

Article

Legal Protection of Industrial Drawings, Models and Designs in Yemen

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Abstract: Industrial revolution contributed to the emergence of industrial property rights and the accompanying inventions. Technological development and the expansion of the use of electronic technologies in various industrial fields contributed to increasing competition between economic entities, regarding their ownership of the elements of industrial property rights. These rights distinguish their products from others, besides their role in increasing the economic growth rates of countries that possess patents or technical knowledge, which supports their economy. National laws and international agreements have been designed to protect industrial property rights as patents, designs and trademarks. Work on imposing specific controls to protect their owners and creators of those rights from a legal perspective, as well as establishing an economic balance between the owners of those rights and those with the right to monopolize them on the one hand and the general public on the other hand to provide the appropriate environment to achieve more innovation and creativity to maximize their economic return. This research aims to study the legal protection of industrial drawings and models, and to investigate the problems that arise regarding them. The researcher used the descriptive approach based on describing the legal texts included in Yemeni law, and analyzing them to reach useful results on the subject. The research reached the most important results, which is that the law provided protection for industrial models and drawings. The researcher recommends keeping pace with technical developments and updating legislation to include technical drawings and models as well.

Keywords: Industrial designs; industrial models; intellectual property; legal protection; IPR

1. Introduction

Man is characterized by reason, which is the source of thought related to creative production and innovation. Therefore, legislation exist to protect these inventions and intellectual property rights. Intellectual property rights (IPRs) are important at the national level, regional and international levels; as they are related to thought, creativity and innovation, and their impact on industry and trade. Such IPR instruments and agreements keep on evolving constantly due to their connection to economic and commercial life, in which developments accelerate, transactions are renewed, and they vary according to their nature. It is necessary to have some legislation to protect this intellectual property and protect the rights resulting from intellectual creativity, innovative civilizational invention and scientific authorship to prevent theft and free riding on them on the one hand and regulating the right to invest and exploit them on the other hand.

Intellectual property legislation is characterized by being international in nature; as it emerged from international agreements regulating IPRs. It is necessary to keep pace with developments in the field of regulating intellectual property rights through international agreements and national legislation and in accordance with the latest legal amendments.

Legal protection of industrial drawings and models as IPRs by national laws and international agreements, is necessary to boost creativity and innovation is mandatory to incentivize the individual, society, and institutions due to their impact on economic, commercial and financial life and their close connection to civilizational progress and renaissance. Current research has been designed to answer whether national laws and international agreements keep pace with new industrial drawings and models, especially in the field of technology.

2. Methods

The researcher adopted the descriptive analytical approach by collecting information and facts related to the subject from their original sources, and to describe and analyze the legal texts in a

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scientific and legal manner. The logical interpretations obtained will be used to frame the research problem, in addition to the comparative approach by comparing the texts of Yemeni law with the relevant international agreements.

3. Results and Discussion

3.1 The nature of industrial drawings, models and designs

Human inventions span a range of protections as patents, trade secrets, industrial designs, trademarks, copyrights, and layout designs of integrated circuits (topographies). From an economic perspective, protecting drawings contributes to encouraging creativity in industries, and traditional arts and handicrafts, and is an effective tool for promoting small and medium enterprises (Idrisi 2003).

3.1.1 Definition of industrial designs and models

Industrial designs and models are lines, colors or shapes that distinguish the external appearance of the product, and this appearance is the subject of protection. Yemeni Industrial Designs Law No. (28) of 2010¹ defined it in Article (3) as: "*Industrial design is the external decorative and aesthetic appearance of a commodity and may include lines, colors or a three-dimensional shape with or without colors that can be used in industrial production by mechanical or manual means, including textile designs, provided that this composition or shape gives a special appearance to the industrial or craft product.*"

