

Designs Brochure

What is a registered design and how does it differ from a patent?

A patent protects the principle on which a new invention is based. Registered Designs protect the way something looks. This may be an existing article which has been redesigned and which you wish to protect from copiers.

What kinds of design protection are available?

In South Africa, designs are grouped into two distinct classes. **Aesthetic designs** are designs applied to any article, whether for the pattern or the shape or the configuration or the ornamentation, having features which appeal to and are judged solely by the eye, irrespective of the aesthetic quality thereof; these designs are protectable for a period of 15 years. **Functional designs** are designs applied to any article, whether for the pattern or the shape or the configuration thereof, having features which are necessitated by the function which the article to which the design is applied, is to perform. This includes not only items such as metal profiling and the like, but also integrated circuit topographies, and mask works. Functional designs are protectable for a period of 10 years.

In addition, designs are grouped into different classes of technology and your design application may only be filed in the most relevant class of technology to which it relates.

What are the requirements for registration of a design?

This differs for aesthetic and functional designs. The proprietor of an aesthetic design must ensure that his design is (i) new and (ii) original. The proprietor of a functional design must ensure that his design is (i) new; and (ii) not commonplace in the field of technology.

A design is deemed to be new if it is different from or if it does not form part of the state of the art immediately before the date of application for registration thereof or the date of release into the public domain. However, there is a six month grace period allowable, as set out below.

My design has aesthetic AND functional features – which type of design is most suitable?

We would suggest filing an aesthetic as well as a functional design application for your article. These are two separate applications, but we usually charge a reduced rate for the second and each following design filed in a class. Please note that it is only possible to cover a single embodiment of your design in a design application. Should you have produced a new range of footwear with four or five variants, South African design law requires you to file separate design applications for each embodiment of the article.

I exhibited my design at a trade show recently – can I still obtain protection for it?

This is another point of difference between designs and patents. You will have forfeited any potential patent rights you may have had in your article by exhibiting it prior to filing a patent application. *However*, the South African Designs Act allows a 6 month grace period for you to file a design application following the release of your design onto the market. In addition, if your design relates to a mask work or a series of mask works, there is a 2 year grace period allowable.

How long does it take to obtain a registered design?

It usually takes about six to eight months from the date of filing the application until notification of registration is received from the South African Designs Office.

Can I stop people from using my design before it has been registered?

No – as with a patent one may only enforce the application once it has been granted (or registered in the case of designs). Registration is a concept different to *filing* of the application. A design application is first filed, after which it is registered by the Designs Office in Pretoria. You do not have an enforceable right until your design has been registered. However, should you become aware of infringers copying your design, it is possible to apply to have the registration process expedited.

Contact

Please do not hesitate to contact any member of the Smit & Van Wyk team – we pride ourselves on being available to clients whenever and wherever we are needed.

Telephone + 27 (0) 12 844 1000 **Fax** + 27 (0) 12 844 1001 **E-mail** mail@svw.co.za **Web** www.svw.co.za
Enterprise Building 23B The Innovation Hub Hotel Street Pretoria 0087 South Africa

Impressum

Smit & Van Wyk Patent, Trademark & Copyright Attorneys

Legal Information

Smit & Van Wyk, Inc. are registered attorneys of the High Court of South Africa in terms of the Attorneys Act No. 53 of 1979, registered patent attorneys in terms of Section 20 of the Patents Act 57 of 1978, and trademark attorneys.

They are members of the South African Institute of Intellectual Property Law and subject to the relevant professional codes of the Law Society of the Northern Provinces (available at www.northernlaw.co.za) and the Code of Ethics of the Council of the Institute under Article 32 of the Constitution of the South African Institute of Intellectual Property Law (available at www.saiipl.org.za).

The company is incorporated in terms of Section 64 of the Companies Act of 1973.

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