

## РАЗВИТИЕ ПОНЯТИЯ «ПРОМЫШЛЕННЫЙ ОБРАЗЕЦ» В РОССИИ И АЗЕРБАЙДЖАНЕ DEVELOPMENT OF THE DEFINITION OF “INDUSTRIAL DESIGN” IN RUSSIA AND AZERBAIJAN

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**Аннотация.** Особенность правовой охраны промышленных образцов обусловлена ее важнейшей ролью в повышении конкурентоспособности продукта в современной рыночной экономике. При наличии национального законодательства в сфере интеллектуальной собственности, отвечающего современным требованиям и международным стандартам, и четкого определения понятия «промышленный образец» правообладатель может предотвратить любое несанкционированное использование своего охраняемого дизайна.

В статье рассмотрены история и этапы развития определения «промышленный образец» в России и Азербайджане. Проанализировано патентное законодательство в сфере охраны промышленного образца в царский, советский и современный периоды. Описаны соответствующие изменения в законодательстве, особенно касающиеся определения понятия «промышленный образец». Также раскрыты некоторые различия в законодательной базе России, Азербайджана и Евразийской патентной организации в области правовой охраны промышленных образцов.

**Ключевые слова:** промышленный образец, дизайнерский проект, Гражданский кодекс Российской Федера-

- ции, Закон Азербайджанской Республики «О патентах», новизна, оригинальность
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- **Для цитирования:** Маммадли Э.Д. Развитие понятия «промышленный образец» в России и Азербайджане // Труды по интеллектуальной собственности (Works on Intellectual Property). 2025. Т. 54, № 3. С. 54–58;
- DOI: 10.17323/tis.2025.27964

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- **Abstract.** The features of legal protection of industrial designs is due to its crucial role in increasing the competitiveness of the product in the modern market economy. In the presence of national legislation in the field of intellectual property that meets modern requirements and international standards and a clear definition of “industrial design”, the copyright holder can exclude and prevent any unauthorized use of his protected design.

- This article examines the history and stages of development of the definition of “industrial design” in Russia and Azerbaijan. It analyzes patent legislation in the field of industrial design protection in the tsarist, Soviet and modern periods. The article describes the relevant changes in legislation, especially in the definition of “industrial design”. It also reveals some differences in the legislative framework of Russia, Azerbaijan and the Eurasian Patent Organization in the field of legal protection of industrial designs.

**Keywords:** industrial design, design, Civil Code of the Russian Federation, Law of the Republic of Azerbaijan "On Patents", novelty, originality

**For citation:** Mammadli E.J. Development of the Definition of "Industrial Design" in Russia and Azerbaijan // Trudi po Intellectualnoy Sobstvennosti (Works on Intellectual Property). 2025. Vol. 54 (3). P. 54–58; DOI: 10.17323/tis.2025.27964

Legal protection of industrial designs gives the owners of product's designs the opportunity to have a monopoly in the market. The creation of new design objects and the use of the latest technologies develop civil law regulation in this area.

Back in 1864, the Russian Emperor Alexander II approved the "Regulation on the Right of Ownership of Factory Drawings and Models" ("Положение о праве собственности на фабричные рисунки и модели"). This Regulation stipulated that the inventor of a drawing or model intended for reproduction in factory or handicraft products could ensure for himself, for a certain period, the right to exclusive use of the said invention.

During the Soviet Union, in 1924, the Central Executive Committee of the USSR adopted the Resolution "On Industrial Designs (Drawings and Models)" (Постановление "О промышленных образцах (рисунках и моделях)"). According to the Resolution, the designs had to be "a new in appearance or form artistic-industrial drawings, intended for reproduction in relevant publications, and new in appearance, form, structure or arrangement of parts of the model, intended for industry, homemade production, trade, crafts, household use and generally for any work".

However, this resolution was repealed in 1936, and the protection of industrial designs by patent law was suspended. During this period (1924–1936), 6400 industrial designs registered in the Soviet Union [1].

The USSR joined the Paris Convention for the Protection of Industrial Property (hereinafter — Paris Convention) in 1965. The Paris Convention is the first multilateral international treaty in the field of protection of industrial property rights, including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the suppression of unfair competition. The Council of Ministers of the USSR adopted the Resolution "On Industrial Designs" (Постановление "О промышленных образцах") in the same year. Thus, the protection of industrial designs was restored in the Soviet Union.

According to the new legislation, an industrial design was recognized as "a new, suitable for industrial production, an artistic solution for the appearance of a product, in which the unity of its technical and aesthetic

qualities is achieved". There was enough novelty within the territory of the Soviet Union [2].

In 1981, the "Regulations on Industrial Designs" ("Положения о промышленных образцах") were approved. In this normative act, an "industrial design" was defined as "a new artistic-constructor solution for a product, determining its appearance, corresponding to the requirements of technical aesthetics, suitable for industrial production and producing a positive effect".

