



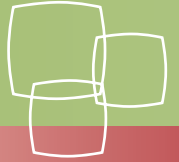
**Canadian
Intellectual Property
Office**

An Agency of
Industry Canada

**Office de la propriété
intellectuelle
du Canada**

Un organisme
d'Industrie Canada

A GUIDE TO INDUSTRIAL DESIGNS





A GUIDE TO INDUSTRIAL DESIGNS

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Table of Contents

THE BASICS1

Purpose of this guide.....	1
Who we are.....	1
Visit CIPO's website.....	2
<i>General enquiries</i>	2
Industrial designs fuel success.....	3
What is an industrial design?.....	3
Why should you register?.....	4
What you cannot register.....	4
Who can apply for registration?.....	4
When to file an application.....	5
How long does the process take?.....	5
<i>Conflicts</i>	5
How long does registration last?.....	5
What to consider before filing an application.....	5
<i>The search</i>	6
<i>Consider finding a registered patent agent</i>	6

GETTING STARTED7

Preparing an industrial design application.....	7
<i>Application form</i>	7
<i>Title</i>	7
<i>Description</i>	7
<i>Drawings and photographs</i>	9
<i>Fees</i>	9
<i>Submit your application</i>	10
<i>Corresponding with the Industrial Design Office</i>	10
Electronic services.....	10
<i>Services available</i>	10
The registration process.....	11
<i>Initial processing</i>	11
<i>Classification</i>	11
<i>Preliminary examination</i>	11
<i>Search</i>	11
<i>Examination</i>	11
<i>Responding to the examiner's objections</i>	12
<i>Registration</i>	12
<i>Appeals process</i>	12
Additional considerations.....	12
<i>Variants</i>	12
<i>More than one design</i>	12

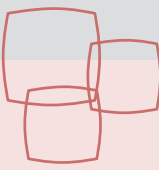
BEYOND THE BASICS13

Other industrial design applications.....	13
<i>Registration outside Canada</i>	13
<i>Priority</i>	13
Marketing rights.....	13
<i>Assignment</i>	13
<i>Licences</i>	14
Marking a product.....	14
Enforcing your rights.....	14
Website of interest.....	14

APPENDIX I —

FREQUENTLY ASKED QUESTIONS15

APPENDIX II — GLOSSARY18



Purpose of this guide

This booklet explores what industrial designs are, what makes them “registerable,” the advantages of registration, and how to go about it.

Although not a complete text on Canadian law regarding industrial design, this guide provides a general overview of the industrial design registration process.

For more detailed information on industrial design procedures, consult the *Industrial Design Act* and *Industrial Design Regulations*, available online (www.cipo.ic.gc.ca/id). The Canadian Intellectual Property Office (CIPO) Client Service Centre can also provide further information (see page 2).

The glossary on pages 18, 19 and 20 provides definitions of terms used in this guide.

Who we are

The Industrial Design Office is responsible for registering industrial designs in Canada, and is part of CIPO, an agency of Industry Canada. In addition to industrial designs, CIPO is responsible for most other intellectual property (IP) rights including patents, trade-marks, copyrights and integrated circuit topographies.

The main functions of the Industrial Design Office are to:

- *receive and examine applications for industrial design registration and register them;*
- *receive and record assignments of industrial designs;*
- *maintain the register of industrial designs; and*
- *provide general information to the public about industrial design registrations.*

Visit CIPO's website

CIPO's website (www.cipo.ic.gc.ca) includes useful information about its product lines, services and legislative changes, and is also the best way to communicate with CIPO.

There are five IP guides, and all are available on the website, along with interactive tools that explain IP.

Visit the "Industrial Designs" section of the website for the following:

- *instructions on getting started;*
- *access to the Canadian Industrial Designs Database to search, retrieve, and study industrial designs registered in Canada;*
- *publications, including office practices;*
- *legislation, including the Industrial Design Act and Industrial Design Regulations;*
- *online and printable forms, including the application for registration; and*
- *Canadian and international Internet links.*



General enquiries

CIPO's **Client Service Centre (CSC)** is the central point of contact for clients wishing to communicate with CIPO. The CSC supplies information on a variety of subjects such as procedures for filing patent, trade-mark, copyright, industrial design, and integrated circuit topography applications.

