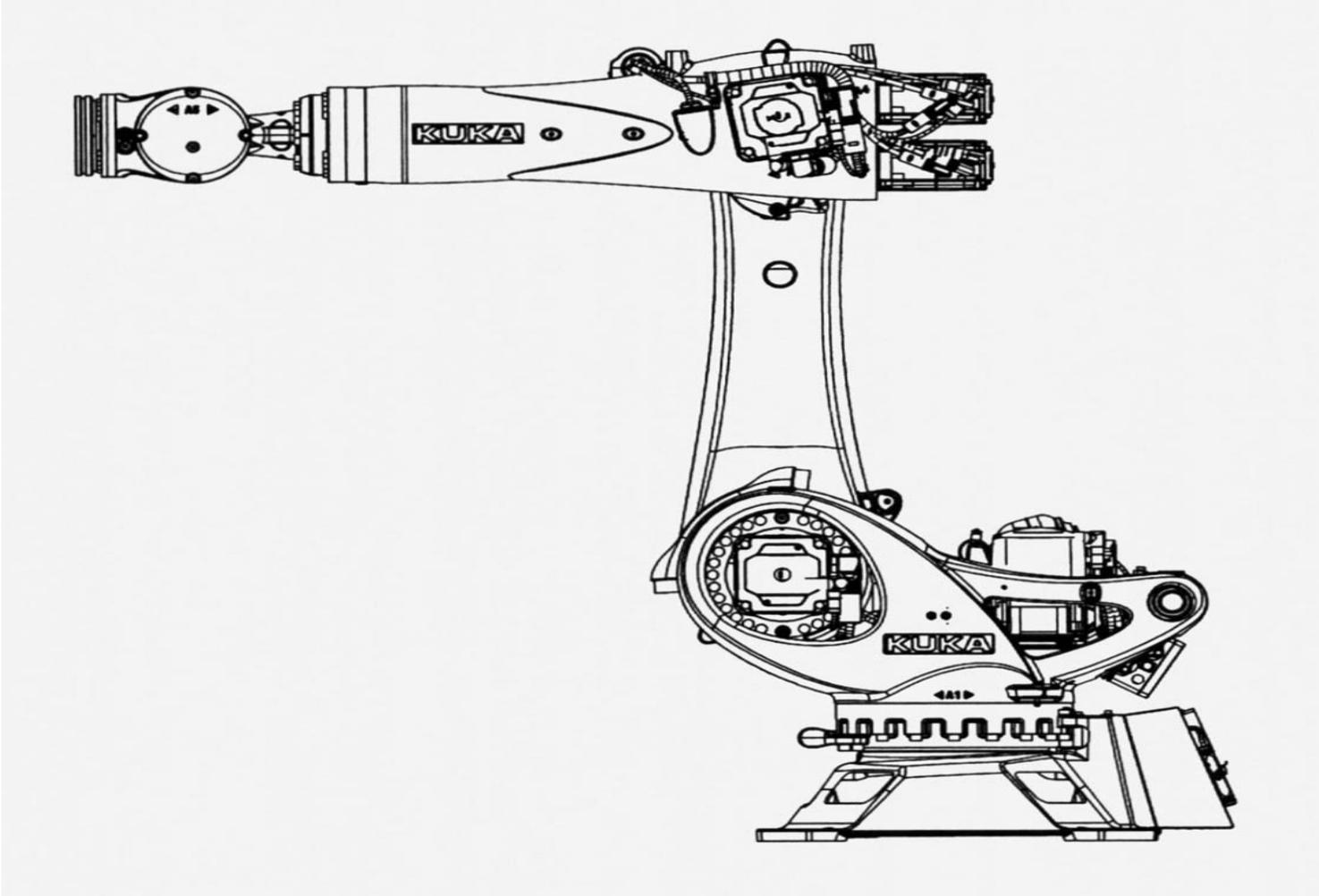
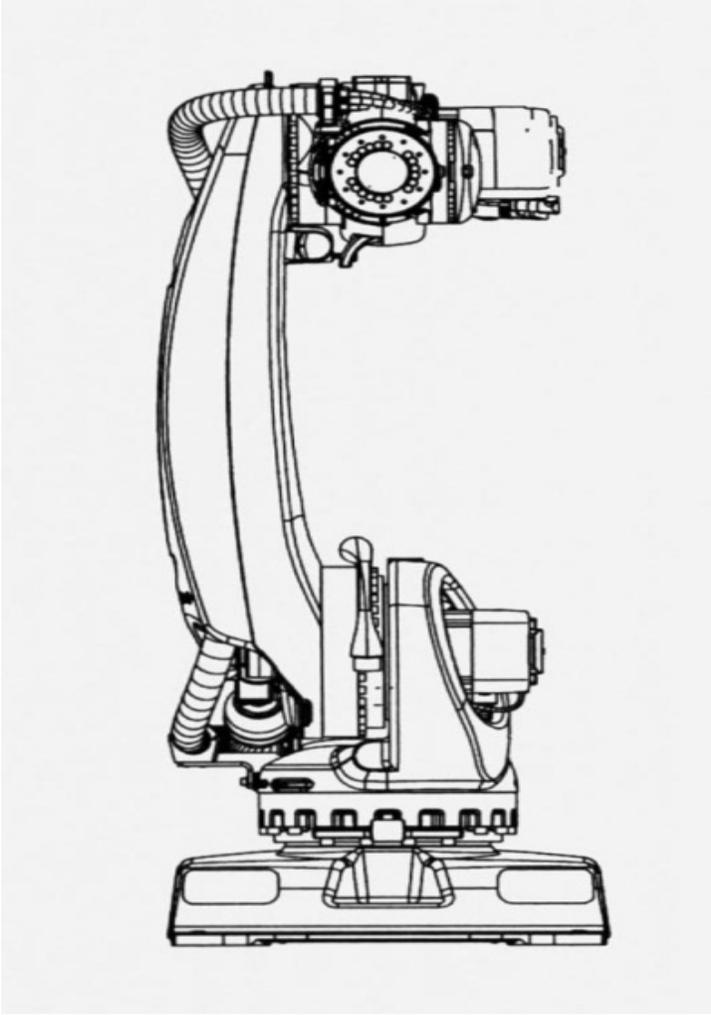
LBR iiwa