According to the Law of the USSR "On Industrial Designs" (Закон СССР "О промышленных образцах") of July 10, 1991, the term "an industrial design" included "an artistic and artistic-constructor solution that determines the appearance of a product". Moreover an industrial design was granted legal protection only if it was "new, original and industrially applicable".

The same definition was included in the Patent Law of the Russian Federation (Патентный закон Российской Федерации) of September 23, 1992. According to Article 6 of the Patent Law, industrial designs included "an artistic-constructor solution of a product that determines its appearance".

In 2003, amendments and additions were made to the Patent Law. In the new version, the criteria of "industrial applicability" was removed from the requirements for an industrial design. It was stated that an artistic-constructor solution of a factory-made or homemade article that determines its appearance should be protected as an industrial design.

On January 1, 2008, Part IV of the Civil Code of the Russian Federation<sup>1</sup> (четвертая часть Гражданского Кодекса Российской Федерации) came into force. The definition of "industrial design" was included in Article 1352. According to the first version of this article, "artistic-constructor solutions of a factory-made or homemade article that determine its appearance" shall be protected as an industrial design.

In order to be granted legal protection, an industrial design must be new and original in its essential features: "the essential features of an industrial design shall include features that determine the aesthetic and (or) ergonomic characteristics of the article's outward appearance, in particular the shape, configuration, ornament and combination of colors".

As part of the reform of civil legislation in 2014, certain amendments<sup>2</sup> made to Part IV of the Civil Code of

the Russian Federation. In the new version of Article 1352, "the appearance solution of a factory-made or home-made article" should be protected as an industrial design.

Combinations of lines, contours of the product, texture or structure of the product's material added to the essential features of an industrial design, and the "ergonomic characteristics" of the appearance removed. The adjective of "artistic-constructor" also removed from the definition of "industrial design". In addition, objects of architecture, industrial, hydraulic and other stationary structures, objects of unstable shape made of liquid, gaseous, bulk or similar substances can be granted legal protection as an industrial design.

The validity of exclusive rights to an industrial design was 5 years from the date of filing an application for a patent to the Federal Service for Intellectual Property of the Russian Federation (Rospatent). At the same time, this term can be repeatedly extended by five years, at the request of the patent holder, but in general for no more than 25 years.

For comparison, the validity period of a patent for an industrial design in the territory of the Republic of Azerbaijan constitutes 10 years and can be tender for not more than 5 years. This will lead us to the second part of the article about Azerbaijan.

During the period of the Russian Empire and the Soviet Union, the above-mentioned legislative acts on the protection of industrial designs were also in force in the territory of Azerbaijan. After Azerbaijan gained independence in 1991, a system of civil-law protection of industrial designs created in the country.

In 2018, an institutional reform carried out in Azerbaijan, testifying to the importance of innovation and intellectual property in the modern economic development of the country [3]. By the order of the President of the Republic of Azerbaijan dated April 20, 2018, the Intellectual Property Agency of the Republic of Azerbaijan (hereinafter — IP Agency) created by merging the Copyright Agency and the Patent and Trademark Center of the liquidated State Committee for Standards, Metrology and Patents.

In a short period the IP Agency developed draft regulatory and methodological documents concerning the procedure for obtaining a patent, searching for information on an application, substantive examination, etc. In 2020, the IP Agency prepared an Analytical Review of Industrial Designs, Geographical Indications and Trademarks in Azerbaijan [4].

Civil protection of industrial designs is regulated by the Law of the Republic of Azerbaijan "On Patent"<sup>3</sup>

<sup>1</sup> Civil Code of the Russian Federation (Part Four) of 18.12.2006 No. 230-FZ // Collection of the legislation of the Russian Federation. 25.12.2006. No. 52 (Part 1).

<sup>2</sup> Federal Law of the Russian Federation "On Amendments to Parts One, Two and Four of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" of 12 March 2014, No. 35-FZ.

<sup>3</sup> Law of the Republic of Azerbaijan "On Patent" dated 25.07.1997 No. 312-IQ. [Electronic resource]. Unified electronic

(hereinafter — Patent Law) dated July 25, 1997. Article 1 of the Patent Law determines definition of “industrial design” as “an artistic or artistic-constructor solution of a product that determines its new appearance”. According to Article 9 of the Patent Law, an industrial design shall granted protection provided if it is new or original [5].

In 2009, the relevant amendments<sup>4</sup> were made to the Patent Law in order to improve the patent legislation of Azerbaijan in line with the requirements of the World Trade Organization (hereinafter — WTO). As in Russia, in the new version of the Patent Law, the criteria of “industrial applicability” removed from the requirements for an industrial design. Unlike Russian legislation, as stated above, Azerbaijan legislation provides a requirement of novelty or originality. The relaxation of requirements encourages and facilitates inventive activity, and contributes to an increase in patent activity. This also complies with the provisions of Article 25 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the WTO.