Industrial drawing is a new arrangement of lines on the surface of products, giving them an attractive appearance. Therefore, every arrangement of lines that appears on products and gives them a distinctive character is considered an industrial drawing, as is the case with drawings for textiles, carpets, ceramic pots, wallpaper, etc. (Taha 1971). Industrial model is a new external mold in which products appear, giving them an attractive and beautiful quality. An industrial model is thus the form of the commodity or production itself, as is the case with the body of a car or the body of a refrigerator etc., and as is the case with the mold of utensils, clothes, shoes, perfume bottles, water, medicines, children's toys, cosmetics and beauty tools, etc. (Al-Qalyubi 1981). Industrial drawings and models are a group of shapes and colors with a special artistic character, applied to goods and products when they are manufactured to add beauty to them and thus attract customers to buy them and prefer them over similar ones, for the drawings that we decorate or for the models that are emptied into them (Al-Nahi 1982). The drawing or model may be inspired by nature or imagination or heritage and history or may express a certain symbolism, or all of them, and therefore it adds a beautiful and attractive form, a distinctive characteristic and a special character to goods and products. Industrial drawings and models are concerned with the external form of goods and products regardless of their quality and benefit. The consumer often prefers one product over another due to its specific design (Zain Al-Din 2017).

3.1.2 Conditions for industrial drawings and models

To protect an industrial drawing or model, a set of objective and formal conditions must be met which are stated below.

Objective conditions

An industrial drawing or model should be able to be exploited industrially, creating an external appearance for an industrial thing, the condition of novelty, and the legality of the industrial drawing or model.

A-The ability of the industrial drawing or model to be exploited industrially

This means that the industrial drawing or model can be exploited industrially, as an original mold for making other units. This exploitation embodies the executive function for which it is intended, and distinguishes a product from other similar products. A drawing or model that is not suitable for industrial or traditional exploitation, such as artistic drawings, advertising brochures, or architectural works, are not included in this concept and not considered an industrial drawing or model in the legal sense. These are rather protected by the copyright and related rights law. If the drawing or model is only exploited industrially without the aesthetic aspect; it will be protected by patent rather than by industrial drawings or models (Al-Jilali, 2015).

B-Creating an external appearance for an industrial thing

Industrial drawings and models are distinguished from other IPRs by their external appearance which highlights the innovation of the owner of the drawing or model. The more distinctive the appearance is, the more the element of innovation is present in it. In fact, the judgment on the drawing or model depends upon the appearance of the drawing or model. This appearance industrial drawing is novel if the artistic and aesthetic aspect of the drawing or model is an innovative aspect that reflects the creativity of its owner and attracts the public to it. However, this does not mean that this drawing or model has an intrinsic value. Rather it must include an objective value for the industrial value of the drawing or industrial model. This aesthetic external appearance can be registered and protected as an industrial drawing or model. The element of innovation in an industrial drawing or model is measured by the psychological rather than its objective impact on the public. This does not mean that innovation has a high artistic value, but rather an attractive and distinctive appearance is sufficient (Al-Jilali 2015).

¹ Executive Regulations of Law No. 28 of 2010 on Industrial Designs. Available online: <https://www.moic.gov.bh/en/regulations?about%5B0%5D=19#collapse2687>

C- The condition of novelty

An industrial drawing or model is considered new if it has a character that distinguishes it from other drawings and models. It is sufficient for the drawing or model as a whole to constitute something new even if it's made up of same old parts. Novelty is one of the issues of reality that is decided by the judge of the subject matter and its criterion is the assessment by an expert of the domain of the drawings and models (Taha 1971).

Yemeni Industrial Designs Law No. (28) of 2010 stipulates that the drawing or model must not be previously published to be eligible for registration in the Republic of Yemen. Yemeni law prohibits the registration of a drawing or model if it has been previously published anywhere in the world in any way, i.e., regardless of the means by which it was published, whether written, audible or visual. Article (4/1) of the Industrial Designs Law states that: "An industrial design shall be eligible for registration if the following conditions are met:

- 1- It shall be new and unprecedented in its disclosure to the public anywhere in the world in any way, including its use or publication before the date of filing the registration application or the priority date of the registration application, if any. Disclosure of the industrial design to the public shall not be taken into account if this occurs during the six months preceding the date of filing the application or the date of claiming the right of priority, and the disclosure of the industrial design was the result of an action taken by the applicant for registration or due to an illegal action by a third party against the applicant for registration.