2014

LBR iiwa – European Design

KUKA







FIESTA



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▼ | MODELS

FUSION



▼ | MODELS

MUSTANG



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TAURUS



▼ | MODELS

EDGE



▼ | MODELS

ESCAPE



▼ | MODELS

EXPEDITION



▼ | MODELS

EXPLORER



▼ | MODELS

FLEX



▼ | MODELS

F-150



F-SERIES SUPER DUTY



TRANSIT

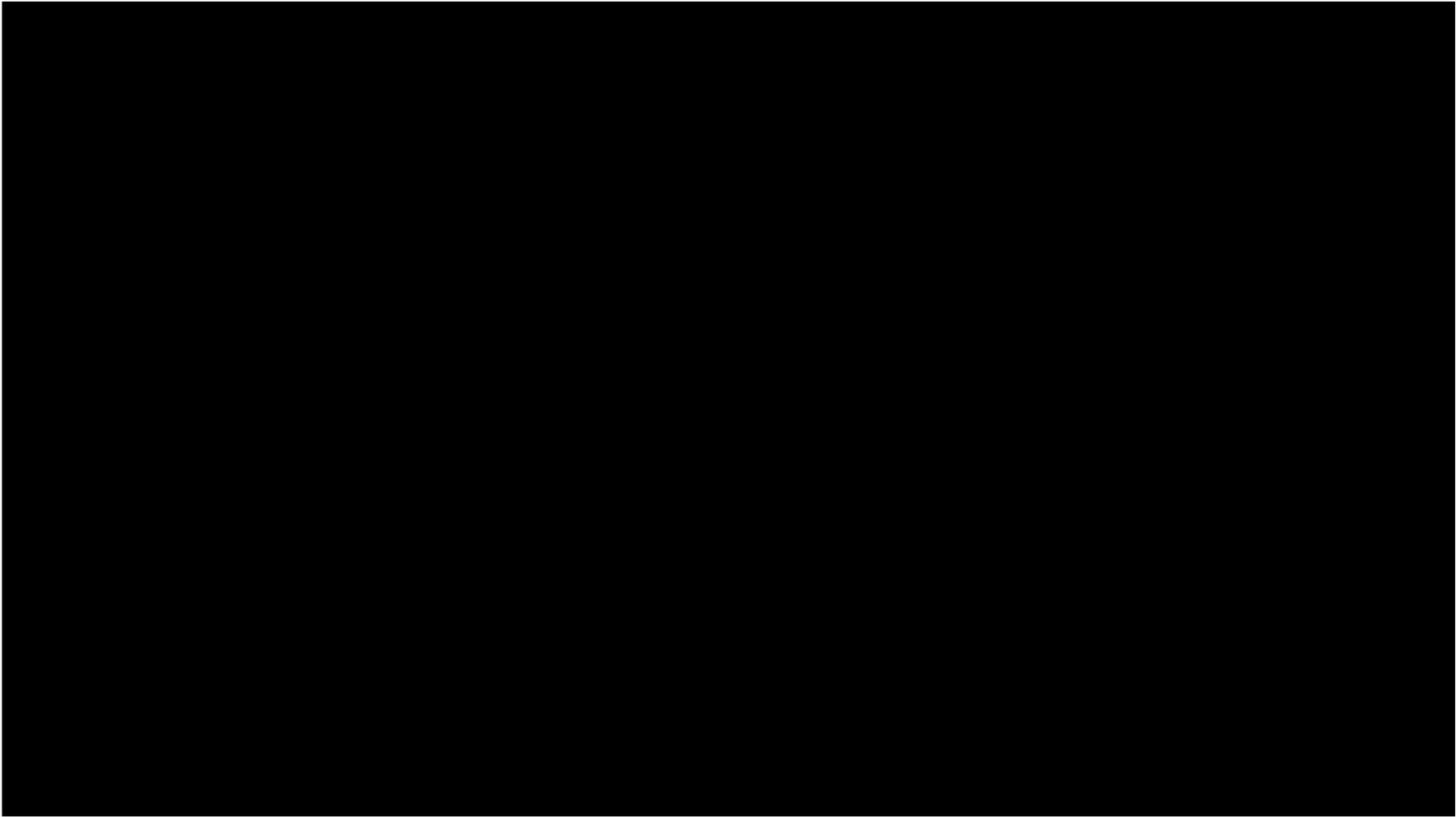


TRANSIT CONNECT



E-SERIES





Ford Mustang GT

How products are designed?

Millimeters matter





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Topic #2:

Where does your company file your designs and why?

Primary markets?

Manufacturing countries?

Locations of infringement?

Emerging markets?



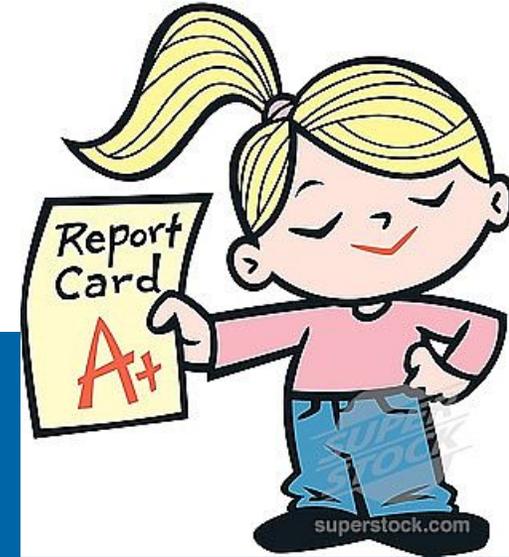


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Topic #3: Report Card

- Which countries are working well and which are not (or could be better)
- Which systems are working well and which are not (or could be better)
 - (1) registration systems only
 - (2) registration system BUT examination required to enforce, or
 - (3) full examination system providing a higher BOP



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Topic #4: Design Timing – Speed up and/ Slow Down

- How do you deal with the challenges?
 - Quick infringements?
 - Need to keep secret?
- How do you analyze and/or address these considerations?





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Topic #5:

Replacement parts?

Lead-in...

Branded competitors

“Unbranded” competitors

Land Rover Range Rover Evoque
and Landwind E32

But what about replacement
parts?



Parts Act H.R.1663

SEC. 2. EXCEPTION FROM INFRINGEMENT FOR CERTAIN COMPONENT PARTS OF MOTOR VEHICLES.

(j)(1) With respect to a design patent that claims a component part of a motor vehicle as originally manufactured—

(A) it shall not be an act of infringement of such design patent to make or offer to sell within the United States, or import into the United States, any article of manufacture that is similar or the same in appearance to the component part that is claimed in such design patent if the purpose of such article of manufacture is for the repair of a motor vehicle so as to restore such vehicle to its appearance as originally manufactured; and

Parts Act H.R.1663 (cont.)

(B) after the expiration of a period of 30 months beginning on the first day on which any such component part is first offered to the public for sale as part of a motor vehicle in any country, it shall not be an act of infringement of such design patent to use or sell within the United States any article of manufacture that is similar or the same in appearance to the component part that is claimed in such design patent if the purpose of such article of manufacture is for the repair of a motor vehicle so as to restore such vehicle to its appearance as originally manufactured.