The next difference in the legislation concerns the non-provision of legal protection as an industrial design. According to Azerbaijani legislation, solutions conditioned solely by the technical function of the product; architectural objects (except for small architectural forms); industrial, hydraulic and other stationary structures; printed products; unstable objects made of liquid, gaseous, bulk or similar substances are not recognized as an industrial design [6].

After the amendments to the Civil Code of the Russian Federation in 2014, similar exceptions removed. In the near future, it is planned to include provisions ensuring the protection of these objects in the relevant legislation of Azerbaijan.

Another difference concerns the legal protection of industrial designs that include elements identical or confusingly similar to trademarks and objects of copyright. In the legislation of the Russian Federation, the legal protection of industrial designs is prevented, among other things, by the principle of “identity or confusingly similarity to trademark, object of copyright of a third party” [7].

According to the Patent Law, an industrial design shall recognized as meeting the criterion of novelty if the entire set of its essential features that determine aesthet-

ic and ergonomic characteristics are unknown from the knowledge available before the priority date of the industrial design. The set of existing knowledge also includes information on protected trademarks that are related to the filed industrial design. However, the legislation of Azerbaijan does not have a provision on “identity, confusingly similarity to the object of copyright of a third party”.

In our opinion, it would be appropriate establish a norm in the legislation of the Republic of Azerbaijan on the intersection of rights to an industrial design and object of copyright. This can be done by making a corresponding change to the set of existing knowledge (point 3 of the Article 9 of the Patent Law) and adding “information on protected objects of copyright and cultural heritage related to the declared industrial design”.

After the creation of the Eurasian system for the protection of industrial designs, the term “Eurasian industrial design” began to be used in scientific literature. The Protocol to the Eurasian Patent Convention of September 9, 1994, on the Protection of Industrial Designs (hereinafter — Protocol) was adopted at the Diplomatic Conference in Nur-Sultan (Republic of Kazakhstan) on September 9, 2019. The Republic of Azerbaijan became the first Member State of the Eurasian Patent Organization (hereinafter — EAPO) to ratify the Protocol. The Eurasian Patent Office received the first Eurasian application for an industrial design in June 2021. Moreover, by April 2025, more than 1000 Eurasian patents for industrial designs issued.

According to the Article 3 of the Protocol “an industrial design to which legal protection is granted shall be a design of the external appearance of an industrial or artisanal product that is patentable in accordance with the Patent Regulations to the Convention”<sup>5</sup>.

Validity of the Eurasian patent for an industrial design shall be 5 years from the filing date of an application for a Eurasian patent for an industrial design. This duration may extended for successive periods of 5 years each at the request of the holder of a Eurasian patent for an industrial design, with respect to the territory of all the Contracting States in which the Eurasian patent for an industrial design has legal effect. The overall duration of the Eurasian patent for an industrial design may not exceed 25 years from the filing date.

However, the term of validity of a patent for an industrial design in the territory of Azerbaijan is 10 years

database of legal acts of the Ministry of Justice of the Republic of Azerbaijan. — URL: <https://e-qanun.az/framework/3934> (date of access: 21.05.2025).

<sup>4</sup> Law of the Republic of Azerbaijan “On Amendments and Additions to the Law of the Republic of Azerbaijan “On Patent” dated 20.10.2009 No. 893-III GD”. [Electronic resource]. Unified electronic database of legal acts of the Ministry of Justice of the Republic of Azerbaijan. — URL: <https://e-qanun.az/framework/18947> (date of access: 21.05.2025).

<sup>5</sup> Protocol to the Eurasian Patent Convention of September 9, 1994, On the Protection of Industrial Designs. [Electronic resource] Website of the Eurasian Patent Organization. — URL: [https://www.eapo.org/wp-content/uploads/2023/03/proc\\_industr\\_design\\_protect\\_1994-1.pdf](https://www.eapo.org/wp-content/uploads/2023/03/proc_industr_design_protect_1994-1.pdf) (date of access: 03.06.2025).

and it is determined from the date of filing an application to the IP Agency. This duration extended based on a petition from the patent holder, but not more than by 5 years.

As can be seen, the maximum term of legal protection of an industrial design in Russia and the EAPO is 25 years from the filling date. In comparison, this duration is maximum 15 years in Azerbaijan. It would be advisable to harmonize the legislation of the EAPO Member States on the legal protection of industrial designs, including the terms of patent validity.

In conclusion, it should be noted that the Republic of Azerbaijan and the Russian Federation closely cooperate in the field of industrial design protection. Back in 1994, the Government of the Russian Federation and the Government of the Republic of Azerbaijan signed the Agreement on cooperation in the field of industrial property protection. Both countries are contracting parties to the Paris Convention, the Hague Agreement Concerning the International Registration of Industrial Designs and the Locarno Agreement Establishing an International Classification of Industrial Designs. They are also contracting parties to the Eurasian Patent Convention. In addition, Azerbaijan and Russia cooperate in the field of protection of industrial designs within the Commonwealth of Independent States and are members of the Interstate Council on Legal Protection and Defense of Intellectual Property.

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