

# Industrial designs

**Industrial designs are applicable in many business sectors. They protect the visual element of products, in particular their exterior, and allow companies to profit from unusual design ideas, which is why they are such a significant factor in commercial success. Efficiently protected industrial designs are an important element of an industrial property rights portfolio. JWP offers a comprehensive range of services regarding industrial design protection as part of a customized strategy of intellectual and industrial property protection.**

## What is an industrial design?

An industrial design is the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, shape, colours, texture, or materials of the product and its ornamentation, so long as the form is new and has individual character. Put simply, an industrial design refers to the external form of a product. Almost any product or craft can be protected as an industrial design. This definition is applied to a vast number of goods present on the market or their replaceable parts, e.g. car models, domestic appliances, furniture, clothes, toys, or groceries.

## Why industrial designs shouldn't be disclosed too early?

The more original and unique an industrial design is, the more important it is to protect it. However, in order for a design not to be rejected it has to be considered new and have individual character. Thus, it is vital to maintain the confidentiality of the design which is to be registered. Applications to register an industrial design must be made within 12 months from the moment the design is made public by the proprietor (and not by any other party), a period in which the design is considered to retain its novelty status, also known as "novelty relief". During this period the entitled party has the chance to assess whether the product embodying the design is viable enough to incur the costs of its registration.

## Why protect industrial designs?

By registering an industrial design, a company which has invested in creating a unique product design acquires an exclusive right for this design; it is therefore efficiently protected and tangible benefits may be accrued as a result. When a distributed industrial design becomes more popular and, therefore, more recognizable, it may be copied or imitated. If the industrial design is protected, it is awarded two kinds of rights: so-called "positive" rights - which are exclusive and allow the commercial and professional use of the registered design within a particular territory, and "negative rights" - which prevent any third party from making, offering, putting on the market, importing, exporting, or using the product in which the design is incorporated or to which it is applied, or stocking such a product for those purposes.

## What does the registration process involve?

There are three ways of acquiring protection for an industrial design - by following a national, community or international procedure.

Under the national procedure, the application is filed either with the Polish Patent Office (for protection on the territory of Poland) or with a patent office of another country (for protection in a particular country). If a design is to be protected in several countries, it is possible, on certain conditions, to use the international procedure. The system of International Registration of industrial designs, established pursuant to the Hague Agreement, makes it possible to file one application, with the same effect in each designated country being party to the Agreement. Applications are filed directly with the International Bureau of WIPO in Geneva. Community designs are registered in the European Union pursuant to the Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs. One of the base principles referring to the community laws of industrial property is that of unitary character. The unitary character of an industrial design makes this design effective on the territory of the EU, including Poland. A company holding rights to an industrial design may want to introduce this product into foreign markets. In such a case, it is possible to expand the protection thanks to priority rights. However, the application must be filed within 6 months from the date of the first application.

## How long does the protection last?

The protection of an industrial design is limited and lasts 25 years at maximum. Renewable official fees are payable every 5 years. A lack of payment will simply terminate the protection of a design pursuant to industrial property law.



### What products cannot be protected as an industrial design?

Internal parts of a product (component parts) which are invisible during normal use as well as spare parts used to repair the product to restore it to its previous appearance cannot be protected as an industrial design. Applications of industrial designs which are contrary to public order or morality or which contain symbols of the Republic of Poland such as the state emblem, colours, anthem, officially recognized symbols of other countries used in trade, or symbols which offend religious or patriotic feelings or national traditions, may be rejected.

### What is an industrial design search?

Prior to filing an industrial design application it is recommended to conduct a search in order to verify whether a particular design infringes the rights of any other party. The purpose of such a search is to find identical or similar industrial designs among the national industrial designs registered in the Polish Patent Office, international registrations of industrial designs designating Poland, international registrations of industrial designs designating EUIPO, as well as registered community designs published in the Community Design Register kept by EUIPO. A search report includes a list of industrial designs found during the search as well as the expert opinion of a trademark attorney on whether a particular design is unique enough to be registerable.

### ■ Experts



Magdalena Maksimowska  
Patent and Trademark Attorney  
e: magdalena.maksimowska@jwp.pl



Jakub Skrzypczak  
Patent and Trademark Attorney  
e: jakub.skrzypczak@jwp.pl



Joanna Janoszek  
Patent and Trademark Attorney (PL)  
European Patent Attorney  
e: joanna.janoszek@jwp.pl



Alicja Kicińska- Fujawa  
European Patent & Trademark Attorney  
Attorney at Law  
e: alicja.kicinska@jwp.pl



Tomasz Grucelski  
Patent and Trademark Attorney  
Advocate  
e: tomasz.grucelski@jwp.pl



Tomasz Gawliczek  
Attorney at Law  
Patent and Trademark Attorney Trainee  
e: tomasz.gawliczek@jwp.pl



Urszula Nowak  
Patent and Trademark Attorney  
e: urszula.nowak@jwp.pl



JWP Rzecznicy Patentowi  
Dorota Rzążewska sp. k.

JWP Group – Intellectual Property & Corporate Law Assistance

Sienna Center  
ul. Żelazna 28/30  
00-833 Warszawa, Poland

T: +48 22 436 05 07  
F: +48 22 436 05 02  
E: info@jwp.pl