United Kingdom

Patent Act, Section 7A(5):

“The right in a registered design of a component part which may be used for the purpose of the repair of a complex product so as to restore its original appearance is not infringed by the use for that purpose of any design protected by the registration.”

Australia

DESIGNS ACT 2003 – SECT 72

Certain repairs do not infringe registered design ... if...(b) the product is a component part of a complex product; and (c) the use or authorisation is for the purpose of the repair of the complex product so as to restore its overall appearance in whole or part.

South Africa

- ▶ THE SUPREME COURT OF APPEAL OF SOUTH AFRICA 2013
- ▶ BMW Design Registrations for
 - Hood, Grille, Headlight, Fender
- ▶ Court found parts functional
- ▶ S. African law exempts designs which are:
 - “necessitated by the function which the article to which the design is applied, is to perform”

BMW v Grandmark

“[13] The designs now in issue are designs of individual components, and must be judged for the qualities of the individual components, independently of the design of the built-up vehicle. The articles embodying the designs are not selected by customers for their appeal to the eye. They are selected solely for the function they perform – which is to replace components so as to restore the vehicle to its original form.”

BMW v Grandmark (cont.)

“[15] There is no suggestion that the purpose of the BMW components is to be fitted, upon selection by customers, to vehicles of a different kind. The purpose they are intended to serve is solely to replace the components of the respective BMW vehicles.

[16] In those circumstances the designs are purely functional and were rightly held not to qualify for registration as aesthetic designs.”



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Topic #6: Iterative designs – Zealous/Overzealous Fans

- Design revisions year to year. Make changes to refresh but also keep some common DNA
- However, fan blogs and blogging also guess designs.
- Goal: Obtain valid rights but what to do:
 - if fans get close (validity to your design + unregistered design threat)
 - If design has strong similarity to prior design
- Rethink law? Possibly allow originator to get more scope and a lower validity test on increments; Require reduction to practice and/or commercialization



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Topics #7 and #8: Inventorship and ownership issues?

