

## **Industrial Design Regulations (SOR/99-460)**

Enabling Statute: Industrial Design Act

Regulation current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

# **Industrial Design Regulations**

SOR/99-460

Registration December 2, 1999

## **INDUSTRIAL DESIGN ACT**

Industrial Design Regulations

P.C. 1999-2135 December 2, 1999

Her Excellency the Governor General in Council, on the recommendation of the Minister of Industry, pursuant to section 25<sup>a</sup> of the *Industrial Design Act*, hereby makes the annexed *Industrial Design Regulations*.

a S.C. 1993, c. 44, s. 170

## **INDUSTRIAL DESIGN REGULATIONS**

### **INTERPRETATION**

1. The definitions in this section apply in these Regulations.

"Act" means the *Industrial Design Act*. (*Loi*)

"agent" means a person or firm appointed by an applicant to act on their behalf for the purposes of these Regulations. (*mandataire*)

"applicant" means a person who is named as the proprietor of a design in an application or the person to whom a design has been assigned while the application is pending. (*demandeur*)

"application" means, except as otherwise provided in these Regulations, an application for the registration of a design filed under section 4 of the Act. (*demande*)

"Commissioner" means the Commissioner of Patents. (*commissaire*)

"Office" means the industrial design section of the Office of the Commissioner of Patents. (*Bureau*)

"registered proprietor" means, in respect of an industrial design, the person whose name appears in the Register of Industrial Designs as the proprietor of the industrial design. (*propriétaire inscrit*)

"representative for service" means a person or firm in Canada who is appointed by an applicant or registered proprietor to receive any notice or on whom documents are to be served on behalf of the applicant or registered proprietor for the purposes of these Regulations. (*représentant aux fins de signification*)

### **FILING OF APPLICATIONS**

2. An application under subsection 4(1) of the Act must be filed with the Minister by delivering it to the Office or to an establishment referred to in subsection 3(4).

### **CORRESPONDENCE**

3. (1) Correspondence intended for the Commissioner or the Office must be addressed to the Commissioner.

(2) Correspondence addressed to the Commissioner may be physically delivered to the Office during ordinary business hours of the Office and must be considered to be received by the Commissioner on the day of the delivery.

(3) For the purposes of subsection (2), where correspondence addressed to the Commissioner is physically delivered to the Office outside of its ordinary business hours, it must be considered to have been delivered to the Office during ordinary business hours on the day when the Office is next open for business.

(4) Correspondence addressed to the Commissioner may be physically delivered to an establishment that is designated by the Commissioner in the *Canadian Patent Office Record* as an establishment to which correspondence addressed to the Commissioner may be delivered, during ordinary business hours of that establishment, and

(a) where the delivery is made to the establishment on a day that the Office is open for business, the correspondence must be considered to be received by the Commissioner on that day; and

(b) where the delivery is made to the establishment on a day that the Office is closed for business, the correspondence must be considered to be received by the Commissioner on the day when the Office is next open for business.

(5) For the purposes of subsection (4), where correspondence addressed to the Commissioner is physically delivered to an establishment outside of the ordinary business hours of the establishment, it must be considered to have been delivered to that establishment during ordinary business hours on the day when the establishment is next open for business.

(6) Correspondence addressed to the Commissioner may be sent at any time by electronic or other means of transmission specified by the Commissioner in the *Canadian Patent Office Record*.

(7) For the purposes of subsection (6), where, according to the local time of the place where the Office is located, the correspondence is delivered on a day when the Office is open for business, it must be considered to be received by the Commissioner on that day.

(8) For the purposes of subsection (6), where, according to the local time of the place where the Office is located, the correspondence is delivered on a day when the Office is closed for business, it must be considered to be received by the Commissioner on the day when the Office is next open for business.

**4.** (1) Subject to subsection (2), correspondence addressed to the Commissioner in relation to an application or a registered design must be restricted to one application or one registered design, as the case may be.

(2) Subsection (1) does not apply to correspondence that relates to

(a) an assignment or a licence affecting more than one application or more than one registered design, or affecting one or more applications and one or more registered designs;

(b) a change in the name or address of a registered proprietor of more than one registered design;

(c) a change in the name or address of an applicant of more than one application;

(d) a change in the name or address of the representative for service or the agent of a registered proprietor of more than one registered design;

(e) a change in the name or address of the representative for service or the agent of an applicant of more than one application;

(f) a request to have two or more designs registered on the same date; or

(g) an initial application and the filing of a separate application referred to in subsection 10(3).

