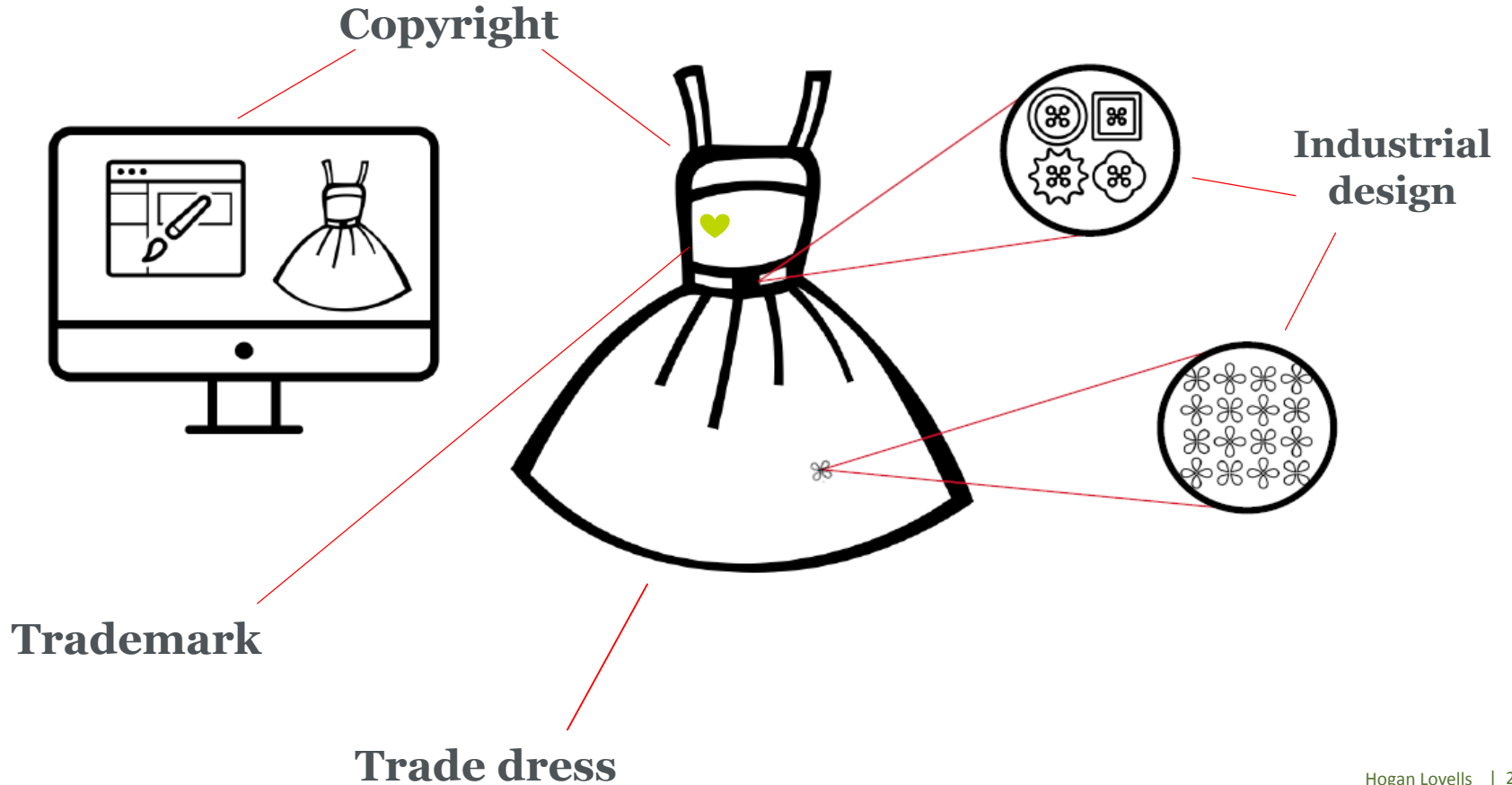




Temporary protection of
industrial designs for the
fashion industry

Common tools



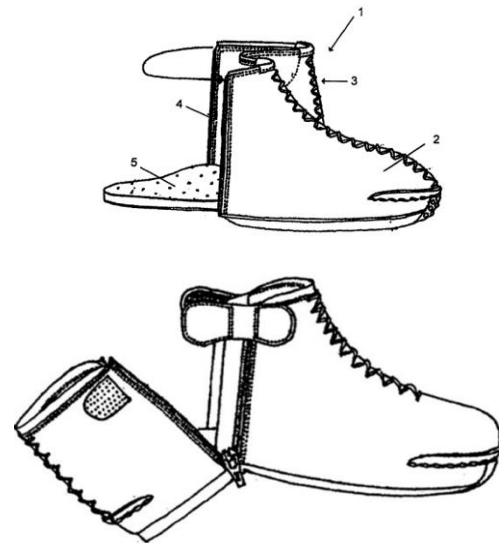
Uncommon tools

Trade secret



Технология изготовления воощных принтов в африканском стиле, принадлежащая голландской компании Vlisco, десятилетиями охраняется в качестве секрета производства.

Invention



Фиг.8

Патент № 2395222 на изделие, относящийся к конструкции ботинка, способу его надевания на ногу и снятия с ноги человека

Copyright: particularities in Russia

- No fees to obtain protection
- High standard of proof of copyright ownership in court
- "Parallel thinking" defence strategy
- Risk that the design is considered to be not protected by copyright



Uncertainty for designers



August Gernster Ringfabrik vs. Almaz LLC

August Gernster Ringfabrik filed a copyright infringement claim against Almaz LLC, claiming unlawful copying of the design of wedding rings.

The IP Court has confirmed copyright ownership of the plaintiff and found copyright infringement.



Gerstner designed rings



Almaz LLC designed rings

Namfleg vs. Sunlight

