



Canadian Property Registries

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Canadian Intellectual Property Office (CIPO)

The Canadian Intellectual Property Office is a federal organization, managed by the Minister of Industry, responsible for registration of all intellectual property rights across Canada. It consists of four offices: the Patent Office, the Office of the Registrar of Trade-marks, the Industrial Design Division, and the Register of Copyrights.

CIPO Patent Office

Canada's patent system falls under the umbrella of CIPO's management. CIPO's Patent Office is headed by the appointed Commissioner of Patents, who administers the body, and the office is manned by patent examiners, who review patent applications. The office also contains a panel of senior officials called the Patent Appeal Board. The board's central function is to hear appeals from refused applicants and make recommendations for a response to the Commissioner of Patents, who typically accepts and follows the board's counsel.

The Patent Office's operations and structure can be organized around its four main functions:

1. Application Processing and Examination – receive, evaluate, and potentially approve all patent applications
 2. Records and Maintenance – monitor and maintain all patent assignments
 3. Databases– maintain public access to both a searchable database of Canadian and
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she must appoint a Canadian resident as a representative to handle the claim. In the form, it is also possible to specify which drawing is to be included with the abstract. Finally, if necessary, small entity status and the appointment of a patent agent are also restated.

The abstract is a brief summary, 150 words or less, of the invention, to be used to index the patent. More detail is provided in the specification, where there must be a clear and complete description of the invention and its usefulness, along with a claim that defines the boundaries of protection desired from the patent. The description must be accurate, without obscurity or ambiguity. It is to be written so that someone skilled in the field – more precisely, an average, technically skilled, but unimaginative practitioner – could effectively create the invention and put it to use. As a result, both the technical field and the precise problem that is solved by the invention must be indicated. As for the claim, its structure is ideally one phrase of clear, singular meaning, demarcating the boundaries of the patent. It should highlight the inventive features of the patent, be without subjective meaning, and be supported by the contents of the submitted description.

The drawings need to be reproducible electronically, and so the Patent Office requires the use of good quality paper, 21.6 cm wide by 27.9 cm long, and forbids the use of colour. Proportions should be maintained and every figure labeled, and photographs are an allowable alternative if the invention cannot be adequately explained through drawings.

All of these elements are assembled in a single application file, for which the office may issue only one patent. Combinations of separate, unique inventions are patentable in a single file only if, when working together, the function of the sum is greater than that of the separate parts, therefore

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At the conclusion of the examination, the patent examiner issues an Examiner's Report. If the applicant is successful, he or she is given a notice of allowance and a final fee is requested. Once paid, the patent is issued; however if the fee is not paid, the patent is considered abandoned. If the application is rejected, the report details the reasons for its refusal and the applicant is given an opportunity to correct its faults.

An applicant may address the examiner's issues through filing an amendment, either by an insert or by replacing all affected pages. In those circumstances, an amendment must be a good faith response to the examiner's concerns with the intention of advancing the claim. Amendment is also allowed after a notice of allowance, but only to correct clerical errors or to add elements that could be reasonably inferred from the original. If any changes affect the scope of the patent, however, the amendments will be rejected. An amendment is not possible after the payment of the final fee.

If, after amendment, the application is still unacceptable for the same reasons, the examiner will issue a Final Action Report which rejects the claim and comprehensively details its fatal flaws. If new concerns are found, another Examiner's Report will be issued before resort to a Final Action Report. Once the Final Action Report is issued, an applicant has only six more months to correct the patent or to argue how the application is within a patent's appropriate limits. If the examiner is unsatisfied with either the corrections or the applicant's response, the file is forwarded to the Patent Appeal and Reconsideration Board. The fee for a Patent Appeal is \$1,000.

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The Patent Appeal Board also administers the Patent Agent Qualifying Examinations. Once a patent agent passes the exam, they are added to the CIPO approved list of patent agents who are given the right to interact with CIPO on behalf of their clients. The listing is available both online and at patent offices.

Databases

CIPO maintains two databases that are accessible to the public. The first is the online Canadian Patent Database, which is searchable on multiple fronts, such as title, abstract, claim, owner, country of origin, patent number, etc. Each page contains the basic identification of the patent, a drawing and an abstract and provides links to PDFs of every section of the application, which are also searchable in the advanced menu. The entirety of Canada's patent database has been digitized, though at times older patents will not have a complete online record. For those files, the missing elements can be ordered from the CIPO Client Service Centre.

The second is a physical library of patents at the CIPO Client Service Centre, where information regarding patents and help searching the database is provided. The centre not only has access to Canadian, American, and European patent databases, but it also provides general information about intellectual property law, registry and processes in Canada and abroad. The library can be visited, but CIPO staff are also on hand to take calls, emails and faxes during business hours.

