



Courtesy: Roces S.R.L.

How extensive is industrial design protection?

Generally, industrial design protection is limited to the country in which protection is granted. Under the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration is offered. An applicant can file a single international deposit either with WIPO or the national office of a country which is party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant wishes.

www.wipo.int

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WIPO Publication No. L450ID/E

ISBN 92-805-0815-6

WORLD
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What is an industrial design?

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the **shape** or **surface** of an article, or of two-dimensional features, such as **patterns**, **lines** or **color**.

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.

To be protected under most national laws, an industrial design **must be non-functional**. This means that an industrial design is primarily of an aesthetic nature and any technical features of the article to which it is applied are not protected.

Why protect industrial designs?

Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

*Courtesy: Tonello SAS
di Gianni e Mario Tonello & C.*



Courtesy: Lindt & Sprüngli A.G.

When an industrial design is protected, the **owner** – the person or entity that has registered the design – is assured an exclusive right against **unau-**

thorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits **consumers and the public at large**, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.

Protecting industrial designs helps **economic development**, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products.

Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.



Courtesy: Victorinox

How can industrial designs be protected?

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be “**new**” or “**original**”. Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, “new” means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

Depending on the particular national law and the kind of design, an industrial design may also be **protected as a work of art under copyright law**.

In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other.

Under certain circumstances an industrial design may also be protectable under **unfair competition law**, although the conditions of protection and the rights and remedies ensured can be significantly different.