IP Search Information Officers provide numerous services, including providing IP information, answering general enquiries, and guiding clients with IP searches through various IP databases.

CIPO's **Client Service Centre** is located at:

Canadian Intellectual Property Office
Industry Canada
Place du Portage I
Room C-229, 2nd Floor
50 Victoria Street
Gatineau QC K1A 0C9

General enquiries:

Tel.: 1-866-997-1936 (toll-free)
TTY: 1-866-442-2476

Email: cipo.contact@ic.gc.ca

Industrial designs fuel success

A well-designed chair is not just a pleasure to sit on, but also a pleasure to look at. This can be said for most manufactured products — their value to people depends not only on what they do, but how they look.

Manufacturers invest a great deal of money and know-how in industrial design and this is why an original design is considered valuable IP.

Your industrial design is worth a lot of time and money, and it may mean the success of an entire enterprise. It pays to protect your hard work.

If you are the creator of (or an investor in) an original industrial design, Canadian law offers you protection from unlawful imitation of your design. The *Industrial Design Act*, like other forms of IP legislation, protects owners while promoting the orderly exchange of knowledge.

The way to obtain this valuable protection is to register your design with the Industrial Design Office.

The rights given by a Canadian industrial design registration extend throughout Canada, but not to other countries. You must apply for registration in other countries separately. Likewise, foreign registrations do not protect an industrial design in Canada.

What is an industrial design?

An industrial design is 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. For example, the shape of a table or the shape and decoration of a spoon may be industrial designs.

An industrial design must have features that **appeal to the eye**. To be eligible for registration, your design must be **original**.

Industrial designs are the visual features of shape, pattern, configuration or ornament (or any combination of these features) applied to a manufactured article.

People occasionally confuse industrial designs with patents, trade-marks, copyrights and integrated circuit topographies. Like industrial designs, these are rights granted for intellectual creativity and are forms of IP.

However:

- **Industrial designs** are the visual features of shape, configuration, pattern or ornament (or any combination of these) applied to a manufactured article.
- **Patents** cover new inventions (process, machine, manufacture, composition of matter) or any new and useful improvement to an existing invention.
- **Trade-marks** are words, symbols or designs (or any combination of these) used to distinguish the wares or services of one person or organization from those of others in the marketplace.

- **Copyrights** provide protection for literary, artistic, dramatic or musical works (including computer programs) and three other subject matter known as: performances, sound recordings and communication signals.
- **Integrated circuit topographies** refer to the three-dimensional configuration of electronic circuits embodied in integrated circuit products or layout designs.

Why should you register?

It is recommended that you register your industrial design in order to have the exclusive right to your design for up to ten years from the date of registration. Unless you register your design, you cannot make a legal claim of ownership, and you have no legal protection to prevent others from making, importing, renting, or selling any article to which your design is applied.

What you cannot register

Under the *Industrial Design Act* you cannot register the following:

- a method of construction;
- an idea;
- the materials used in the construction of an article; or
- the function of an article.

Who can apply for registration?

Only the proprietor (owner) of a design may apply for and receive registration for an industrial design.

Usually you are considered the proprietor if you have created the design; however, if you have been **hired under contract** to develop a design for someone else, then that someone else is considered the proprietor, and only that person may apply.

If you work together with other people to create a design, you should file as **joint proprietors** (unless you are all working under contract or commission).

If you have **acquired ownership** of the design, then you may apply.

If you are an **employee** of a company and develop a design as part of your employment, then your employer is considered to be the proprietor, and is the only one who may apply.

**What
can you
register?**

Yes

- *a repeat pattern applied to wallpaper*
- *the shape of a perfume bottle*
- *the ornamentation applied to a t-shirt*
- *the visual features of a running shoe*

No

- *the way an MP3 player functions*
- *the material of which a protective mask is made*
- *the idea of putting advertising on bus shelters*

When to file an application

In Canada, there is no time limit for registering an industrial design as long as the design has never been published (i.e., never been made public — even to your friends — or offered for commercial sale or use anywhere in the world).

