

MODULE 2.3 - VALUE OF INDUSTRIAL DESIGNS



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This presentation is adapted from the IP foundation series on the Canadian Intellectual Property Office (CIPO) website.



What are the benefits of having a registered industrial design?

Which other forms of IP are commonly used with industrial designs?

In this section, we will explore the value of industrial designs and how they can be used strategically with other forms of IP.

LEARNING OBJECTIVES FOR VALUE OF INDUSTRIAL DESIGNS

By the end of this section, you will be able to:

- Describe how industrial designs can be a valuable business asset
- Explain how to use industrial designs strategically



VALUE OF INDUSTRIAL DESIGN REGISTRATION

VALUE ADDED BY INDUSTRIAL DESIGNS

Your products have value not only because of what they do, but also because of how they look. An eye-catching look is a good start, but design is about more than decoration.

Effective designs appeal to consumers and create an emotional connection between the consumer, the product and the brand. Designs can influence consumer behaviour and support the marketing and sales of products.



VALUE OF INDUSTRIAL DESIGN REGISTRATION

VALUE ADDED BY INDUSTRIAL DESIGNS

Industrial designs give your products a **competitive edge** in the marketplace.

To sell a product, there are multiple factors to consider, including its price, functionality, reputation and **aesthetics**. Consumers are often drawn to eye-catching products. For that reason, manufacturers put a lot of money and know-how into their industrial designs.

This is why a novel design is considered to be valuable IP.



VALUE OF INDUSTRIAL DESIGN REGISTRATION

VALUE ADDED BY INDUSTRIAL DESIGNS

Industrial design rights can also be a **source of revenue**.

- **Sell your design** for a 1-time lump sum.
- **License your design** by allowing another party to use it with specific terms and conditions set in a license agreement. By licensing your design registration, you continue to own it and earn royalties or a percentage of sales made using the design.

A registered industrial design strengthens your competitive position by deterring others from copying or imitating it.



VALUE OF INDUSTRIAL DESIGN REGISTRATION

VALUE ADDED BY INDUSTRIAL DESIGNS

Startup companies can use industrial designs as a "wow" factor for their products and quickly set themselves apart from other established and reputable brands. For example, a really well-designed user interface (UI) can be impactful.

Industrial designs are also becoming increasingly important in a design-conscious economy, and they can be a fundamental element in the growth of innovative companies.

DID YOU KNOW?

Firms holding industrial design registrations have **16% greater revenue per employee**, compared to firms without such registrations.

Source: IP Canada Report 2017



USING INDUSTRIAL DESIGNS STRATEGICALLY

ALIGN THE DESIGN WITH THE TECHNOLOGY

Think of **consumer** electronics such as smartphones. Many consumers appreciate a sleek and visually appealing shape for their phones, as well as distinctive icons on the display. Such aspects could be protected as **industrial designs**.

Others look for technical features for their phones, such as wireless capabilities or built-in speakers or algorithms. Those could be protected with **patents**.



USING INDUSTRIAL DESIGNS STRATEGICALLY

ALIGN THE DESIGN WITH THE TECHNOLOGY

Why not create a synergy between **technical features** and **visual appearance** from the start?

By focusing on both patents and industrial designs in parallel, you can merge form and function to create products that are easy to use and functional, but also distinctive and visually appealing to consumers.



USING INDUSTRIAL DESIGNS STRATEGICALLY

EXTEND THE PROTECTION OF YOUR DESIGN

Industrial design registration provides an exclusive right for up to **15 years from filing (or 10 years from registration, whichever is later)**.

In some instances, it may be possible to extend the protection for your novel design through a **trademark**.

Trademarks are used to distinguish the goods or services of one person or organization from those of another. The shape of a product or its packaging can be an aspect that distinguishes it from other products.

To qualify, your product's shape or packaging must have acquired enough distinctiveness in the marketplace that consumers across Canada can associate the design with your company brand.



USING INDUSTRIAL DESIGNS STRATEGICALLY

EXTEND THE PROTECTION OF YOUR DESIGN

Here are some well-known industrial designs that are currently protected as trademarks:



**Coca-Cola bottle,
TMA926811**



**Kit Kat wafer design,
TMA601833**



**Crocs shoe design,
TMA1009981**



USING INDUSTRIAL DESIGNS STRATEGICALLY

EXPORT YOUR DESIGN AND COMPETE GLOBALLY

Industrial design registration is **only valid in the country where the protection was sought**.

