

Good to know if you are applying for a design in Chile!

Registrability: The ornamental shape or appearance embodied in, or applied to, an article of manufacture; may be registered as industrial designs (3D) or industrial drawings (2D), provided that they meet the novelty and visual distinguishability requirements (unique or distinctive appearance).

Legal definition of a design: Article 62 of the Chilean Industrial Property Law defines industrial designs and drawings as follows:

"Industrial designs include all three dimensional shapes, whether associated or not with colors, and any industrial or handcrafted article that can be used as a pattern for the manufacture of other units and that can be distinguished from similar patterns, by its shape, geometric configuration, ornamentation or any combination of these, so long as said characteristics give it a unique appearance perceptible by sight, in such a way as to give it a new appearance.

Industrial drawings include all arrangements, collections or combinations of figures, lines or colors developed on a plan or diagram for its incorporation into an industrial product for the purpose of ornamentation and to give said product a new appearance.

Industrial drawings and designs are considered new when they significantly differ from known industrial drawings or designs, or from the combinations of characteristics of known industrial drawings or designs.

Containers may also be protected as industrial designs, as long as they comply with the condition of novelty previously indicated.

Printed fabrics, cloths or any laminated materials may also be protected as industrial drawings, as long as they comply with the condition of novelty previously indicated".

The registration is granted for a non-renewable term of 10 years counted from the filing date of the application.

Limits on registrability:

- 3D and 2D shapes whose appearance is entirely given by technical or functional considerations, without involving any arbitrary contribution (ornamentality).
- Clothing of any kind. In the case of shoes, the sole may be eligible for design protection, provided that the design meets the novelty and distinguishability requirements under article 62 of the Chilean Industrial Property Law.

Grace period: A 12-month grace period for claiming the "*innocuous disclosure*" of the design (non-prejudicial disclosures or exceptions to the novelty requirement) is granted in the case of public disclosures made or authorized from the applicant, or even in the case of disclosures derived from abuse or unfair practices. This is a legal exception that has to be claimed when filing the design application and the grace period is counted from the date of the first universal disclosure of the design.

Divisional applications: Divisional applications may be filed at any time during the prosecution of the design application. However, if the first substantive examination report has been already issued, then divisional applications are only allowed if there is a unity problem.

Multiple-design applications: These are not allowed; only one industrial design/industrial drawing per application is permitted.

Pre-grant proceedings: Any interested party may file an opposition within a term of 45 working days after the publication date of a design application in the Official Gazette.

Post-grant proceedings: Any interested party may request the cancellation of a design within 5 years counted from the granting date of the final registration.

Formal requirements:

- Line drawings showing the front, back, left, right, top, bottom and perspective view of the design (pictures are not allowed).

These drawings have to be in the same scale, in a sharp black and white version, since no other colors are acceptable.

The claimed design must be drawn in solid lines, while broken lines should be only used to disclaimed parts/elements of the design.

- Spanish specification: This is a geometrical description of the industrial design and due to local particular requirements; it is usually prepared at our end*.
- Certified copy of the priority document, in case of claiming the Paris Convention priority right.
- Power of attorney from the applicant(s) to our law firm*.
- Assignment of rights from the designer(s) to the applicant(s)*.

*Optional, but always recommendable to strengthen the protection (Especially useful in infringement cases).

*Notarization/legalization/Apostille of these documents is not required.

Official fees: The government filing fee has to be paid when filing the design application, the publication expenses and examination fees are mandatory to continue with the prosecution and avoid the abandonment of the application. Annuities fees do not apply!

General prosecution: The prosecution of the industrial design/industrial drawing application, usually takes an average time of 1 year or even less, since the substantive examination of the design implies the issuance of at least one technical report with the prior art search carried out by the local examiner, along with a registrability analysis, based on the requirements of novelty and distinguishability.