If your design *has* been published, you must file for registration within 12 months of publication.

Before filing for registration, you must also make sure that:

- the design is applied to a fully assembled finished article or set;
- the design features are not ruled only by the article's function; and
- the description portion of the application (see page 7) describes visual features, not functional or manufacturing aspects.

How long does the process take?

The Industrial Design Office examines applications on a first-come, first-served basis. If your application is properly prepared, registration should happen quickly. If your application is incomplete, or incorrectly completed, the process will take longer. In order to shorten the time required for registration, it is recommended that you respond to Office reports as quickly as possible.

Conflicts

Should another person apply to register essentially the same design as yours, the application with the earlier filing date will be registered.

How long does registration last?

Registration is for a 10-year term, beginning on the date of registration. Before the expiry of five years and six months from that date, a maintenance fee must be paid or protection will end. Once the 10-year term is over, anyone is free to make, import, rent or sell the design in Canada.

What to consider before filing an application

The Industrial Design Office will give you the basic information you need to file your own application for industrial design registration; however, the Industrial Design Office cannot prepare your application, conduct a preliminary search of existing designs for you or provide an opinion about the aesthetic or commercial qualities of your design.

The search

A good first step is to undertake a search of existing industrial designs. This will help you to determine whether your design is original, and it will also let you see other registered designs. The Industrial Design Office maintains records of all industrial designs filed and registered in Canada dating back to 1861.

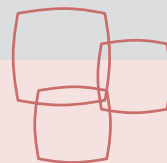
Searches can be done by accessing the Canadian Industrial Designs Database on the CIPO website (www.cipo.ic.gc.ca/iddatabase). Interactive and simple to use, the database will allow you to perform simple but powerful searches on industrial design information free of charge. Searches can be conducted using the classification code, classification text, client reference number, court order number, name of current owner, date of registration, description, interested parties, and title.

A search can also be conducted in person at CIPO's Client Service Centre. As a first-time visitor, you may feel overwhelmed by the idea of searching through so many registrations. Intellectual Property Information Officers are available to help you with your search (though they cannot do the search for you). It is a good idea to consider engaging the services of a patent agent or searching firm for this work (please see below for information on registered patent agents).

Consider finding a registered patent agent

Drafting an industrial design application requires careful attention to detail and knowledge of the *Industrial Design Act* and *Industrial Design Regulations*. For this reason, you may wish to hire a **legal professional who specializes in IP** to prepare and “prosecute” (i.e., follow through on) your application. Hiring an agent is not mandatory, but is highly recommended.

A list of agents can be obtained by visiting the CIPO website (www.cipo.ic.gc.ca) or from the Client Service Centre. It must be noted that CIPO will not recommend a particular agent.



Preparing an industrial design application

Application form

Registration forms are available on the CIPO website (www.cipo.ic.gc.ca/id), at CIPO's Client Service Centre or from a regional Industry Canada office.

Note:

- **Only** the current proprietor (owner) of the industrial design or an appointed agent can file an application. The application form includes a declaration that you are the proprietor of the design and that, to your knowledge, no one else used the design before you or the first proprietor.
- Your application form must also include the following:
 - o your name and complete street address;
 - o the title of the article;
 - o the description;
 - o the name and complete street address of a representative for service in Canada, if you have no office or place of business in Canada; and
 - o drawings or photographs.

Title

The application must include a title that identifies the finished article to which the design is applied. The title should be the common name generally known and used by the public (e.g., “lighter,” “chair,” “spoon,” “t-shirt”).

Description

Your application must include a description of the features of your design.

The description along with the drawings and the title must provide an accurate picture of the design. The following information must be clearly indicated in the description:

- the features of the design and where they reside in the article (i.e., the entire article or a portion of the article); and
- the manufactured article to which the design is applied.