**5.** Any address that is required to be furnished under the Act or these Regulations must be a complete mailing address and include the street name and number and the postal code when they exist.

- 6.** (1) Correspondence that relates to an application must include
- (a) the application number, if one has been assigned; and
  - (b) the name of the applicant.
  - (c) [Repealed, SOR/2008-268, s. 1]
- (2) Correspondence that relates to a registered design must include
- (a) the registration number of the design; and
  - (b) the name of the registered proprietor.
  - (c) [Repealed, SOR/2008-268, s. 1]
- SOR/2008-268, s. 1.

- 7.** (1) Subject to subsection (2), the Commissioner must conduct correspondence that relates to an application with
- (a) the applicant, if there is only one applicant; or
  - (b) if there is more than one applicant,
    - (i) the applicant authorized by the other applicant or applicants to act on their behalf, or
    - (ii) the first applicant named in the application, if no applicant has been authorized in accordance with subparagraph (i).
- (2) The Commissioner must conduct correspondence that relates to an application with an agent if their agency has not been revoked and the agent is named
- (a) in the application; or
  - (b) in a notice under section 14.
- 8.** (1) Subject to subsection (2) and section 14, the Commissioner may not consider any correspondence in relation to an application from anyone other than the persons with whom correspondence may be conducted in accordance with section 7.
- (2) Any correspondence made to the Commissioner with the stated or apparent intention of protesting against the registration of an industrial design must be acknowledged, but no information shall be given as to the action taken.

### **APPLICATIONS**

- 9.** (1) An application filed under section 2 must be made in the form set out in Schedule 1 and must include payment of the applicable fee set out in column 2 of item 1 of Schedule 2.
- (2) An application must include the following information and documents in addition to the declaration mentioned in paragraph 4(1)(b) of the Act:
- (a) the name and address of the applicant and, if an agent is named, the name and address of the agent;
  - (b) a title identifying the finished article or set in respect of which the registration of the design is requested;
  - (c) for the purpose of paragraph 4(1)(a) of the Act, a description that identifies the features that constitute the design;
  - (d) a drawing or photograph in accordance with section 9.1; and
  - (e) if the applicant has no place of business in Canada, the name and address of a representative for service.
- SOR/2008-268, s. 2.

- 9.1** (1) Drawings must have margins of at least 2.5 cm.
- (2) All views on a drawing or photograph must
- (a) be of sufficient quality to permit the features of the design to be identified clearly and accurately;
  - (b) clearly and accurately show the article to which the design is applied; and
  - (c) show the article in isolation.
- (3) However, in the case of an application containing more than one view, a single view on a single drawing may show environment that is not part of the article to which the design is applied if that environment helps to make clear what the article is or what the features of the design are.
- (4) Drawings must show

- (a) the design in well-defined solid lines;
  - (b) portions of the article that do not form part of the design either wholly in well-defined solid lines or wholly in well-defined stippled lines; and
  - (c) the environment, if any, in well-defined stippled lines.
- (5) For the purposes of subsection (4), "stippled lines" means broken lines formed by
- (a) evenly spaced short dashes;
  - (b) evenly spaced dots; or
  - (c) evenly spaced and alternating short dashes and dots.

SOR/2008-268, s. 3.

- 10.** (1) An application must relate to one design applied to a single article or set, or to variants.
- (2) If an application does not comply with subsection (1), the applicant or their agent must limit the application to one design applied to a single article or set, or to variants.
- (3) Any other design disclosed in the application referred to in subsection (2) may be made the subject of a separate application, if it is accompanied by the applicable fees set out in column 2 of item 1 of Schedule 2.

#### **FILING DATE**

- 11.** (1) Subject to section 29 of the Act, the filing date of an application is the date on which the Office receives the information required by paragraphs 9(2)(a), (b) and (c) and a drawing or photograph of the design.
- (2) A separate application referred to in subsection 10(3) has the same filing date as the initial application if it is filed
- (a) before the design in the initial application is registered; and
  - (b) where an initial application has been abandoned, before the expiry of the period set out in section 17 for reinstating of the initial application.