D- Legitimacy of the industrial drawing or model

The legitimacy of the drawing or model means that it does not violate public order and public morals. Violation of the public order destroys its legitimacy and legal recognition. Violation of public order depends upon its traditional connotations, public health and public tranquility or with its modern connotations related to the political, economic and social system of the state. If the drawing or model is a mocking imitation of a constitutional institution or a message of rebellion, disobedience and chaos, or if it affects the national security, national defense, or the system of government it is against public morals. A drawing or model must respect the religious and moral values of society, including the customs, traditions, and norms of society if its protection is required as an IPR (Al-Jilali 2015).

Article (4/2) of the Industrial Designs Law stipulates that: "An industrial design is eligible for registration when the following conditions are met:

It does not violate public order or public morals or include religious slogans or symbols or seals or flags specific to the Republic, countries, or regional and international organizations."

E- The industrial drawing or model is not imposed primarily for technical or functional considerations of the product:

Industrial drawing or model should be independent of the basic parts of the product. If it is manufactured for functional considerations in the product and is an internal component of it, the description of a drawing or model worthy of legal protection does not apply to it. Article (4/3) of the Industrial Designs Law stipulates that: "An industrial design is eligible for registration when the following conditions are met:

- 2- "It is not imposed primarily for technical or functional considerations of the product."

Formal conditions

The protection of industrial drawings and models by registration with the department responsible for protecting IP in the Ministry of Industry and Trade is characterized as a formal protection. Owner of the industrial drawing or model or his representative must deposit the drawing or model directly with the competent authority, requesting registration of the industrial drawing or model, attaching the legally required documents. There is no specific time in the Yemeni Industrial Drawings and Models Law to carry out the deposit process, and the owner of the drawing or model is free to choose the appropriate time to deposit it, unlike some other countries that have fixed a period of one year from the date of disclosure.

Industrial drawings and models are deposited as a diagram or a picture. The depositor must also pay the prescribed government fees, and the competent department then examines the application and the attached file. This examination is known as a formal examination and not a substantive one, as it is concerned with verifying the extent to which the applicant has completed the procedures required to obtain the registration certificate. After formal examination, the department issues a registration certificate to the applicant, describing that the formal conditions to protect industrial drawings and models are met. Registration application must be submitted to the registrar and must include the data related to it, including the name, nationality and address of the applicant, a picture of the design, its name and the purpose for which it was designed, with a description of it and its elements that are required to be protected, the category of the industrial design and a statement of the claim for priority right, if any, and the address of the registration agent in the Republic if the application is submitted by an agent, with the applicant's declaration that the design is his creation and is not an imitation or similar to a design used or owned by others. The application must be accompanied by documents related to the applicant, including: a copy of the commercial, industrial or craft register, with a power of attorney if he is not the owner of the design, and pictures of the design to be registered (Article 3 of the Executive Regulations of Law No. 28 of 2010 regarding industrial designs). The application for international registration of an industrial design or model may be filed with the International Bureau of (WIPO) through the Industrial Property Office in the country of origin if the law of that country permits or requires it. In practice, all international applications are actually filed directly with the International Bureau, and most of them are

filed using the electronic filing system on the WIPO website (Hague Agreement Concerning the International Registration of Industrial Designs)².

3.2. Effects of registering industrial designs and models

The person who obtains the registration of industrial designs and models acquires proof of their ownership and the effects resulting from them, which are discussed below.

3.2.1 Ownership of industrial designs and models

The registration of an industrial design or model entails proof of ownership for the person who submitted the registration application. The Industrial Designs Law has outlined the procedure for filing an objection to its registration within ninety days from the date of publication of the announcement of the registration application. In case of an objection, the applicant for registration must respond to the objection in writing within thirty days from the date of notification of the objection (Article 12 of the Industrial Designs Law).

