



THE LEGAL INSIDER

of Mr. Alain P. Lecours

CANADIAN INTELLECTUAL PROPERTY LAW:

Patents, Copyrights & Industrial Designs – Essential Distinguishing?

*The terms **patent**, **copyright**, and **industrial design** are known to many, but few can actually distinguish the concepts they represent. However, each of these terms designates a different form of intellectual property.*

The rights over intellectual property owned by a business are a noticeable increase to its capital, as long as they are duly protected. Without doubt, the savvy businessman knows the value of his business' concrete assets (capital-stock, rolling stock, inventory, real estate, etc.). Still, many are not aware of the importance of fewer tangible assets such as intellectual property rights, which must be recognized and registered in order to protect their worth. It is important for an entrepreneur to recognize the intellectual property owned by his business, or that which it could have.

This article aims to briefly expose the main principle of law regarding invention **patents**, **copyrights**, and **industrial designs**, so that the reader shall be able to identify and recognize them himself.

Patents

Invention patents are regulated and protected under the **Patent Act**. A patent issued under this act aims to protect an invention, which can be defined as the following: any realization, any process, any machine, manufacture, or composition of matter, and any improvement to one of the preceding, as long as it has the characteristics of novelty and usefulness. In practice, any new technology that can be put to practical application in the industry can be patented.

Patenting an invention is advantageous for the inventor because of the protection granted by the **Patent Act**. Indeed, under this act, a patented technology cannot be legally reproduced by another for a period of twenty (20) years. However, registration of a patent requires the inventor to disclose the confidential information that was used to create the invention, thus revealing that information to the public. Furthermore, to insure optimal protection, the inventor should consider patenting his invention in multiple countries, as Canadian law can only protect an inventor's rights within the Canadian territory. Such procedures can become extremely costly and, in some case, more or less useful, since numerous emerging markets are hardly mindful of intellectual property rights, and gladly copy original products regardless of the protection afforded by patents.

Copyrights

Copyrights are protected in Canada by the **Copyright Act**. Under this act, any work characterized as original is protected regardless of registration. In the context of this act, the term "work" designates any piece of a literary, dramatic, musical, or artistic nature; also, the piece must be original, that is:

- 1) Must originate from its author;
- 2) Must not have been copied; and
- 3) Must have required a certain intellectual effort.

The **Copyright Act** protects the author of an original work against any copy or reproduction that could be made for the duration of his life and for fifty (50) years following his death.

However, in cases where a design could be deemed an original, artistic work, reproducing that design more than fifty (50) times, the protection afforded by the **Copyright Act** lapses. In such a case, the author must register his work as an industrial design at the Industrial Designs Bureau.

Industrial Designs

Under Canadian law, an industrial design is defined as the visible features of shape, configuration, pattern or ornament, and any combination of those features, of a finished object. Furthermore, an industrial design must bear at least one original feature that distinguishes it from other designs of the same type. Industrial designs are regulated and protected under the **Industrial Designs Act**. Contrarily to copyright, the creator or user of the industrial design must register his design with the Industrial Designs Office to benefit from the protection of the **Industrial Designs Act**

The main advantage of industrial design registration over copyright is that a registered industrial design can be reproduced in mass by its creator, while retaining its protection against unauthorized copies. This aspect of the **Industrial Designs Act** makes it of particular interest to the clothing industry (as an example), because a designer can authorize mass reproduction of his artistic creation, while remaining protected against unauthorized reproductions by third parties.

The registration of an industrial design remains valid for a period of ten (10) years.

Conclusion

An entrepreneur must not only be aware of the intellectual property rights his business owns or can own (*via* registration), but also understand the nuances between the various kinds of intellectual property. In this fashion, the entrepreneur can determinate the exact needs of his business and in consequence, could efficiently employ the different means of protecting intellectual property. For example, if he plans to commercialize on a large scale a product with a distinctive, he would know that he needs to register his right under the **Industrial Designs Act** to maintain ownership over his intellectual property, since he loses the protection of the **Copyright Act** as soon as more than fifty (50) copies of the work are made.

Furthermore, in order to establish whether his business owns any intellectual property that could potentially be protected, the entrepreneur must consider his product in light of the originality criterion. Indeed, only a product possessing sufficient characteristics distinguishing it from other products on the market can gain the protection afforded by the various Canadian laws on intellectual properties. For example, an entrepreneur could not pretend to a right on the design of an acrylic display simply because that object's dimensions differ from what is already offered on the market. It is not sufficient for a product to be unique; it must also be born out of a creative impulse from its creator.

This same reasoning must be held when registering an intellectual property right; this registration being necessary only in the case of an invention **patent** or that of an **industrial design**. In such cases, the marketed product can only be registered if it is original and can be distinguished from other existing products.

In a later article, the *Legal Insider* will discuss further forms of intellectual property rights as protected by Canadian law, such as trademarks.

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