

Study Note: This module should take you a total of about 2 hours to complete. You can find convenient places for you to pause your studies after each main section.

Module 6: Industrial Design

Objectives

At the end of this module you will be able to:

- 1 Explain what an Industrial Design is in about 50 words
- 2 Explain the differences between Industrial Design protection and trademark and patent protection
- 3 List the benefits of Industrial Design protection for
 - The owner of the protection
 - The consumer of the product
 - The economy
- 4 Describe the way in which an Industrial Design can be protected

Introduction

This module describes the protection that can be obtained for a form of Intellectual Property called Industrial Design. The concept of Industrial Design will be described together with the benefits that can be obtained from Industrial Design protection.

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 the article, or two dimensional features such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry or handicraft: from watches, jewelry, fashion and other luxury items, to industrial and medical implements; from house ware, furniture and electrical appliances to vehicles and architectural structures; from practical goods and textile designs to leisure items, such as toys and pet accessories.



Examples: shapes or forms of chairs, telephones, cars, computers, airplanes, TV, watches, camera, etc.

Audio segment 1 : *Trademarks are signs often visual in nature that are affixed on goods or used in connection with the offering of services, and Patents are used to protect the inventive aspects of manufactured articles. What is the difference between trademarks and an Industrial Design?*

An Industrial Design is distinguished from a trademark primarily because it is constituted by the appearance of a product, which must not necessarily be distinctive (a prime requirement for a trademark). A trademark although it may consist of all kinds of visible signs, which may or may not be ornamental, must always be distinctive, since a trademark must always be capable of distinguishing the goods and services of one enterprise from another. Therefore the functions of, and justifications for, protecting industrial designs and trademarks are quite different.

The object of protection of an industrial design is different from that of a patent, primarily because an industrial design must relate to the appearance of the object and which is not determined by technical or functional necessity. The object of patent protection, in contrast, is determined by the functionality of an object or process since it must be an 'invention'.

SELF-ASSESSMENT QUESTION (SAQ)

SAQ 1: What would be the most likely form of protection for the following

- a) **A teapot**



- b) **A new form of electric motor**

- c) **The logo of the Open University**



Type your answer here:

[Click here for answer](#)

SAQ 1 Answer

- a) The most likely way that the intellectual property embodied in the teapot is through the protection of its industrial design. If however the teapot had a new and innovative way of brewing the tea it may be possible to protect that element as well by means of a patent.
- b) The most likely way would be though the use of a patent.
- c) This sign is most likely to be used as a trademark and therefore trademark protection is the most likely route

Why protect Industrial Designs?

By protecting an industrial design, the owner of the design is given a right against its unauthorized copying or imitation by third parties. In other words, the owner of a protected industrial design shall have the right to prevent third parties not having his consent from making, selling or importing articles bearing or embodying a design which is a copy of the protected design.

Since industrial designs are that aspect of an article which make it aesthetically appealing and attractive, they serve to add to the commercial value of the product and facilitate its marketing and commercialization.

To be protected under most national laws, an industrial design must appeal to the eye. Industrial design does not protect any technical features of the article to which it is applied.

Audio segment 2 : *Protecting Industrial Design clearly benefits the owner of the Industrial Design, but does it have other benefits?*

Yes you are right; the owner of an Industrial Design benefits through the industrial development of her/his products and the protection helps to ensure a fair return on investment.

However, the consumer and the public at large benefit as well, as industrial design protection is conducive to fair competition and honest trade practices, encourages creativity and thus leads to more aesthetically attractive and diversified products.

Also industrial design protection injects creativity into the industrial and manufacturing sector, contributes to the expansion of commercial activities, and enhances the export potential of national products.

So industrial design protection benefits the owner, the consumer and the economy in general. Another interesting feature of industrial designs is that they can be relatively simple and inexpensive to develop and protect. Therefore they are reasonably accessible to small and medium-sized enterprises, even to individual artists and craftsmen, in both industrialized and developing countries.

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, in order to be registered, the design must be **'new'** or **'original'**. Now what constitutes novelty or originality may differ from country to country, and indeed the registration process itself varies from country to country. In particular this can involve whether there is an examination or not as to the form and substance of the application for the registration of the design, especially to determine novelty or originality.

An industrial design must be capable of being reproduced by industrial means (industrial application).

Also it must be possible to apply an industrial design to an article which may be either two-dimensional or three-dimensional.



In principle, the industrial design must be published either before, at the time of, or in a stated period after, registration. This depends on the national law and sometimes on the decision of the applicant.

Furthermore, it should be borne in mind that registration of an industrial design is not necessarily the only means of protection. It is possible, if certain conditions are met, to protect industrial designs under copyright law or the law against unfair competition.

SELF-ASSESSMENT QUESTION (SAQ)

SAQ 2 : A clothes manufacturer wants to launch, as part of his new collection, a series of plain T-shirts in three different shades of color, i.e. white, blue and green. Can these T-shirts be protected by industrial design?

Type your answer here:

[Click here for answer](#)

SAQ 2 Answer

No, since the T-shirts do not present any element of novelty or originality. However, if the materials used to manufacture the T-shirts were new or original, or the shape of the T-shirt was new or original, industrial design could be applied.

How long does any protection last?

Again this varies from country to country but the term of protection is typically for 5 years with the possibility of renewal, which may total, in most countries, up to a maximum of 15 to 25 years. The minimum duration under the TRIPS agreement is 10 years.

Audio Segment 3 : *Is it ever possible for an industrial design to obtain copyright protection?*

Depending on the particular 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. This means that these two kinds of protection can exist concurrently. However in other countries, if copyright is allowed, it is mutually exclusive to industrial design protection. This means that once the owner chooses one kind, he loses the protection of the other.

Is there any other protection available for an Industrial design?

Under some circumstances and in some countries, an industrial design may also be protectable under unfair competition law. However it is worth stressing that the protection and remedies are different under the different forms of protection.

Can you get worldwide protection for an Industrial Design?

As a general rule, and in accordance with the Paris Convention, industrial design protection is limited to the country where protection is sought and granted. If protection is desired in several countries, separate national applications (or 'deposits') must be made and the procedures will normally be different in each country. However the Hague agreement concerning the International Deposit of Industrial Design helps to facilitate this process.

Summary of Industrial Design protection

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 the article, or two dimensional features such as patterns, lines or color. As with other forms of intellectual property it may be protected.

By protecting an industrial design, the owner is ensured an exclusive right against its unauthorized copying or imitation by third parties for a period of time, which is typically for 5 years with the possibility of renewal, up to a maximum of 15-25 years depending on the particular national law. The TRIPS provides for protection of a minimum of 10 years.

In most countries an Industrial Design must be registered in order to be protected under industrial design law and as a general rule in order to be registered, the design must be '**new**' or '**original**'. What constitutes its novelty or originality may differ from country to country and indeed the registration process itself varies from country to country. In particular this can involve whether there is an examination or not as to the form and substance of the application for the registration of the design, especially to determine novelty or originality.

Also an industrial design must be reproducible by industrial means.

Legislative Texts:

- Hague Agreement Concerning the International Deposit of Industrial Designs
- TRIPS Agreement and Paris Convention