3.2.2 Rights of the owner of the industrial design or model

Registration of the industrial design or model entails rights for its owner, which are as follows:

A- The right to legal protection

The owner enjoys the official protection for his industrial design or model for a period of ten years from the date of filing the registration application (Article 20/1 of the Industrial Designs Law).

B- The right to monopolize the design or model

An owner has the monopoly to exploit the registered design, and may prevent others from using that design or model except with his prior consent, otherwise he will be considered an infringer of the right of the owner of the design or model and will be subject to legal liability (Article 20/2 of the Industrial Designs Law).

C- The right to dispose of the design or model:

The ownership of a registered industrial design or model may be transferred in whole or in part with or without compensation, and the design or model may be mortgaged and any of them may be seized (Article 20/3 of the Industrial Designs Law). Accordingly, the owner of the drawing or model has the right to dispose of all types of legally permissible actions, such as sale, gift, investment, exploitation, assignment, etc.

4. Legal protection of industrial designs and models

Legal protection of industrial designs and models varies, as texts have been provided for precautionary measures and civil and criminal protection, as follows:

4.1 Procedural protection of industrial designs and models

Article (28) of the Industrial Designs Law stipulates that:

"A- The owner of the industrial design may, at any time, even before filing any lawsuit, obtain, based on a petition accompanied by an official certificate indicating the registration of the design, an order from the court to take the necessary precautionary measures, especially the following:

- 1- Preparing a detailed inventory and description of the machines and tools that are used or have been used in any of the violations stipulated in this law, as well as the products, goods, and other things that have used the protected industrial design that is the subject of the violation.
- 2- Imposing a seizure on the items mentioned in Clause (1) Paragraph (A) of this Article, provided that the seizure shall not be imposed on them except after the applicant for the seizure deposits a financial guarantee with the court, which the court shall estimate as a preliminary estimate to compensate the person against whom the seizure is made, if necessary. After the seizure is imposed, it is permissible to dispute the sufficiency of the financial guarantee deposited by the applicant for the seizure in accordance with the provisions of the applicable laws.

B- The order issued by the court for the precautionary seizure may include the appointment of one or more experts to assist the person making the seizure in implementing the procedures

In order not to prolong the duration of these procedures, the same law required in Article (29) to file a lawsuit within eight days from the date of signing the seizure, as it stipulated that: "The precautionary procedures stipulated in Article (28) of this law shall be considered null and void if they are not followed by filing a lawsuit against the person against whom the seizure was made within eight days from the date of signing the seizure."

The Industrial Designs Law allows the owner of the registered industrial design to get issued an order on a petition to stop the release of imported or exported goods that embody a counterfeit or forged design, as Article (31) stipulated that: "A- The owner of

² Hague Agreement Concerning the International Registration of Industrial Designs and Models of 1925. Available online: <https://www.wipo.int/treaties/en/registration/hague/>

the registered industrial design may, based on a petition, issue an order from the court to stop the customs department from taking measures to release imported or exported goods that embody a counterfeit or forged design, and the court may issue an order to stop the release of those goods after the owner of the design submits the following:

- 1- Sufficient evidence of an apparent infringement of his rights.
- 2- A detailed description of the infringing goods.
- 3- A financial guarantee estimated by the court to be sufficient to protect the defendant's right and prevent abuse of rights."

Owner is entitled to receive compensation that is proportionate to the extent of the damage incurred by the owner of the registered industrial design as a result of the wrongful detention. Article (31/e) of the Industrial Designs Law, states: "The court may order appropriate compensation for the importer of the suspended goods for any damages incurred by him as a result of the wrongful detention of the goods, and the compensation shall be paid from the amount of the financial guarantee deposited with it, and the remainder thereof shall be returned to the applicant for the suspension of the release of the goods, or he shall be obligated to pay an additional amount if the financial guarantee is not sufficient to cover the value of the compensation".