The following are some specific things to keep in mind when writing your description:

- Your description must describe only the **visual features** of the design (i.e., features of shape, configuration, pattern, or ornament, or a combination of these). The description must not refer to how the article was made, what it is made of, how it functions, its size or its dimensions. For example, a distinctive tread on the sole of a boot may have functional properties (to prevent slipping) as well as visual appeal (it is in the shape of a snowflake); however, the description must refer to only those features that are visual.
- The description must also indicate **where the design features reside** in the article. The design may reside in the entirety of the article, or just in a portion of the article. For example, you may wish to protect the shape of the entirety of a chair or you may wish to protect only the shape of the arms of a chair.
- You may choose to give a **brief description** that simply states what features the design consists of and where those features reside in the article. For example: a) The design consists of the features of shape of the arms of the chair as shown in the drawings. b) The design consists of the features of shape, configuration, pattern, and ornamentation of the entire chair as shown in the drawings.

Or you may choose to provide a more **detailed description by using descriptive terminology**. For example: The design consists of generally rectangular arms with a convex upper surface and concave lower surface, a longitudinal groove extending the entire length of each arm on the outer side edges. Whichever method you use, it must be clear whether the design's features reside in the entire article, or just a part of it.

- You might also want to **highlight** particularly important features of the design. For example: The design consists of the features of shape of the arms of the chair as shown in the drawings. The most significant feature is the diamond-shaped recess on the top surface of each arm.
- Since the courts may use your description to help decide the limits of protection for your design, you should word your description carefully and accurately. If your description is **too broad**, it may be impossible to enforce. If it is **too narrow**, you may leave out features you wanted to protect.

Keep in mind that you are responsible for providing an accurate, adequate description of your design and to make sure it covers all of the design's original features. In order to assess whether the design can be registered, the Industrial Design Office will only verify that your wording clearly describes the design and that it accurately states what is shown in the drawings or photographs.

More information on descriptions is available in the document entitled "Industrial Design Office Practices" on the CIPO website (www.cipo.ic.gc.ca/id).

Drawings and photographs

Your application must include at least one drawing or photograph of the design as it is applied to the finished article of manufacture. Drawings and photographs must meet the following conditions:

- **Content:** The drawings or photographs must show the **complete** finished article; put otherwise, the article must be shown alone against a neutral (blank) background. Your drawing(s) or photograph(s) should show every feature of the design as it is applied to the article. You may use stippled or broken lines to show parts of the article that are not part of the design, but **the design must be shown in solid lines**. It is acceptable to include environment — subject matter that is not part of the article — in a single view, provided that the environment helps to make clear what the article is or what its design features are. Written matter, including the title, descriptive text or dimensions should not be included on the drawing.
- **Quality:** Drawings or photographs must be of high enough quality that they can be reproduced electronically in black and white by the Industrial Design Office. The features of the design identified in the description portion of the application (see page 8) must be shown clearly and accurately.
- **Number and type of views:** Your drawings or photographs should include only as many views as are necessary to properly display the features of the design. The conventional views are: perspective, front, back, top, bottom, right side, left side. Each view should be numbered in the following way: Figure 1, Figure 2, etc.
- **Figure reference:** Where the drawings or photographs contain more than one figure, a figure reference should be included at the end of the **description**. For example: “Figure 1 is a bottom view of the chair.”
- **Miscellaneous views:** Occasionally, conventional views will not fully show all the features of your design. In that case, you will need to include the following views as well: views showing open and closed positions, cross-sectional views, fragmentary views, and views showing indefinite length and repeat patterns.

More information on the requirements for drawings and photographs is available in the document entitled “Industrial Design Office Practices” on the CIPO website (www.cipo.ic.gc.ca/id).

Fees

You must pay a fee to have your application examined by the Industrial Design Office. Payment may be made by credit card (VISA, MasterCard or American Express), direct payment, deposit account, postal money order or cheque payable in Canadian dollars to the Receiver General for Canada. Do not add federal and provincial taxes.

Details about fees are available on the CIPO website (www.cipo.ic.gc.ca/id) or you may communicate with the Client Service Centre (see page 2 for contact information).

Submit your application

You may send your completed application **electronically** through the CIPO website (www.cipo.ic.gc.ca/id) or to the address below.