NamfleG LLC filed a copyright infringement claim against several companies offering SUNLIGHT branded jewellery, claiming unlawful copying of their rings' designs

The courts confirmed that Plaintiff's design is protected by copyright, but decided that similarity of styles is insufficient to find copyright infringement



Namfleg rings



Sunlight rings

Copyright: particularities



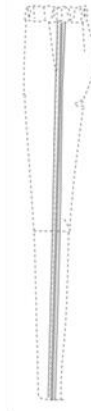
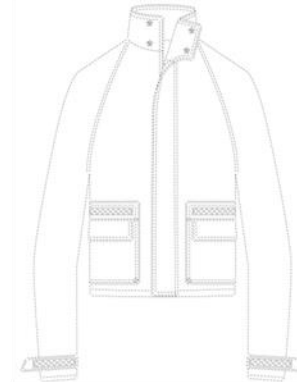
Copyright: particularities



- Does plagiarism incentivize the fashion industry?
- Who is a trendsetter: a designer or a consumer (street style)?
- Do modern designs deserve copyright protection?

Industrial design in fashion: particularities in Russia

- Industrial designs are commonly used for bags, shoes, accessories, perfume bottles
- Where there is a smooth examination process, an industrial design application converts to a patent within about 15-20 months
- This does not always keep pace with the life cycle of a fashion trend
- Temporary protection for industrial designs has been introduced to the Russian Civil Code – Article 1392 (effective starting from 27 June 2019)