Before applying for a patent, CIPO strongly recommends a preliminary search in its patent databases to prevent duplication. The database also serves as an important resource for industry, allowing it to

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Application Processing

While not required to guarantee intellectual property rights, any design, words, or combination

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use of a portion of a trade-mark is foregone. If the applicant's response is unsatisfactory, a rejection letter will be issued containing the grounds for refusal. The applicant may appeal this rejection to the Federal Court of Canada if they choose.

If there are no issues, a second pre-publication search is conducted to guarantee no applications have been filed during the evaluation process that may conflict with the trade-mark and, if one is found, provide the applicant with an opportunity to respond. Otherwise, the details of the application are published in the Trade-marks Journal, giving members of the public an opportunity to oppose the trade-mark, which must be done within two months of the publication date. Any disputes arising from a filing of opposition are forwarded to the Trade-marks Opposition Board, a process detailed in the Dispute Resolution section of this document.

If no opposition is filed, or an opposition has been dismissed, the application is allowed and no further changes are considered. A notice of allowance is issued and the registration fee must be paid. Once paid, a certificate of registration is issued and the trade-mark is registered in the database.

Records, Databases and Publication of Registrations

To maintain the registration of a trade-mark, an owner must pay a renewal fee every fifteen years. Failure to do so expunges the trade-mark from the registry. A trade-mark can also be assigned to another party, but to avoid ownership disputes it is recommended assignment be recorded at the registry.

Though not required to apply for trade-mark, CIPO recommends that applicants do a preliminary search of trade-marks in both official languages to assess if the proposed mark may be confused with another registered trade-mark. A preliminary search of trade names is also recommended, but there is no centralized database for trade names, the availability of records depending upon Provincial legislation, making the process potentially complicated.

The Canadian Trade-marks Database is accessible online, each entry containing all the details of the application and registration. It is searchable on multiple fields, such as by file number or owner name; product, service or ware associated with the trade-mark; or by Vienna Code, an international system to classify trade-mark by its figurative elements. A physical library is also available at the CIPO Service Centre, where agents can help in person or by phone with any information required, but cannot do searches for applicants.

The Trade-marks Journal, a listing of all trade-mark applications, application extensions, registrations, amendments, is published weekly online. The CIPO website holds the archives for every journal published online since the year 2000.

CIPO also maintains a database of marks, crests, badges, and official symbols prohibited by national legislation as described in the previous section. There is also a registry of trade-mark agents, all of whom must have been working in trade-mark for two years or passed a qualifying exam administered by CIPO. If a trade-mark agent is nominated by an applicant to handle their file, CIPO will correspond only with the agent.

Dispute Resolution

The Trade-mark Opposition Board acts on behalf of the Registrar in handling both opposition and expungement proceedings. The Board consists of a chair, members and hearing officers, who are each delegated authority by the Registrar to run hearings and render decisions in both proceedings.

During the review period of two months in the application process, a third party may either file an opposition statement, accompanied by a fee, or request for extension of time to file an opposition statement, which also requires a fee, so long as the reasons for the extension are included in the

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statement. An opposition statement must include the grounds for opposition to sufficient detail so that the other party may effectively reply. The Registrar reserves the right to dismiss any opposition it deems to be frivolous. If the opposition is legitimate, adversarial proceedings not dissimilar to a legal court begin, wherein parties may file evidence, arguments and counter-arguments, cross-examine evidence and participate in an oral hearing. It is due to the complex nature of the proceedings that parties are encouraged to procure legal counsel, especially as proceedings generally take two to four years.

Once completed, the Board makes a recommendation to the Registrar, who renders a decision. If the losing party is unhappy with the decision, they may appeal to the Federal Court.

A third party may also file for expungement of the trade-mark, also known as a section 45 proceeding, but such a request is generally not entertained until three years after the issue of the trade-mark. An expungement can be requested if the trade-mark holder's ownership of the mark is contested, if its distinctiveness is newly in question, if it is abandoned, or in cases of non-use. Section 45 proceedings may also be launched by the Registrar if deemed appropriate. A section 45 filing also demands a filing fee.

If a trade-mark holder fails to respond to the proceedings, the trade-mark registration is expunged. Otherwise, a section 45 proceeding can be filed. The proceeding is similar to opposition hearings, including evidence, written arguments and representations in an oral hearing, making legal counsel recommended over the typical two to four year period. If a party is unsatisfied with the results, they may appeal to the Federal Court.