Corresponding with the Industrial Design Office

Business with the Industrial Design Office is normally done in writing. Address all correspondence to:

Office of the Commissioner of Patents
Industrial Design Office
Canadian Intellectual Property Office
Industry Canada
Room C-114
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9

Fax: 1-819-953-CIPO (2476)

More information about CIPO's official correspondence procedures is available on the CIPO website (www.cipo.ic.gc.ca/id).

If you are enquiring about the status of your pending application, provide the application number, the title and the applicant's name. If you have hired an agent, it is necessary that you conduct all correspondence through that agent.

The Industrial Design Office will respond to all general enquiries, but cannot:

- advise you whether to file an application;
- tell you whether your design meets registration criteria prior to your filing an application;
- advise you about possible infringement of an industrial design; or
- act in any way as an interpreter of industrial design law, or as a counselor, other than in matters directly related to processing your application.

Electronic services

Our electronic service delivery allows you to:

- file an industrial design application;
- submit general correspondence;
- order copies; and
- pay industrial design maintenance fees.

To file your application online, simply visit the CIPO website (www.cipo.ic.gc.ca/id). The website also has industrial design forms available for download that can be completed and sent by regular mail.

The registration process

After you submit your industrial design application, the design registration process consists of the following six phases:

- initial processing (including the issue of a filing certificate);
- classification;
- preliminary examination;
- search;
- examination; and
- registration.

Initial processing

Staff will review your application to make sure the basic administrative requirements have been met. If your application is complete, a filing certificate will be issued to acknowledge that the application has been received, processed and given a filing date. It also provides you with the number assigned to your application so you can refer to it in later correspondence. If it is incomplete, the Industrial Design Office will send a notice to the applicant outlining any deficiencies.

Classification

Next your application will be classified according to the particular type of article to which it relates.

Preliminary examination

Your application will be assessed by an examiner to make sure the description and drawings or photographs are clear in defining what features the design is comprised of, and what the article is. This is done in order to conduct a search, and also to make sure the application relates to only one design or variants.

Search

Your design will be compared with previously registered and published designs for similarity. The results of this search will be reviewed by the examiner in the “Examination” stage (see below).

Examination

An examiner will review your title, description and drawings or photographs to make sure they comply with the *Industrial Design Act* and *Industrial Design Regulations*. The examiner will review the search results to assess the originality of your design and to determine whether the design has been published for more than one year.

Following this assessment, the examiner will either **allow** (approve) the application for registration or **issue a report** (which will be mailed to you). The report will set out the objections to registration and tell you what information or amendments (changes) are required.

Responding to the examiner's objections

The industrial design examiner may raise objections about your application, which will be explained in the examiner's report. If this happens, you have the opportunity to respond. Your response should be in writing and may include the requested information or amendments. If you do not agree with the examiner's objections, you may submit arguments. If you do not understand the examiner's report, you may contact the examiner for clarification.

It is important to remember that if you make changes to your description or drawings after filing the application or in response to the examiner's report, you cannot change the design in any substantial way. If you do, the new drawings or description will be rejected. If you wish to proceed with the new design, you must submit a new application (with filing fees) which will receive a new filing date.

Registration

Once approved by the examiner, your design will be registered as soon as possible. A certificate of registration that includes a copy of the application and drawing(s) or photograph(s) of the registered design will be mailed to you. This certificate is evidence of ownership and of the originality of your design.

Appeals process

If the examiner decides your application is unregistrable in the final report issued by the Industrial Design Office, you may appeal this decision to the Patent Appeal Board. The Board will make recommendations to the Commissioner of Patents, who will either reverse the decision or support it in a final rejection. If you are still not satisfied, you may appeal the final rejection to the Federal Court of Canada, and from there to the Supreme Court of Canada.

Additional considerations

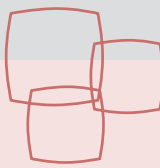
Variants

Each industrial design application must be limited to a single design or to "variants" (i.e., designs that do not differ substantially from one another). You may add variants of the design to your application any time before registration.

