

## The Difference Between Patents and Industrial Designs

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The importance of industrial design cannot be overstated in the consumer electronics marketplace today. For example, in the mobile phone industry, many consumers appreciate and value a handset that is eye-catching, and they often make purchasing decisions based on a preference for one user interface over another. But can a pleasing handset design or distinctive icon layout be patented?

In Canada, a patent may be obtained for “any new and useful art, process (method), machine, manufacture or composition of matter”, or any new and useful improvement in one of these categories, subject to certain conditions.

The word “useful” is critical. To be patentable, an invention must have utility. But despite their cleverness and novelty, many industrial designs lack utility. The shapes or ornamentations that make up a design do not necessarily perform any function or contribute to the utility of the underlying article. Nevertheless, the design clearly can have commercial value without having a functional aspect. For instance, the shape of a particular brand speaker or home networking device or remote control may influence purchasing decisions due to its familiarity or appeal.

It is not surprising then that governments have recognized that the importance of protecting this particular species of intellectual property, which is different from the types of patents we ordinarily associate with functional inventions. For non-functional aspects, there is a parallel branch of intellectual property known as Industrial Designs. In the United States, these are known as Design Patents (in contrast to Utility Patents).

Industrial Designs can be obtained to safeguard the visual features of shape, configuration, pattern or ornament—or any combination of these features—applied to a finished article made by hand, tool or machine. This of course includes the shape of a finished article, such as a speaker. Moreover, Industrial Design registrations can also be obtained for user interface features, such as icons on a display.

These may seem minor features for which to seek intellectual property protection, but Industrial Design registrations can be powerful tools. One recent illustration of this comes from the Apple and Samsung patent battle in the United States. In that case, four out of seven patents asserted by Apple were in fact Design Patents. These covered the familiar edge-to-edge glass of the iPad and the grid-style icon layout of Apple’s iOS, among other things.

Clearly, even the biggest players are taking Industrial Designs (Design Patents) seriously. Any maker of consumer electronics should strongly consider doing the same.