#### **DOCUMENTS AND MATERIALS**

- 12.** (1) All documents filed with the Minister must be clear and legible and be presented so as to permit direct reproduction in black and white.
- (2) Documents filed in paper form must be printed
- (a) on one side only;
  - (b) on white paper, except for photographs; and
  - (c) on paper that measures between 20 cm and 22 cm in width and between 25 cm and 36 cm in length.
- (3) Documents filed in electronic form in connection with applications and registered designs must be in an electronic format specified by the Commissioner in the *Canadian Patent Office Record*.

SOR/2008-268, s. 4.

- 13.** (1) The Minister shall refuse any document submitted to the Minister that is not in the English or French language unless the applicant submits to the Minister a translation of the document into one of those languages.
- (2) The text of an application shall be wholly in English or wholly in French.

SOR/2008-268, s. 4.

#### **AGENTS**

- 14.** (1) Subject to subsection (2), the Commissioner may not recognize a person or firm as an agent unless the applicant, or the person or firm acting as the agent, delivers to the Commissioner a written notice signed by the applicant that states that the person or firm is the agent.
- (2) Subsection (1) does not apply if the agent communicating with the Commissioner has been named in the application.
- (3) If the Commissioner receives correspondence from a person or firm who claims to be an agent but in respect of whom no written notice has been given under

subsection (1) and who has not been named as the agent in the application, the Commissioner must notify the person or firm in writing that the person or firm has 60 days from the date of issuance of the notification to file a written notice signed by the applicant that states that the person or firm is the agent.

(4) If the person or firm delivers the written notice to the Commissioner within the 60 days, the Commissioner must consider the correspondence to have been filed on the date that it was initially filed.

(5) If the written notice is not received within the 60 days, the Commissioner must remove the correspondence from the file and consider it not to have been filed.

(6) The appointment of an agent may be revoked by the applicant or the agent by submitting to the Commissioner a notice of revocation signed by the applicant or the agent.

### **REPRESENTATIVE FOR SERVICE**

**15.** A notice of a proceeding relating to an application or registered design that is sent to, or served on, a representative for service has the same effect as if it were sent to, or served on, the applicant or the registered proprietor.

### **AMENDMENT OF APPLICATION**

**16.** (1) Subject to subsection (2), an applicant may request an amendment to an application at any time before the registration of a design by submitting information and material in support of the amendment to the Commissioner.

(2) The Commissioner may not accept an amendment to an application that would substantially alter the design to which the application relates.

### **REINSTATEMENT OF APPLICATION**

**17.** A request under subsection 5(4) of the Act for the reinstatement of an application must be made within six months after the date on which the application was considered abandoned under subsection 5(3) of the Act.

### **MAINTENANCE OF EXCLUSIVE RIGHT**

**18.** (1) The registered proprietor must, before the expiry of the five-year period beginning on the date of the registration of the design, pay the fee set out in column 2 of item 2 of Schedule 2 to maintain an exclusive right conferred by the registration of the design.

(2) If the registered proprietor does not comply with subsection (1), the registered proprietor may, on request to the Commissioner, maintain the exclusive right conferred by the registration of the design if the registered proprietor

(a) makes the request within six months after the expiry of the five-year period beginning on the date of the registration of the design; and

(b) pays the fees set out in column 2 of items 2 and 3 of Schedule 2.

### **ASSIGNMENTS**

**19.** An assignment or licence granting an interest in a design that is presented to be recorded against the design under section 13 of the Act must be accompanied by the applicable fees set out in column 2 of item 4 of Schedule 2 and by evidence that establishes that the person in whose name the interest is to be recorded is the assignee or licensee, which evidence may include an affidavit or a copy of a document effecting the assignment or licence.

### **PRIORITY**

**20.** (1) A request for priority filed within the six months specified in subsection 29(1) of the Act must be made in writing and indicate the date the application for registration of the design was first filed in or for the foreign country, the name of the country and the number assigned by that country to the application.

(2) If, at any time before the registration of the design for which priority is sought, an application is made for a design that is identical to or so closely resembles the design as to be confounded with it, the Commissioner must so advise in writing the applicant who is requesting priority and request that the applicant provide the following documents

(a) a certified copy of the foreign application on which the request is based; and  
(b) a certificate from the office in which the application referred to in paragraph (a) was filed showing the date of its filing therein.