More than one design

If you include designs in one application that are very different, an objection will be issued and you will be asked to choose one design and remove the rest from your application. You then have the option of filing a new application (with filing fees) for any design removed from the first application.

In this case, the filing date of the new application will be the same as the first application.



Other industrial design applications

Registration outside Canada

Registering your design with the Canadian Intellectual Property Office gives you exclusive rights in Canada only. To enjoy similar rights abroad, you must apply for them in each country separately. Most industrialized countries have equivalent industrial design protection. Links to foreign IP offices are available on the CIPO website (www.cipo.ic.gc.ca).

Note: If your Canadian industrial design application goes to registration prior to filing in another country, it could prevent you from receiving a registration in the other country. It is recommended that applicants inform themselves on the filing requirements of other countries in order to avoid this situation.

Priority

Procedures for obtaining international design rights are partially governed by an international treaty called the Paris Convention for the Protection of Industrial Property. The Paris Convention allows applicants to request **convention priority**. This means that someone who has filed for design registration in one Convention country has six months to file an application for the design in another country in order to be given the same rights as if he or she had filed in the second filing country on the original filing date.

For example, if you applied to register a design in Canada on January 5, 2006, you then have until July 5, 2006, to file for design registration in any other Convention country and claim **convention priority** in that country, i.e., receive the filing date of January 5, 2006.

Marketing rights

Now that you have taken steps to protect your creation, you will want to decide the best way to market it and turn a profit. As the proprietor (owner) of a registered industrial design, you have the exclusive right in Canada to make, import for trade or business, rent or sell a product incorporating that design.

You may also sell all or some of your rights to others (known as “assignment”), or you can simply authorize others to use the design subject to stated conditions (known as a “licence”).

Assignment

An **assignment** occurs when you sell all or part of your rights to the design to another party. This party (or “assignee”) assumes your ownership rights to make, import for trade or business, rent or sell, products to which the registered design is applied, and to authorize others to do so as well. Money is usually exchanged. The assignment must be in writing, but there are no standard forms for this. You may wish to ask a lawyer for help when preparing assignment documents.

The new owner should make sure that the assignment is recorded with the Industrial Design Office, which is done by sending a copy of the assignment document along with the fees. Details about fees are available on the CIPO website (www.cipo.ic.gc.ca/id).

Assignments may be recorded against both pending and registered designs.

Licences

In some cases, financial benefits can come from licensing a design. When you license your design, you allow someone else to use it with particular terms and conditions set out in a license agreement. You keep ownership and you can, in some instances, license to more than one other party. For example, you may license your design to one party for Ontario, one for Western Canada and another for the Maritimes. Similarly you could have an exclusive licence with one party for the first five years of protection, and another licence with a different party for the second five-year period. As with assignments, licences should be recorded. You may wish to ask a lawyer for help when preparing licensing agreements.

Marking a product

Although you do not have to mark your product to indicate it is registered as a design, marking does give you extra protection. The proper mark is a capital “D” inside a circle and the name, or abbreviation, of the design’s owner on the article, its label or packaging.

If your product is marked and someone is charged with infringing (violating) your design, the court could award you a remedy such as financial compensation. If there is no mark, the only thing the court can do is forbid the other party from using your design (an “injunction”).

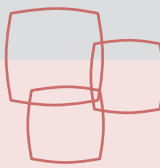
Enforcing your rights

You may take legal action against anyone who infringes (violates) your design in Canada. You must take legal action within three years of the alleged infringement. The Industrial Design Office will not assist in legal proceedings on your behalf or police your rights in any way.

Website of interest

The following is a website you may find helpful:

Department of Justice Canada
www.justice.gc.ca



Q1. What is an industrial design?

A An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these) applied to a finished article. It may be, for example, the shape of a table or the ornamentation on the handle of a spoon. The article can be made by hand, tool or machine.

Q2. Must I register my industrial design in order to be protected?

A Yes. There is no protection without registration. Once registered, industrial designs are available for public inspection. Keep in mind that it is best to apply for registration before marketing your product.

Q3. How long does registration last?

