Industrial design

Industrial designs protect the ornamental features of articles. These features can also be protected by other types of IP such as copyrights, trademarks or, in specific cases, patents.

What is industrial design?

An industrial design is the ornamental or aesthetic aspect of an article. The design may comprise three-dimensional features (such as the shape of an article), or two-dimensional features (such as patterns, lines or colors) of a wide variety of products (e.g. cars, jewelry, clothes, etc.)

Under most national laws, **an industrial design must be new and/or original** in order to be protected. Whether a design is new or original is determined **according to the state of the art in design**. Moreover, given that industrial designs are concerned with the aesthetic characteristics of products, they do not protect any technical features of articles.

Exclusive rights may be granted to **independently created industrial designs that are new or original** and that significantly differ from known designs or combinations of known design features. Moreover, such **protection shall not extend to designs dictated essentially by technical or functional considerations** (TRIPS, Article 25(1), WTO, 1994). The owner of a protected industrial design shall have **the right (for at least 10 years) to prevent third parties not having the owner's consent from making, selling 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** (TRIPS, Article 26(1) WTO, 1994). Minimum standards for industrial design protection have been defined in the Trade-Related Intellectual Property Rights Agreement (TRIPS, WTO, 1994) (see International dimensions of IP systems [1]).

How is industrial design related to innovation?

The industrial design of a product is what makes it attractive and appealing to consumers; hence, it adds commercial value to a product and increases its marketability. Protection of an industrial design helps to ensure a fair return on investment in the creation of such design. Thus exclusive rights over industrial designs protect innovative designs and encourage creativity in industrial and manufacturing sectors. Therefore, industrial design is particularly related to a specific type of non-technological innovation which, arguably, plays an increasingly important role to incentivize innovations. The case of various digital devices is an important example of an industry where they are critical.

How is industrial design used in practice?

There is no simple taxonomy for design protection. Different regimes use different models of protection, and each regime contains its own mix of choices from a significant number of variables. Systems of protection vary in subject matter, nature of protection, term and scope of protection provided, and exceptions and defences available (Kingsbury, 2010). In general terms, designs can be protected under a number of regimes, and overlap between regimes is possible. Models of protection can be variants of copyright and patent protection, and they can be legal hybrids. Industrial designs can also be protected by trademarks, copyright and, in some cases, patents (see Types of IPR [2]) in the following ways:

- **Copyright as artistic works.** Examples are fashion, textiles or furnishings. Generally, copyright is intended to protect the artistic features of industrial design rather than the

functional features, and it may not be well-suited to designs that are entirely functional (Kingsbury, 2010).

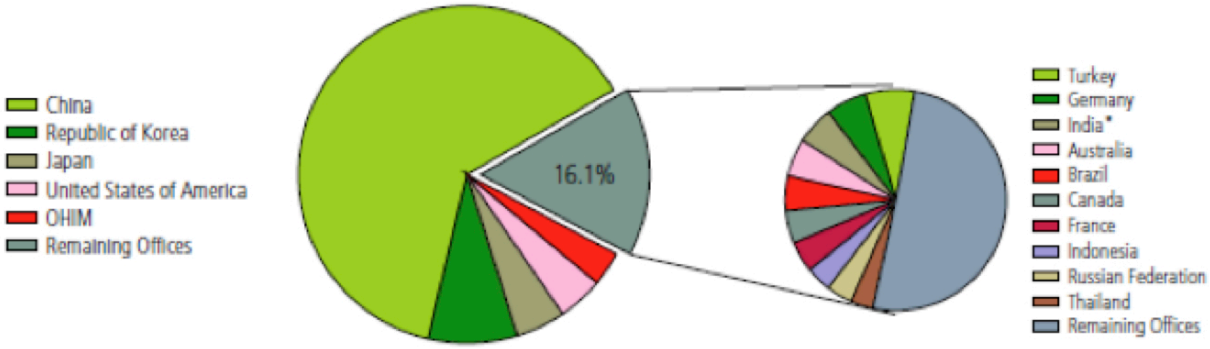
- **Patent law.** Patent law may offer protetion, so long as the design meets the requirements of novelty, inventiveness, utility and related requirements. This protection is usually not suitable for purely ornamental designs, but it can be applicable to functional designs (Kingsbury, 2010).

- **Trademark.** Trademarks may protect design by providing exclusive rights of the specific industrial design.

Once the design is registered, the owner has a well-defined right to use and license the design and to prevent others from using it. The fact of registration gives notice to competitors and second comers and allows them to identify the design as prior art, the features that are protected, the scope of the monopoly, and the owner of the design (Kingsbury, 2010). However, registration is costly and involves inevitable delays. The Hague Agreement Concerning the International Registration of Industrial Designs (WIPO, 2012) provides an international registration procedure allowing applicants to designate the contracting countries where their design (if approved/granted) will be protected.

The use of **sui generis registered design protection**, by which a new design applied to an article is protected upon registration of the design and payment of fees, varies across countries (Figure 1).