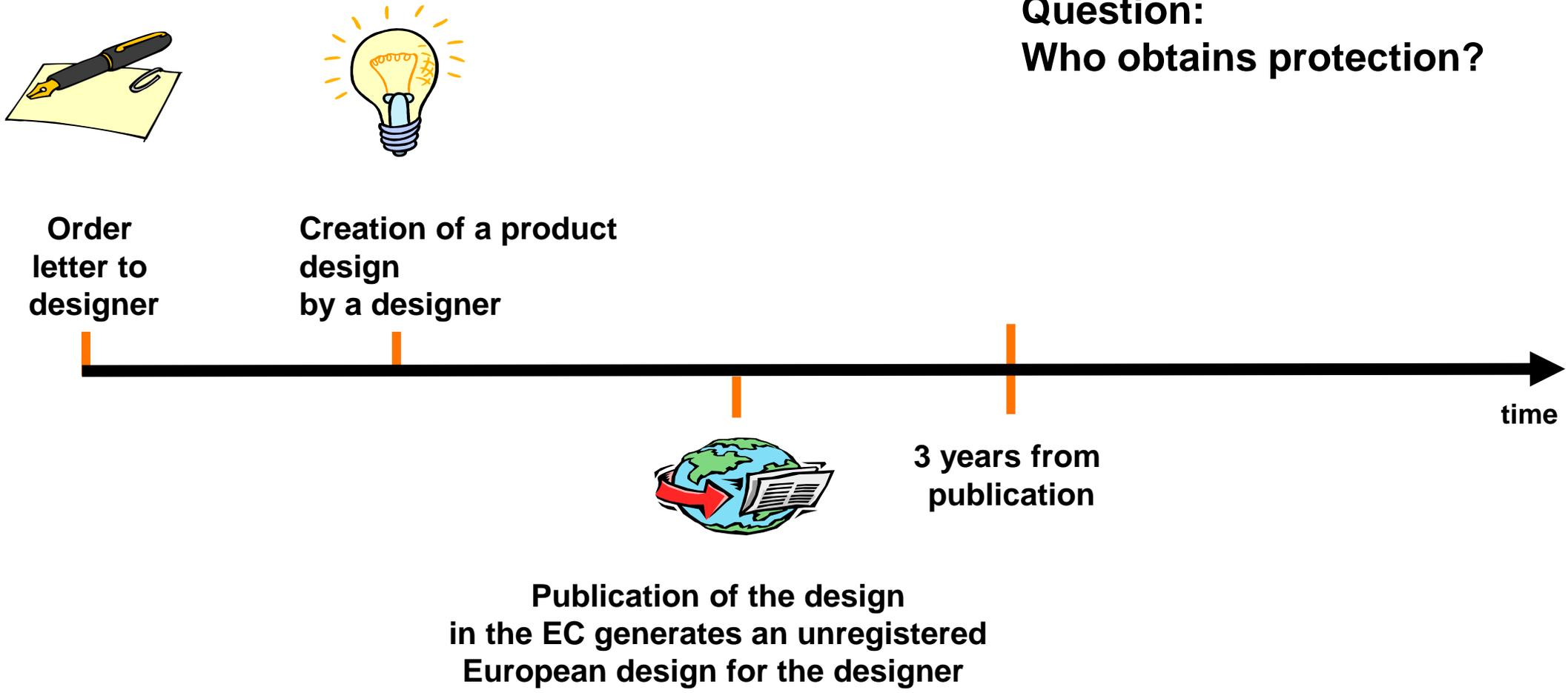
Employee inventors

Consultants/ or contract inventors - Agreements

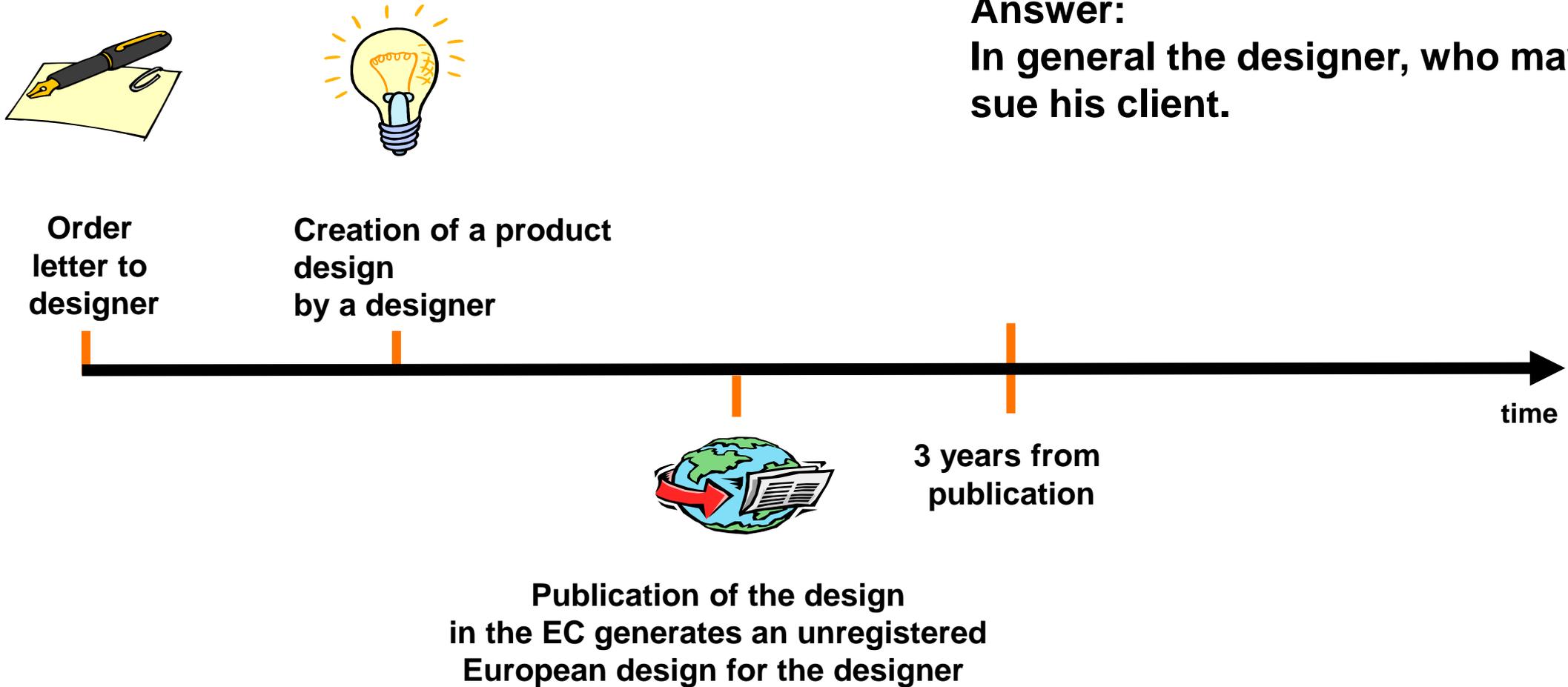
What should/can OC do to help?