CIPO Industrial Design Division

Industrial design is governed by the Industrial Design Division of the CIPO. It serves two central purposes:

1. Application Processing and Examination – receive and examine industrial design applications, registering those which qualify
2. Records and Databases – receive and record assignments of industrial design and maintain an industrial design register and database

Enforcement of industrial design rights lies outside the purview of the CIPO and rests upon the individual industrial design holder.

Application Processing

Industrial design provides protection of imitation for visual features of shape, configuration, pattern, or ornament applied to a fully assembled manufactured article. The features must be original and visual, not solely functional or relating only to the process of manufacturing. Ideas, methods of construction, materials used in construction, or the function of an article are not protectable under industrial design.

Protection is available for ten years after the date of registration, but the legal right is created only through registration with CIPO. ^{51e} §

of conflict between two essentially identical designs, the design with the earliest date of application is registered. An application is limited to a single design and its variants without substantial differentiation.

A completed application consists of an application form with the applicant's information, a title and description of the industrial design, at least one drawing or photograph of the design and the required fees. The title must include the object to which the design applies. The description must describe the visual features of the design and where they exist in the article, and should eschew elements of the manufacturing process, how the object operates, or its size and dimensions. A completed application can be submitted electronically through the CIPO website.

The photo or drawing must show the finished product in a neutral background, visually depicting every feature of the industrial design in solid lines. Environment is included only if it relates to or makes clear the features of the industrial design. The quality of any photograph or drawing must be of a high enough quality that it is digitally reproducible in black and white. There should only be enough views included to describe the industrial design, typically limited to perspective, front, back, top, bottom, right and left side, but more may be included if necessary.

Application Examination

When an application is received, it is reviewed to make sure that it meets the minimum administrative requirements. If so, it is given a filing certificate and a filing date; if incomplete, a notice is sent detailing what is missing. The application is then classified by object and a search is conducted of all registered industrial design. After comparing the results with the application, an examiner gauges the originality of the design and either approves registration or issues a report noting any flaws or objections and what is required to amend the application. If rejected, an applicant is given an opportunity to reply either in argument or amendment. If the examiner is still unsatisfied, they will issue a final report outlining their reasons for denying registration. These results may be appealed to the Patent Appeal Board, who follow the same procedure in industrial design as they do for patents (see Patents section). Those results are appealable to the Federal Court of Canada.

Records and Databases

It is highly recommended that all assignment and licencing of industrial design be recorded with CIPO. To do so, CIPO only requires a copy of the written documentation and the required fee.

CIPO maintains an industrial design database online, wherein all entries are searchable by fields such as article, description and current owner. The search room at CIPO Client Services Centre also maintains a physical record of industrial design registration.

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Quebec's Property Registries

The Land Register and the Movable Real Rights and Personal Rights Register of Quebec are the systems by which rights are publicized rendering them enforceable against third parties. Although the registers initially consisted entirely of hard paper documents, the majority of consultation, registration and document submission are now performed electronically.

The Minister of Natural Resources and Wildlife directs and coordinates the land registry offices, whereas the Minister of Justice directs and coordinates the personal and movable rights registry offices. The Registrar for land () is appointed jointly by the two ministers. The Registrar for land's administrative functions are overseen by the Minister of Natural Resources and Fauna, while his/her public functions are overseen by the Minister of Justice. The Registrar for personal and movable rights () is overseen solely by the Minister of Justice. Both Registrars must be either a lawyer or a notary.

Ministers may also appoint associate officers () who share the responsibilities and obligations of the Registrars. Associate officers are overseen by their respective Registrar.

With regards to the land registry, there also exists two committees: one committee who advises the Registrar of land regarding interpretation application of the law, and a second committee available for consultation by the Registrar or either Minister. The first committee is composed of two members representing the is compose two comng is compose two comng responv a

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Cadastral Reform

For the past ten years, the province of Quebec has been reforming its cadastral designation system, the method by which individual plots of land are labelled. Initially, the province was divided into counties and each county would allocate lot numbers to land, starting at number one. This meant that in Montreal, for example, there were ten counties and therefore ten lots with the cadastral designation number one. Across the entire province, there were hundreds of lots with the cadastral designation number one. Since the county borders did not match today's municipal borders, often people did not know which cadastral county they lived in. This made identifying which lot number one that a given person was referring to very difficult. Furthermore, farmers who would divide their land would find themselves with cadastral designation numbers such as 1-1, or 1-1-1 if the land was divided a second time. Under the cadastral reform, the province has assigned individual and unique lot numbers to each and every lot in Quebec, allowing appropriate space as well for future subdivisions.

Criticism

There is a single major flaw with the online Register in Quebec: it is not user-friendly. Although the

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