

Understanding the novelty requirement for industrial designs under Mexican law.

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The concept of novelty is a cornerstone in the protection of industrial designs, ensuring that only truly new and original creations receive legal protection. In Mexico, the Federal Law for the Protection of Industrial Property (FLPIP) outlines specific criteria for what constitutes a novel design.

Article 67 of the FLPIP stipulates that for a design to be considered novel, it must meet two key criteria:

A) Independent Creation: This means that the design must be the result of the creator's own intellectual effort and not a copy or imitation of an existing design. Industrial designs whose characteristics differ only in "irrelevant details" shall be considered identical.

Although the emphasis of this definition is on the originality of the creation process, the key issue here is the term "irrelevant details". When addressing this criterion, rather than demonstrating that the design was developed independently, one must be focused on explaining why the small differences are not "irrelevant details". The more a design is saturated within the state of the art, the more likely it is that small differences between the designs to be compared could suffice to justify protection.

B) Differ in a Significant Degree: This means that the overall impression the design produces on a technician in the field must differ significantly from the overall impression produced by any other design, considering the "designer's freedom degree" for developing the design.

Many design possibilities are limited by technical or constructional specifications. Precisely because the appearance of a certain design cannot be varied to a significant degree, the technician would have no reason to ignore small differences in the overall impression, especially when the designer's freedom in developing the design is more restricted.

Understanding and effectively demonstrating these aspects are crucial for securing design protection under Mexican law.



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