
Industrial Designs and The Hague Agreement: An Introduction

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What is an industrial design?

An industrial design is that aspect of a useful article which is ornamental or aesthetic. It 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 watches, jewelry, fashion and other luxury items, to industrial and medical instruments; from houseware, furniture and electrical appliances to vehicles and architectural structures; from practical goods and textile designs to leisure items, such as toys and pet accessories.

An industrial design is primarily, if not exclusively, of an aesthetic nature; the actual design itself, as opposed to the article to which it is applied, cannot be dictated, at least solely or essentially, by technical or functional considerations.

In general, an industrial design must be reproducible by industrial means. Otherwise it would constitute a “work of art”, protectable by copyright.

The object of protection of an **industrial design** is to be distinguished from that of a **patent**, primarily because the former relates to the **appearance** of an article. An industrial design consists precisely of that aspect of an article which is **ornamental** or **aesthetic** and which is not determined by technical or functional necessity. The object of patent protection, to the contrary, whether it is a product or a process, must first and foremost constitute an “invention”, which generally means that, among other requirements, it must be of practical use.

An **industrial design** is to be distinguished from a **mark** (or trademark) primarily because it must not necessarily be distinctive. A mark, to the contrary, although it may consist of different elements which may or may not be ornamental, must always be distinctive, since a mark must be capable of distinguishing the goods or services of one enterprise from another. The functions of and therefore the requirements for protecting industrial designs and marks are quite different.

Finally, industrial designs can only be protected for a fixed period of time (usually for a maximum of 15 to 25 years, depending on the particular national law).

Why protect industrial designs?

By protecting an industrial design, the owner is ensured an exclusive right against its unauthorized copying or imitation by third parties.

Since industrial designs are that aspect of an article which makes it aesthetically appealing and attractive, they do not merely constitute an artistic or creative element; they also serve to add to the commercial value of a product and facilitate its marketing and commercialization.

As such, an effective and modern system for the protection of industrial designs benefits:

- the *owner*, as industrial design protection contributes to the market development of his products and helps ensure a fair return on his investment;
- *consumers and the public at large*, as industrial design protection is conducive to fair competition and honest trade practices and encourages creativity, thus leading to more aesthetically attractive and diversified products; and
- *economic development*, as industrial design protection injects creativity in the industrial and manufacturing sector, contributes to the expansion of commercial activities, and enhances the export potential of national products.

Another interesting feature of industrial designs is that they can be relatively simple and inexpensive to develop and to protect; therefore, they are reasonably accessible to small and medium-sized enterprises, even to individual artists and craftsmen, in both industrialized and developing countries.



Courtesy: Swatch AG

How can industrial designs be protected?

In general, an industrial design must be registered in order to be protected under the industrial design law.

As a general rule, to be registrable, the design must be **“new”** or, under some laws, **“original”**.

What constitutes **“new”** or **“original”** may differ from country to country. The same is true for the registration procedure itself, in particular, whether an examination as to form only or also as to substance, especially to determine novelty or originality, is carried out.

Once the industrial design is registered, a registration certificate is issued.

In principle, the industrial design must be published, whether before, at the time, or within a period after registration, depending on the particular national law and/or on the decision of the applicant.

The term of protection is typically five years, with the possibility of further periods of renewal, which may total, in many countries, up to a maximum of 15 to 25 years.

Depending on the particular national law and the kind of design, a design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can be **“cumulative”**; that is, these two kinds of 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.

Under copyright or unfair competition laws, the conditions of protection and the rights and remedies ensured can be very different.



Courtesy: Volkswagen Aktiengesellschaft

What are the advantages of protecting industrial designs under the Hague Agreement?

As a general rule, industrial design protection is limited to the territory of the country or the region where protection is sought and granted. Instead of filing separate national and/or regional applications according to different national/regional procedures, under the Hague system for the international registration of industrial designs, nationals and residents of, or companies established in, a Contracting Party to the Agreement, may **obtain industrial design protection** in a number of countries through a simple and inexpensive procedure: a single “international” application, in one language (English, French or Spanish), upon payment of a single set of fees, in one currency, and filed with one office (either directly with the International Bureau of WIPO or, under certain circumstances, through the national Office of a Contracting Party).

Once the industrial design is recorded in the International Register, it enjoys, in each Contracting Party designated in the international registration, the protection which is conferred on industrial designs by the law of that Contracting Party, unless protection is expressly refused by a national/regional office. The international registration is thus equivalent to a national/regional registration. At the same time, the international registration facilitates the **maintenance of protection** with a single request to renew the international registration and to record any changes, e.g., in ownership or addresses.

The Hague Agreement Concerning the International Registration of Industrial Designs was adopted in 1925 and entered into force in 1928. It was subsequently revised several times, in particular by the 1960 Act and the 1999 Act. The Acts of the Hague Agreement operate as independent treaties with the 1999 Act being applicable to the relations between Contracting Parties bound by both Acts. A list of Contracting Parties to the Hague Agreement is available on WIPO's website, at the following address:
www.wipo.int/hague/en/members/.



Courtesy: Tod's S.P.A.

The Geneva (1999) Act of the Hague Agreement

The 1999 Act (also called the Geneva Act) was adopted on July 2, 1999 and entered into force on April 1, 2004. The 1999 Act was adopted with a view to extending the Hague system to new members. It introduced certain procedures intended mainly to facilitate accession by countries whose laws provide, in particular, for a novelty examination of industrial designs. It also incorporated features to make the Hague system more attractive to the users of the system.

Furthermore, the 1999 Act also provides for a link between the international system and regional registration systems of intergovernmental organizations, such as the Registered Community Design (RCD) system of the European Union (EU) or the regional industrial design registry of the African Intellectual Property Organization (OAPI). The 1999 Act entered into force for the EU on January 1, 2008, and for OAPI on September 16, 2008.

This means that anyone within the EU or OAPI States can now use the Hague system. It also means that the Hague system can be used to obtain the effects of an RCD (by designating the EU in the international application) or of a regional application with OAPI (by designating OAPI).

More information about the Hague Agreement is available on WIPO's website (which also includes an electronic filing interface for filing an international application) at: www.wipo.int/hague/en/.

More information may be obtained from:

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Courtesy:
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