4.2 Criminal Protection of Industrial Designs and Models

The owner has the right to protect it after registering it, by preventing others - if they do not obtain his consent - from making - for commercial purposes - products that have copied the design it bears or the model it contains or an essential part thereof, or importing or selling these products (Article 20 of the Industrial Designs Law). Copying images by the person while he knows or was able to know that he has infringed on an industrial design or model that enjoys legal protection are considered an infringement of the rights of the owner of the industrial design. The Industrial Designs Law has stipulated the penalties on infringement of the rights of the owner of the industrial design or model, as Article (34) states that: "Without prejudice to any more severe penalty stipulated in another law, anyone who:

- Forges or imitates a registered industrial design that enjoys protection under the provisions of this law.
- Uses a design in bad faith Industrially counterfeited or imitated.
- Uses in bad faith an industrial design owned by another.
- Sells, offers for sale or possesses for the purpose of selling products of a counterfeit or imitated industrial design, knowing that.

In the event of a repeat of any of the violations stipulated in this article, the penalty shall be doubled with the closure of the facility for a period not exceeding three months.

The Industrial Designs Law stipulates the penalties that the court has the right to impose in the event of an infringement on industrial designs, as it stipulates in Article (36) that: "The court may rule on the violator, depending on the seriousness of the violation, with one or more of the following additional penalties:

- A- Confiscation of the seized goods that embody a counterfeit or imitated industrial design and disposing of them outside commercial channels or, if necessary, destroying them.
- B- Confiscation of the machines and equipment used in counterfeiting or imitating the industrial design and disposing of them outside commercial channels or, when necessary, destroying them.
- C- Not allowing the re-export of goods that embody a counterfeit or imitated industrial design.
- D- Publishing the ruling in one or more newspapers at the expense of the convicted person.

4.3 Civil protection of industrial drawings and models

The owner's right to a civil lawsuit for an industrial drawing or model does not prejudice the right of the injured party to compensation for the damage he suffered as a result of the actions of others, as Article (37) of the same law stipulates that: "Anyone who has suffered damage as a result of any of the violations stipulated in Articles (34 and 35) of this law may file a lawsuit against the perpetrators before the court to claim compensation for the damage."

The right to a drawing or model also has the umbrella of civil protection. Anyone whose right has been infringed has the right to initiate a civil (legal) lawsuit against the person who committed or caused the infringement, requesting compensation for any material or moral damage he suffered as a result of that infringement based on unfair competition, even if the drawing or model is not registered, according to the prevailing opinion in this regard (Zain Al-Din 2017).

This is what was decided by Law No. (19) of 1999 regarding the promotion of competition and the prevention of monopoly and commercial fraud, as Article (3) stipulated that: "Dealing with various goods and commodities shall be carried out within the framework of freedom of trade and competition in accordance with the provisions contained in this law and in a manner that does not harm the interests of consumers or create commercial monopolies."

The unfair competition lawsuit is based on the elements on which tort liability is based, which are error, damage, and the causal relationship between them. When these elements are available, the lawsuit can be filed to protect the plaintiff of unfair competition (Abdul Qader 2021). It is noted that Yemeni law requires the registration of the industrial design or model for the purposes of protecting it (Article 20 of the Industrial Designs Law), meaning that the protection of the industrial design or model does not take place except after its registration according to the rules.

5. Conclusions

The law protects industrial models and designs that are registered according to specific conditions and procedures. Industrial drawings and models are lines, colors, or shapes that distinguish the external appearance of the product, and this appearance is the subject of protection. The industrial drawing or model must be legitimate, meaning that it does not violate public order and public morals. The registration of the industrial drawing or model results in proving the right of ownership for the person who submitted the registration application. The Industrial Designs Law allows the owner of the registered industrial design to issue an order on a petition to stop the release of imported or exported goods that embody a counterfeit or forged design. Benefiting from modern technologies in registering industrial drawings and models in a way that preserves these rights for their owners. The researcher recommends organizing procedures for compensation for damage resulting from infringement of industrial drawings and models. Inviting researchers to research modern technological drawings and models, and the extent to which legislation keeps pace with these developments.

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