

Understanding Industrial Design

I. What is an industrial design?

Industrial design rights are obtained through an application made at the national intellectual property (IP) Office of Seychelles.

A design is the outward or visible appearance of the whole or parts of a product, resulting from its features. These features can be:

- Lines;
- Colours;
- Shapes;
- Textures;
- Contours;
- Materials;
- Ornamentation.



Registered industrial design by Vitra Patente. Source: EPO.

II. Qualifying for industrial design protection

To qualify for protection an industrial design must:

- Comply with the definition of a design under the applicable law of Seychelles.
- be new – i.e., no identical design has previously been made available to the public. Designs are deemed identical if their features differ only in immaterial details.
- be original – the design must have been independently created by the designer and not a copy or imitation of an existing design. Designs are not original if they do not significantly differ from known designs or combinations of known design features.
- have individual character – meaning that the overall impression that a design produces on an informed user differs from the overall impression produced on such a user by any other design which has already been made available to the public.

A product does not have to be produced on an industrial scale in order for it to be a design. The concept covers all products without limitation as to production method or volume of production. Designs protect all applied art.



Examples of industrial designs

- **Logos**, such as the UPS logo, which is also protected as a trade mark.
- **Computer icons**, such as the weather icon in the top right-hand corner.
- **Ornamentation** that can be placed on various different items, in this case the Hermès horses.
- **Single products**, such as a clock or a chair.
- **Complex products** such as the Volkswagen Beetle.

Source: EPO IP Teaching Kit

III. What cannot be classed as an industrial design?

Neither the technical function of a product nor the abstract invention of the product can be protected by a design. However, design protection is possible for the specific embodiment of the product, in which case the same item will have multiple protection, that is design protection and patent or utility model protection.

Any item that does not comply with the definition - in other words where there is a lack of outward appearance or the item does not have an industrial or handicraft nature - is excluded.

A design is the outward appearance of a product. Ideas, smells, fragrances, music and sounds cannot be designs in themselves.

The following are also excluded because the product is not an industrial or handicraft item:

- products belonging to the natural world;
- colours *per se*, without shape or contour; and
- words in a standard typeface without any additional figurative elements.

Computer programmes are excluded from design protection, although computer icons, web designs and graphical user interfaces are not.

IV. The industrial design registration process

Filing of an industrial design application

An industrial design application must be filed and paid for in national IP office of Seychelles. An applicant who is not domiciled or who has no established business in Seychelles shall appoint an agent who is domiciled in Seychelles.

In general, the following steps must be taken:

First, you must submit a duly completed application form and pay the required fees. Reproduction(s) of the industrial design(s) for which protection is sought may need to be included.

The office will examine the application to make sure it complies with administrative requirements or formalities (application fee has been paid; the form is properly completed, etc.).

No search is made and no examination as to substance is carried out prior to registration of the industrial design.

Once it has been determined that there are no grounds for refusal, the design is registered, and a registration certificate issued. The registration of an industrial design in Seychelles is valid for a period of 5 years from the filing date of the application for registration, which may be extended for a further two consecutive periods of 5 years on payment of the prescribed fee.

The industrial property law of Seychelles allows for a grace period of 6 months for processing the registration of an industrial design. This period is counted from the date of disclosure of the industrial design to the public.

Rejection of an industrial design application

An industrial design application will be rejected if it:

- does not meet the requirements of novelty, originality and/or individual character;
- is dictated exclusively by the technical function of a product. Such technical or functional design features may be still protected by other IP rights (e.g., patents, utility models or trade secrets), depending on the facts of each case;
- is considered to be contrary to public order or morality.

V. What rights do I have when I register an industrial design?

The industrial design right holder has the exclusive right to prevent third parties not having the right holder's consent from making, selling, stocking for sale or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

VI. How are industrial designs relevant to my business?

Industrial designs make a product attractive and appealing to customers. Design drives consumer's choice: the appearance of a product can be a key factor in the consumer's purchase decision. In other words, the success or failure of a product may rest, at least partially, on how it looks. Industrial designs can therefore be particularly important for both small- and medium sized enterprises (SMEs) and larger companies alike, regardless of their sector of activity.

What are the advantages to my business of protecting my industrial designs?

The protection of industrial designs should form an integral part of any business strategy. The main reasons to protect industrial designs are the following:

- *Return on investments*: Protection contributes to obtaining a return on investments made in creating and marketing aesthetically attractive and innovative products.
- *Exclusive rights*: Protection provides exclusive rights for at least 5 years, to prevent or stop others from commercially exploiting or copying the industrial design.
- *Strengthen goodwill and brands*: Industrial designs are an important element of a company's brand. Protecting industrial designs contributes to protecting a company's brand and securing your market position.
- *Opportunity to license or sell*: Industrial rights may be sold or licensed to another enterprise, which will then be a source of income (royalties) for the right holder.
- *Positive image*: Protection helps convey a positive image of a company, since industrial designs are business assets which may increase the market value of a company and its products.
- *Reward*: Protecting industrial designs rewards and encourages creativity.

What happens if I don't protect my industrial design(s)?

If you fail to protect your industrial design(s), you will not enjoy exclusive rights to them. Your competitors may take a product to market, incorporating your industrial design, without getting your permission. If a competitor or anyone else makes, sells or imports products bearing or embodying a design which is a copy (or substantially copy) of your industrial design without your consent, you will have no legal means to fight them. Moreover, it is likely that copies of the industrial design will be sold at a lower price as competitors do not have to recoup the investments made in the creative process. This could decrease your market share for the product in and be harmful both to your firm's reputation and to that of your products.

The outward appearance of your product can give you substantial competitive edge. To prevent copycats and secure your rights, you should seek protection for the design of your new products. You can also seek protection for a part of your product. Only the appearance will be protected.



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