A Obtaining registration for an industrial design will give you exclusive rights for a period of ten years from the date of registration, provided that you pay a maintenance fee before expiry of the first five years plus six months of the registration.

Q4. What cannot be protected by an industrial design?

A The following cannot be protected:

- the functional features of an article;
- a principle of construction, or how an article is built;
- the materials used in the construction of an article;
- colour per se; or
- ideas.

Q5. If I register my design in Canada, am I protected in other countries?

A No. You can obtain protection in other countries only by filing in each country separately.

Q6. Is there a time limit for filing an application for registration?

A No, unless there has been “publication” (i.e., the design has been made public or offered for commercial sale or use anywhere in the world). In that case, you must file an application within twelve months of the publication date.

Q7. What do I need in order to apply for industrial design registration?

A You should send a completed application form, at least one drawing or photograph and the fees. You can file your application online via the CIPO website (www.cipo.ic.gc.ca/id) or you can print the form entitled “Application for Registration of an Industrial Design” and submit it by regular mail, fax or in person.

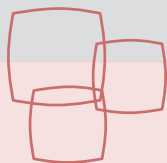
Q8. What type of description do I need to include?

A The description does not have to detail every aspect of the design, but it must state clearly what the design is. You should describe the visual aspects of the design only (i.e., shape, configuration, pattern or ornament or any combination of these). Do not refer to how the article functions or performs. For a more detailed explanation of descriptions, consult the document entitled “Industrial Design Office Practices” available on the CIPO website (www.cipo.ic.gc.ca/id).

- Q9. **What types of drawings or photographs are necessary?**
A Whether you submit drawings or photographs, they must show the article and the design features clearly and accurately. They must also be presented so that the Industrial Design Office can directly reproduce them in black and white. For a more detailed explanation of drawings, consult the document entitled “Industrial Design Office Practices” available on the CIPO website (www.cipo.ic.gc.ca/id).
- Q10. **If I have a registered design, do I have to put any marking on the articles to indicate this?**
A Though marking is not required, it is helpful in the event of a court proceeding. If there is no mark, the court cannot award a remedy other than an injunction, which will prevent further infringement on your design. The proper mark is a capital “D” in a circle and the name, or abbreviation, of the design’s proprietor on the article, its label or packaging.
- Q11. **If I see a good design outside Canada and it does not appear to be on the market in Canada, can I register that design under my name here?**
A No, only the proprietor of the design may apply. You could apply for the design in Canada if you have acquired ownership and it has not been published anywhere in the world for more than one year.
- Q12. **How will the Industrial Design Office know if I did not originate the design?**
A A search is done through records of registered Canadian designs and published art to determine whether anyone else already owns the design or one so similar that yours would be considered an imitation. If so, your application will not be acceptable for registration. If the search does not disclose a similar design, your declaration of originality will be accepted and the design registered, provided all other requirements are met. It should also be noted that the courts have the power to overturn an invalid declaration at a later date.
- Q13. **Can anyone do a search through the Industrial Design Office records to see what has been registered previously?**
A Yes, anyone can conduct a search via the Internet by accessing the Canadian Industrial Designs Database (www.cipo.ic.gc.ca/iddatabase). There is also a search room at the CIPO Client Service Centre, in Gatineau, Quebec. Staff will give you the basic information you need to do the search. You may also obtain copies of drawings and other documents at a nominal fee.
- Q14. **Can non-Canadians register their designs in Canada?**
A Yes, provided that Canadian requirements are met. Registrations in other countries offer no protection in Canada.
- Q15. **If I sell or purchase rights to a design, do I need to inform the Industrial Design Office?**
A It is a good idea to register the sale of rights, or “assignment,” as it is known, with the Industrial Design Office. Many legal text writers feel that registration of an assignment would be necessary before the new owner could sue anyone for infringing the design.
- Q16. **Would the Industrial Design Office stop someone else from infringing my design?**
A No. This responsibility rests with the owner of the design. You must start any legal action within three years of the alleged offence.