(3) The request for priority is suspended until the certified copy and the certificate have been filed.

### **FEEES**

**21.** The fees prescribed for a service described in column 1 of an item of Schedule 2 provided by the Office are the fees set out in column 2 of that item and are payable to the Receiver General of Canada.

### **AMENDMENTS TO THE INDUSTRIAL DESIGN RULES**

**22. to 24.** [Amendments]

### **COMING INTO FORCE**

**25.** These Regulations come into force on December 15, 1999.

### **SCHEDULE 1**

*(Subsection 9(1))*

**DEMANDE D'ENREGISTREMENT D'UN  
DESSIN INDUSTRIEL**

**APPLICATION FOR THE REGISTRATION  
OF AN INDUSTRIAL DESIGN**

Le demandeur,

The applicant, \_\_\_\_\_

(nom du demandeur / name of applicant)

dont l'adresse complète est

whose complete address is \_\_\_\_\_

\_\_\_\_\_

demande l'enregistrement d'un dessin pour un(e)

hereby requests the registration of a design for a \_\_\_\_\_

\_\_\_\_\_

(titre identifiant l'objet fini ou l'ensemble / title identifying the finished article or set)  
dont il est le propriétaire.

of which the applicant is the proprietor.

À la connaissance du propriétaire, personne d'autre que le premier propriétaire du dessin n'en faisait usage lorsque celui-ci en a fait le choix.

The design was not, to the proprietor's knowledge, in use by any person other than the first proprietor at the time the design was adopted by the first proprietor.

Description du dessin :

Description of the design:

**À REMPLIR SEULEMENT SI LE DEMANDEUR A UN MANDATAIRE / TO BE COMPLETED  
ONLY IF AN APPLICANT HAS AN AGENT**

Nom du mandataire / Name of agent

Adresse du mandataire / Address of agent

Lorsque le demandeur n'a pas d'établissement au Canada, le nom et l'adresse de son REPRÉSENTANT AUX FINS DE SIGNIFICATION au Canada doivent être indiqués.

If an applicant has no place of business in Canada, the name and address of a REPRESENTATIVE FOR SERVICE in Canada must be provided.

Nom du représentant aux fins de signification / Name of representative for service  
 Adresse au Canada du représentant aux fins de signification / Address in Canada of representative for service

SOR/2008-268, s. 5.

SCHEDULE 2  
 (Subsections 9(1) and 10(3), and sections 18, 19 and 21)

**TARIFF OF FEES**

Column 1	Column 2
Item Service	Fees (\$)
1. Examination of an application to register a design pursuant to subsection 4(1) of the Act,	
(a) basic fee.....	400.00
(b) plus, for each page of drawings in excess of 10 pages.....	10.00
2. Maintenance of a registration of a design pursuant to subsection 18(1) or (2).....	350.00
3. Maintenance of a registration of a design pursuant to subsection 18(2).....	50.00
4. Recording an assignment or any document affecting a design pursuant to subsection 13(1) of the Act, for each design.....	100.00
5. Providing a copy in paper form of a document, for each page,	
(a) where the user of the service makes the copy using Office equipment.....	0.50
(b) where the Office makes the copy.....	1.00
6. Providing a copy in electronic form of a document,	
(a) for each request.....	10.00
(b) plus, for each design to which the request relates.....	10.00
(c) plus, if the copy is requested on a physical medium, for each physical medium requested in addition to the first.....	10.00
7. Providing a certified copy in paper form of a document, other than a certified copy made under Rule 318 or 350 of the <i>Federal Courts Rules</i> ,	
(a) for each certification.....	35.00
(b) plus, for each page.....	1.00
8. Providing a certified copy in electronic form of a document, other than a certified copy made under Rule 318 or 350 of the <i>Federal Courts Rules</i> ,	
(a) for each certification.....	35.00
(b) plus, for each design to which the request relates.....	10.00
9. Delaying registration.....	100.00
10. Reinstatement of an abandoned application.....	200.00
11. Issuance of a correcting certificate required as a result of an error not committed by the Office.....	50.00
12. Processing a request for accelerated examination of an application to register a design.....	500.00

SOR/2003-210, s. 1; SOR/2007-92, s. 1.