

What Are Industrial Design Protection Criteria and Eligibility in Myanmar?

In the realm of industrial design protection within Myanmar, it is imperative to comprehend the criteria that determine the eligibility of a design for safeguarding. This guide elucidates the crucial aspects that govern the protection of industrial designs, ensuring inventors and creators navigate the intricate landscape of design rights with clarity.

1. Eligibility Criteria for Industrial Design Protection in Myanmar

To qualify for protection, an industrial design must possess the qualities of novelty and distinctiveness, setting it apart from imitative or pre-existing designs.

(a) Newness Requirement: An industrial design is considered new if it has not been previously documented in writing, utilized, published, exhibited, or divulged to the public by any other means within the Republic of the Union of Myanmar or internationally before the date of the registration application in the Union.

(b) Priority Consideration: In cases where the right of priority is invoked, the novelty of an industrial design is evaluated based on its status before the requested date for the right of priority.

Absence of Notable Difference: An industrial design that constitutes a fusion of elements from designs already known to the public or fails to exhibit a distinctive dissimilarity from a pre-existing design will not be deemed as possessing the requisite novelty for protection.

2. Ineligibility Criteria for Industrial Design Protection in Myanmar

Technological and Operational Inventions: Industrial designs that fall under the category of technological or operational inventions are excluded from the scope of protection. These types of designs, which pertain to technological advancements or operational functionalities, are not eligible for industrial design protection.

Preservation of Public Peace, Stability, and Values: (a) Designs that contravene public peace, stability, or the esteemed values of the Republic of the Union of Myanmar are ineligible for protection. This encompasses designs that compromise the dignity, beliefs, or cultural norms integral to the nation.

3. Eligibility for Applying for Industrial Design Registration in Myanmar

3.1. Individuals with Entitlement

(a) Inventor's Right: The inventor of the industrial design, along with their legal heir or legal transferee, holds the authority to seek the registration of the said design.

(b) Collaborative Creations: In the instance of an industrial design being jointly created by multiple individuals, these co-creators collectively possess the right to apply for the registration of the design.

3.2. Employment Agreement and Design Creation

(a) Employer's Right in Creation: When an industrial design is brought forth through an employment agreement between an employer and employee, unless otherwise specified in the agreement, the employer exclusively retains the right to apply for registration.

(b) Employee's Right After Completion: Following the completion of the design, the employer has a six-month window from the written notice of completion by the employee to initiate registration. Should the employer fail to do so within this timeframe, the employee gains the right to apply for registration.

(c) Design Creation after Employment Agreement Expiry: In cases where an industrial design is formulated within one year after the expiration of the employment agreement, and the design aligns with the employee's area of business, the former employer's right to apply for registration is acknowledged, provided no opposing clause exists in the employment agreement. If the employee can prove no opposing clause exists, they possess the exclusive right to apply for registration if any of the following conditions are met:

- (i) The former employer refrains from registering the industrial design in question by mutual agreement.
- (ii) The employee's evidence stands unopposed by the former employer.
- (iii) The employee applies for registration due to the former employer's failure to do so as per subsection (b).

(d) Employee's Exclusive Right: When an employee employs the employer's equipment, data, or technology to create an industrial design, and the design is not assigned by the employer, the employee exclusively holds the right to initiate registration, unless otherwise outlined in the employment agreement.

(e) Employee's Independent Creations: Apart from the situations specified in subsections (a), (c), and (d), an employee maintains the exclusive right to apply for registration of an independently created industrial design, unless otherwise detailed in the employment agreement.

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