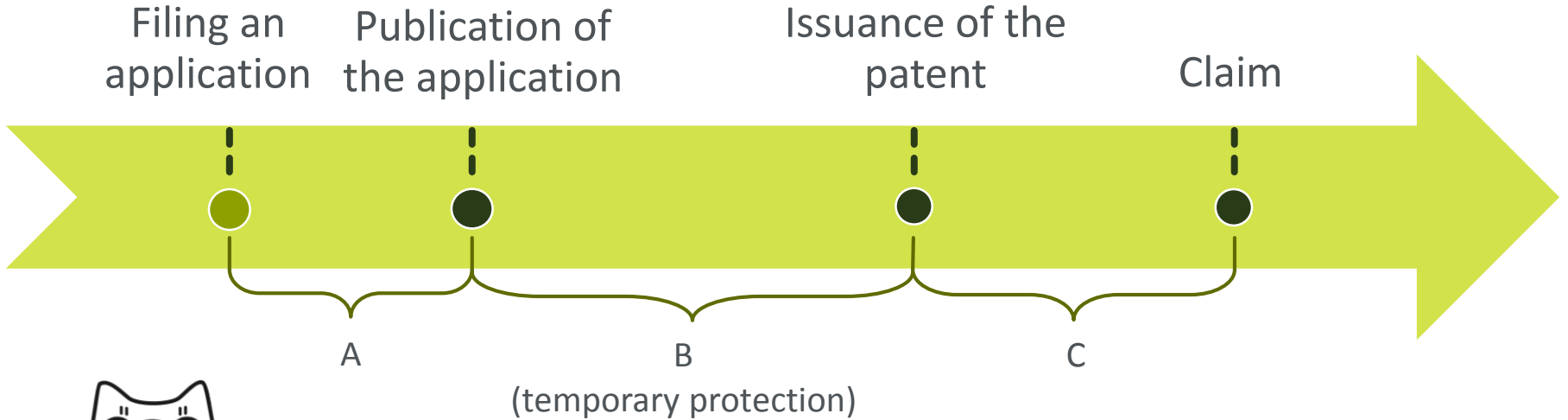
New initiative: Temporary protection of industrial design

Temporary protection is granted:

- from the application's publication date
- to the date of publication of the information on the granted patent
- as a set of essential features; reflected in images contained in the published application
- to only the essential features reflected in images contained in the Russian PTO's decision to issue the patent

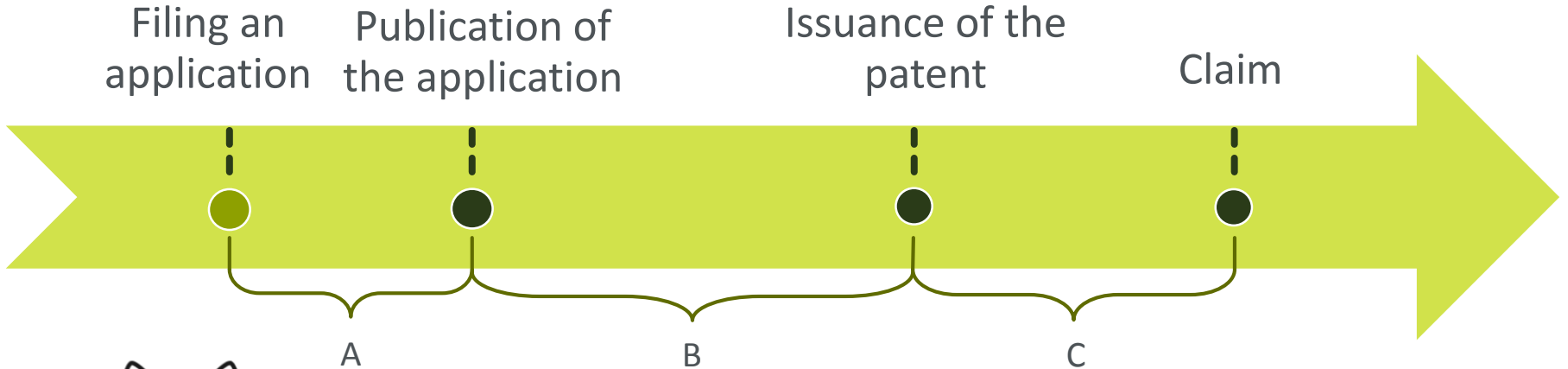


What is temporary protection?



Actual or statutory damages may be claimed for period C, while compensation may be claimed for period B (Article 1392 of the Russian Civil Code)

What is temporary protection?



May C&Ds be circulated during period B?

Having conducted IP clearance, designers may be reluctant to market similar designs: being afraid of potential compensation claims during period B?

Temporary protection: pros and cons

Advantages:

- Takes into account a fashion trend life cycle
- Incentivizes designers to create
- Copying in the fashion industry becomes more difficult
- Facilitates young designers' entry into the fashion market



Disadvantages:

- Unjustified monopoly for period B in case of refusal to grant a patent



Questions?

