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Introduction

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INTRODUCTION

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Professor Reichman pointed out that for many years, industrial designs were regarded as orphans in the intellectual property area, but now we are getting to a situation where all three of the big disciplines—patents, trademarks, and copyrights—are seeking to be the adoptive father and mother of this discipline.

I think there are four issues that really come up in the industrial design area. First, what should we be seeking to protect? Is it just anything that anybody wants to copy, or should there be some higher standard? If we do decide what it is we want to protect, what means should be used to protect it—a patent-type system with registration, copyright arising automatically, or slavish imitation-type (similar to section 43(a) of the Lanham Act[1]) protection, which is akin to trademark? Should there be derogations from the rights given, for example, to permit spare part manufacture? Should spare part manufacturers be treated any differently under a design regime than under a patent regime? And finally, there are questions such as whether design protection should be the same terms for all types of designs. Are there differences in what should be protected between aesthetic designs and purely functional designs? Those are the issues which I think we are going to be addressing during this session.

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1. 15 U.S.C. § 1125(a) (1988 & Supp. IV 1992).