If you intend on exporting products to which your novel design is applied, or if you intend to license the manufacturing, sale or export of such products to other parties in foreign countries, consider protecting your design in the applicable countries. This can be done by:

filing directly with the IP office for each country

taking advantage of the **Hague System**, which allows applicants to acquire, maintain and manage industrial design rights in multiple countries through a single application filed with the World Intellectual Property Organization (**WIPO**)



CHECK FOR UNDERSTANDING

Which of following are good reasons for registering your industrial design?

- a. It excludes others from making, selling or importing products that copy or very closely resemble your design
- b. Industrial design may help with subsequent trademark protection
- c. It may make your product more distinctive and desirable
- d. Industrial designs can protect your novel design indefinitely



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ANSWER: A, B, and C. Industrial designs provide exclusive right for up to 15 years from filing (or 10 years from registration, whichever is later).



CASE STUDY

APPLE VS SAMSUNG

Video Description: Pooja Viswanathan (PhD), CEO & Founder, Braze Mobility Inc., walks us through a case study about an industrial design dispute between Apple and Samsung.

Braze Mobility Inc. Is one of many startups at University of Toronto.

CASE STUDY: APPLE vs SAMSUNG



CASE STUDY: THE VALUE OF DESIGN AND INDUSTRIAL DESIGN

WHAT'S THE VALUE OF A GRAPHICAL USER INTERFACE (GUI)?

Your GUI (Graphical User Interface) or other design features might be some of the most valuable aspects of your brand

For example, Apple protected many aspects of the iPod and iPhone

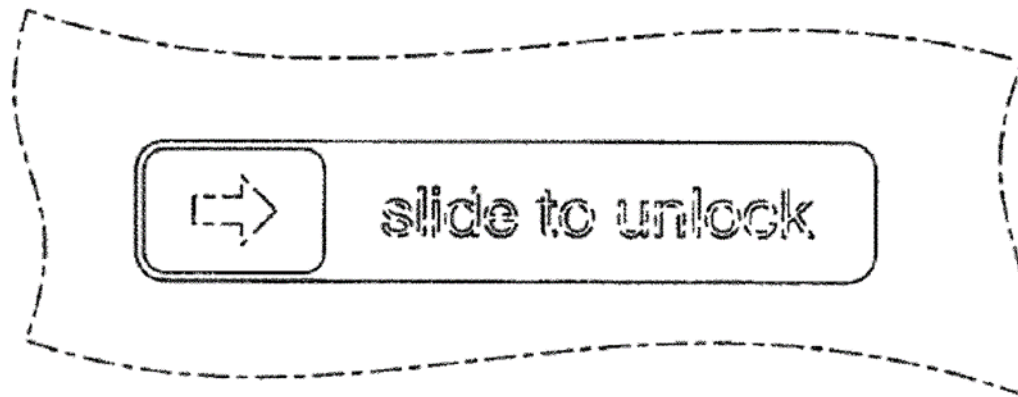
- Technical features such as touchscreen response
- Design features such as the black rounded screen

Some features, e.g., (“slide-to-unlock”) were protected by both “**utility patents**” and “**design patents**” (known in Canada as “industrial designs”) in the US

CASE STUDY: THE VALUE OF DESIGN AND INDUSTRIAL DESIGN

APPLE'S "SLIDE-TO-UNLOCK" AND GUI

Apple's design patents covered features such as "slide-to-unlock" (USD675,639) and the square-icon GUI design (USD604,305)



CASE STUDY: THE VALUE OF DESIGN AND INDUSTRIAL DESIGN

APPLE VS SAMSUNG

Samsung Galaxy S, released in 2010, appeared very similar to Apple's devices

Apple sued Samsung in the US for infringement of several of its utility patents and infringement of several design patents

Apple and Samsung were also involved in nearly 50 other lawsuits around the world based on similar claims



CASE STUDY: THE VALUE OF DESIGN AND INDUSTRIAL DESIGN

APPLE VS SAMSUNG: DAMAGES FOR INFRINGING UTILITY PATENTS AND DESIGN PATENTS

US courts ruled in favour of Apple, finding that Samsung had infringed both the utility patents and the design patents

Some of the utility patents covered methods of scrolling and scaling on a touchscreen

Although numerous utility patents were asserted, most of the damages were awarded for design patent infringement

- Damages for utility patent infringement: \$5.3 million USD
- Damages for design patent infringement: \$533 million USD

If the appearance of your product is important to your brand—even if your product is software-based—consider industrial design protection!

SUMMARY OF LEARNING OBJECTIVES FOR VALUE OF INDUSTRIAL DESIGNS

You should now be able to:

- Describe how industrial designs can be a valuable business asset
- Explain how to use industrial designs strategically

