

Canada's new Industrial Design Regime has launched

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November 5, 2018, marks an important step in the evolution of the industrial design regime in Canada. Numerous and substantial [amendments](#) to the [Industrial Design Act](#) and [Rules](#) are now in force. These amendments modernize Canada's industrial design law and bring it into better harmony with other jurisdictions. Here are some of the most important highlights that apply to applications filed on or after November 5, 2018:

- **Divisional applications provide more flexibility than before.** An applicant may now file a divisional application for any design that was originally *disclosed* – not merely claimed – in the parent application as filed. For example, the Canadian Design Office has indicated that the applicant is able to file a divisional application with portions of the design in solid lines that were shown in dotted lines in the parent application as originally filed, and *vice versa*. Divisional applications also remain available for cases where the Canadian Design Office issues an Examiner's Report objecting to an application as containing more than one design.
- **The term of protection and grace period are more favourable to rights owners.** Under the amended *Act*, the term of protection begins on the date of registration and ends the later of a) Ten years from the date of registration of the design and b.) Fifteen years from the filing date, subject to payment of a single renewal fee. Previously the term of protection was limited to ten years from the date of registration. Moreover, the one-year grace period for prior disclosure now extends from the application's priority date. As a result, when priority is claimed, any public disclosure by the applicant of the applied for design in the year preceding the earliest priority date will not be citable against the application.
- **The rules surrounding the content of applications have been eased.** A description of the design or statement of limitation are now optional. Without a statement of limitation, the application is deemed to relate to all of the features of "shape", "configuration", "pattern" and "ornament" shown in the representation of the design unless an exception applies, such as the drawings of the design use dotted lines to exclude features from the claimed design. Furthermore, a wide range of drawing techniques are now acceptable and an application may include line drawings, photographs and/or CAD models.

- **Canada can now be designated in international applications filed under the Hague System for the International Registration of Industrial Designs.** The Canadian Design Office will treat each design included in the international application as a separate, so-called “Hague application”, which will be substantively examined. If the Canadian Design Office does not issue a Notification of Refusal within one year of the publication of the international registration, the Hague application(s) will automatically register as enforceable Hague registration(s) in Canada. If a Notification of Refusal is issued, the applicant will have an opportunity to respond in the same manner as it would to an Examiner’s Report issued for a domestically filed application.

The above and other changes to the *Act* and *Rules* usher in an exciting, new era for industrial designs in Canada. They also comprise the first of a whole host of amendments to Canada’s intellectual property regime to come into force. Amendments to both the [patent](#) and [trademarks](#) regimes are scheduled to come into force in 2019, as discussed in our earlier IP Updates.

Further details concerning the new *Industrial Design Act* and *Regulations* are described in our IP Updates of [June 19, 2017](#), [December 12, 2017](#) and [June 28, 2018](#).

For further information, please contact any member of our [Industrial Designs Group](#).



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Christine Genge has been assisting clients in securing patent, industrial design and trademark protection for more than fifteen years. Her practice is largely focused on protecting mechanical innovation over a broad range of technologies, from high-tech and consumer products, to oil field related innovations. She is also a leader in industrial design protection. She heads the firm’s industrial design practice group, she is a liaison to the Canadian Intellectual Property Office industrial design committee and is the Chair of the design committee of the Intellectual Property Institute of Canada. She is among a select few Canadian practitioners with in-depth knowledge concerning the requirement of Canadian, U.S. and European design regimes.



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Lionel Fishman's practice focusses on patent and industrial design prosecution and litigation, particularly in the mechanical, electrical, computer and software fields. Lionel's client activities involve Canadian companies seeking to obtain industrial design and patent protection in Canada and abroad and associate firms outside of Canada seeking to obtain patent protection for foreign clients.