Unregistered design rights

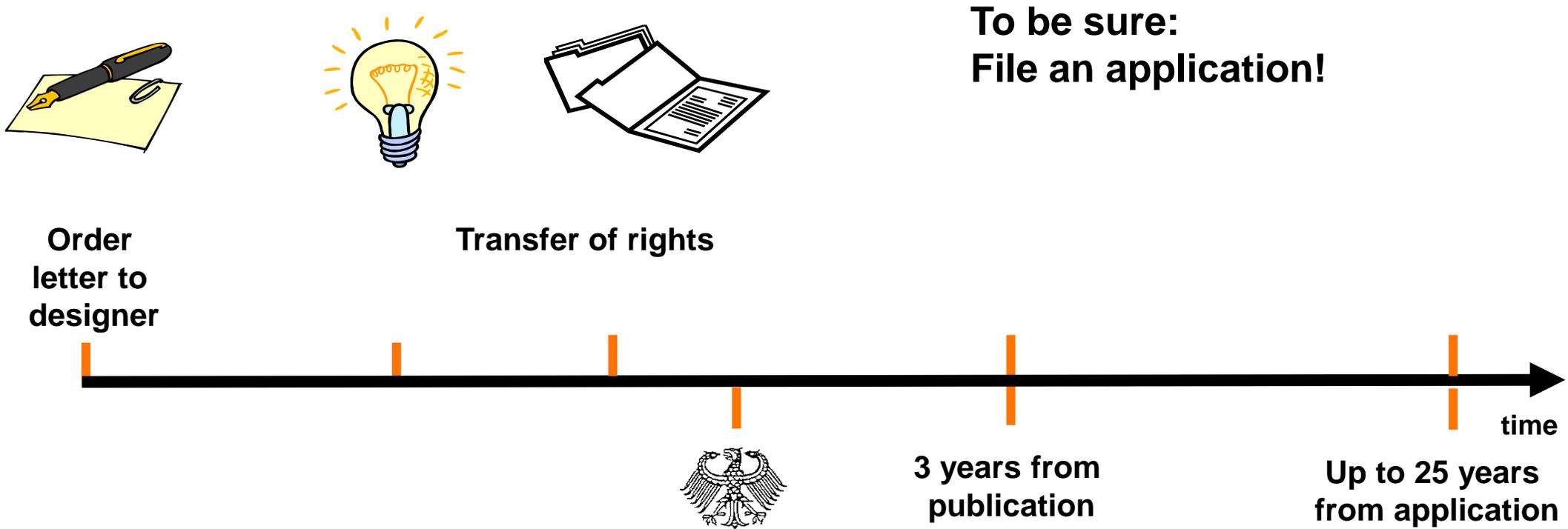
- 1) how to deal with the danger/risk
- 2) Equitable to non-residents?
- 3) Fixes: Grace period



**Question:
Who obtains protection?**



Answer:
In general the designer, who may sue his client.



**To be sure:
File an application!**

**Application for a registered design before publishing or
12 month after publishing at the latest (in EC)**



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Topic #9: Functionality (ornamentality)

Different jurisdictions, Different laws, etc

How to navigate the minefields?

US: Two Functionality Tests

- ▶ **Functionality Test for Infringement**
 - A design patent only protects the ornamental (non-functional) features of a design
- ▶ **Functionality Test for Validity**
 - A design patent is invalid if the design is solely dictated by function (all features are functional)



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Topic #10: Design relationship to Branding

Product configuration marks? Color? Etc.

Industrial Robots



Industrial Robots



Although many robot manufacturers use a specific color for their robots, the German Patent and Trademark Office objected to a trademark application for the color orange for robots as lacking distinctiveness.





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Topic #11: VIRTUAL DESIGN THEFT

Are most companies aware of it?

Do they/you care?



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Kuka Robot Manipulator

by shiva3d

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2015 Ford Mustang GT

by HKV Studios

\$199

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Topic #12: Where have you seen infringements?
(what keeps you up at night)

What types of infringement?

Have you enforced?

Has it been successful?



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Topic #13: Graphic User Interfaces?

How important are these to your company?

Do you see a change in /trend for the future?

Are you satisfied with design laws: inconsistencies and/or limitations?



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Additional Questions?



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Thank you for you attention!!!