Q17. **Can I get help in filing an application for industrial design protection?**

A Yes. Please visit the CIPO website (www.cipo.ic.gc.ca/id) for information on filing an industrial design application. Information on procedures for filing an application can also be obtained from the Client Service Centre. Also, there are legal professionals you can consult who have experience in this area. Look for them in the yellow pages of the telephone book under “Patent Agents,” contact the Client Service Centre (see section entitled “General enquiries” on page 2), or visit the CIPO website (www.cipo.ic.gc.ca).

**Abandonment**

An application for an industrial design will be considered abandoned if the applicant fails to reply within the specified time to any report that sets out objections to registration.

Application

The formal request for an industrial design. The application has three basic elements: the application form, at least one drawing or photograph of the design, and the fees.

Assignment

The transfer of design rights from the owner to another party.

Canadian filing date

The date your completed application is officially received at the Industrial Design Office.

Canadian Intellectual Property Office

An agency of Industry Canada that administers Canada's intellectual property legislation and regulations regarding patents, trade-marks, copyrights, industrial designs and integrated circuit topographies.

Certificate of registration

A certificate stating that the design has been registered in accordance with the *Industrial Design Act*.

Convention priority

Convention priority applies in countries (including Canada) that have signed an international treaty called the Paris Convention. It is a protocol that gives an applicant six months from the filing date in one country to subsequently file an application in another country. The subsequent application is considered as if it had been filed on the earlier date.

Copyrights

The exclusive rights in literary, artistic, dramatic or musical works (including computer programs) and three other subject matter known as: performances, sound recordings and communication signals.

Declaration

Formal statement that you are the proprietor (owner) of the design and that, to your knowledge, no one else was using the design when you created it.

Description

A description is a basic requirement of an application for an industrial design. It identifies the visual features of shape, configuration, pattern or ornament that comprise the design, and indicates whether the design resides in the entire article or a portion of it.

Drawings

Drawings and photographs disclose the industrial design and are a basic requirement of a design application.

Examination

The process through which the Industrial Design Office decides whether a design warrants registration. The main objective is to determine if the design is indeed design subject matter, that it is original and that the documentation meets the requirements of the *Industrial Design Act* and *Industrial Design Regulations*.

Industrial Design Act

Federal legislation governing registration and ownership of industrial designs in Canada.

Industrial Design Office

The office within the Canadian Intellectual Property Office responsible for the registration of industrial designs.

Industrial designs

Visual features of shape, configuration, pattern or ornament (or any combination of these) applied to a manufactured article.

Infringement

Violation of industrial design rights through unauthorized use of a design.

Integrated circuit topographies

Three-dimensional configuration of electronic circuits embodied in integrated circuit products or layout designs.

Intellectual property

The right to ownership and control over a form of creative endeavour that can be protected through a copyright, patent, trade-mark, industrial design or integrated circuit topography.

Licence

Legal agreement granting someone permission to use a work for certain purposes or under certain conditions. A licence does not constitute a change in ownership of the industrial design.

Maintenance fee

Fee required in order to maintain the rights to an industrial design for a second five-year period.

Marking

Signaling that a design is registered by placing a capital “D” in a circle, along with the name, or abbreviation, of the design’s proprietor on the object to which the design has been applied, or to its label or packaging.

Paris Convention for the Protection of Industrial Property

An international treaty on intellectual property signed by 173 states, including Canada.

Patents

New inventions (process, machine, manufacture, composition of matter) or any new and useful improvement to an existing invention.

Proprietor

The proprietor of an industrial design is the owner of the design. This can be the person who created it, who paid to have it created or who bought the design rights from the owner.

Publication

Publication of a design is the act of making it public or available for commercial sale or use anywhere in the world.

Registration

The granting of exclusive rights to an industrial design by the Minister. This provides protection against imitation and unauthorized use of the design.

Representative for service

A person in Canada appointed by the applicant to receive documents on his/her behalf if the applicant has no place of business in Canada.

Search

The act of searching through registered and published designs to verify whether a design is original or whether it has been published for more than one year.

Trade-marks

Words, symbols or designs (or any combination of these) used to distinguish the wares or services of one person or organization from those of others in the marketplace