Figure 1: Application for registered industrial design protection at the top 15 offices, 2010

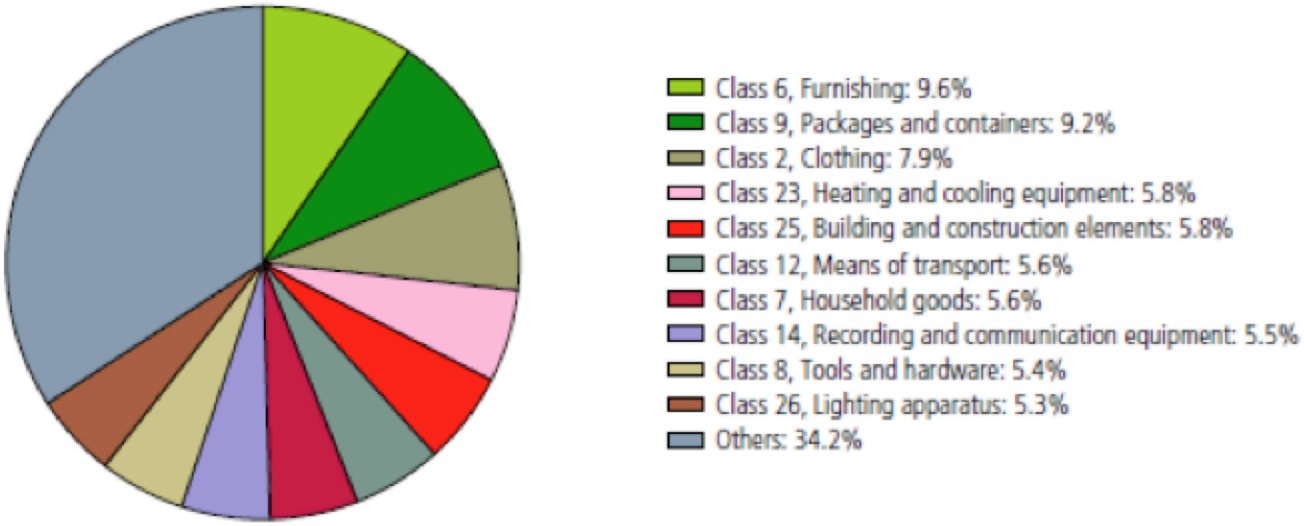


Office	Application Year				
	2008	2009	2010	Share of total (%): 2010	Growth (%): 2009-10
Total	**557,000**	**587,000**	**669,000**	**100.0**	**14.0**
China	312,904	351,342	421,273	63.0	19.9
Republic of Korea	56,750	57,903	57,187	8.5	-1.2
Japan	33,569	30,875	31,756	4.7	2.9
United States of America	27,782	25,806	29,059	4.3	12.6
OHIM	20,143	20,288	21,898	3.3	7.9
Turkey	7,243	7,092	7,920	1.2	11.7
Germany	5,941	5,900	6,285	1.0	6.5
India*	6,557	6,092	-	1.0	-7.1
Australia	6,077	5,136	5,863	0.9	14.2
Brazil	2,761	5,292	5,501	0.8	3.9
Canada	5,282	4,269	5,142	0.8	20.4
France	4,473	4,846	4,891	0.7	0.9
Indonesia	4,307	4,563	4,066	0.6	-10.9
Russian Federation	4,711	3,740	3,997	0.6	6.9
Thailand	3,820	3,873	3,614	0.5	-6.7
Others	54,680	49,983	60,548	9.1	21.1

Source: WIPO (2012), World Intellectual Property Indicators 2012, WIPO Economics & Statistics Series
Notes: Application numbers are a sum of direct applications and Hague system designations received by offices.
a. OHIM = Office for Harmonization in the Internal Market of the European Union
b. India: Share of total applications is based on 2009 total and growth is based on 2008-09 figures.
c. not available

The use of design rights differs across fields of economic activity: the three leading classes are (1) furnishing, (2) packages and containers, and (3) clothing (Figure 2).

Figure 2: Top classes specified in applications, 2010



Source: WIPO (2012), World Intellectual Property Indicators 2012, WIPO Economics & Statistics Series
Note: For a complete list of the 32 class definitions, refer to the International Classification for Industrial Designs under the Locarno Agreement: www.wipo.int/classifications/nivilo/ [3]

References

- Bently, L. and B. Sherman (2008), Intellectual Property Law, 3rd edition. Oxford University Press, NY.
- Kingsbury, A. (2010), "International harmonization of designs law: The case for diversity", European Intellectual Property Review, Vol. 32/8, pp. 382–95.
- WIPO (2013), Industrial Designs. World Intellectual Property Organization, Geneva. http://www.wipo.int/designs/en/ [4]
- WIPO (2012a) The Hague Agreement Concerning the International Registration of Industrial Designs: Main Features and Advantages, WIPO Publication No. 911(E), World Intellectual Property Organization, Geneva.
- WIPO (2012b), World Intellectual Property Indicators 2012, WIPO Economics & Statistics Series World Intellectual Property Organization, Geneva.
- WTO (1994), Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, Articles 25(1) and 26(1), World Trade Organization, Geneva.

Links
[1] https://www.innovationpolicyplatform.org/content/international-dimensions-ip-systems?topic-filters=12005
[2] https://www.innovationpolicyplatform.org/content/types-ipr?topic-filters=12056

[3] http://www.wipo.int/classifications/nivilo/
[4] http://www.wipo.int/designs/en/