

Industrial Design Office Practice Manual

Version of September 27, 2018

In force on November 5, 2018

Foreword

The Industrial Design Office Practice Manual (IDOP) provides information on the operational procedures and examination practices of the Industrial Design Branch, commonly referred to as the Industrial Design Office of the Canadian Intellectual Property Office (CIPO).

Practices expressed in the IDOP reflect the Industrial Design Office's interpretation of the *Industrial Design Act*¹ (the Act or IDA), the *Industrial Design Regulations*² (the Regulations or IDR) and jurisprudence as of the date of the last update. **While this manual provides information on current office practice, it is not binding on the Industrial Design Office. In the event of any inconsistency between the IDOP manual and the applicable legislation, the legislation must be followed.**

This version will replace the IDOP dated May 2, 2017, and has been updated to reflect changes to the Act and the Regulations, which will come into force on November 5, 2018. The IDOP will be updated periodically to reflect changes to the statutory, regulatory and jurisprudential framework governing industrial design rights in Canada.

Document overview

Many of the practices outlined in this manual were developed to support Canada's accession to the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*³ (the Hague Agreement), which establishes an international registration system – the Hague System – that allows industrial designs to be registered in multiple countries or jurisdictions through a single streamlined process. Other provisions have been introduced to modernize Canada's industrial design regime by updating, clarifying and codifying aspects of the industrial design framework.

The IDOP is structured in three parts:

- **Part 1** describes how to file and prosecute industrial design applications and how the Industrial Design Office examines, registers and publishes these applications. This part is

¹ *Industrial Design Act*, RSC, 1985, c 1-9.

² *Industrial Design Regulations*, SOR/18-120.

³ In this manual, the Agreement means the *Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, adopted in Geneva on July 2, 1999.

applicable to both national and Hague applications and registrations unless otherwise specified.

- **Part 2** contains information on practices that relate solely to international registrations which designate Canada.
- **Part 3** provides details on the transitional provisions and applicable office practices for applications filed before and registered after the coming into force of the Act and Regulations.

Part 1 – Practices applicable to all applications and registrations

Chapter 1 – Administration

Section 1 – Communications with the Industrial Design Office

1.01 – Address for correspondence

Mail intended for the Industrial Design Office must be addressed to:

Industrial Design Office
Canadian Intellectual Property Office
Place du Portage I
50 Victoria Street, Room C-114
Gatineau QC K1A 0C9

Documents, information or fees delivered to the above address are deemed to have been received on the actual date of their delivery if they are delivered when CIPO is open to the public (8:30 a.m. to 4:30 p.m. (Eastern Time) Monday to Friday).

Documents, information or fees delivered at a time when CIPO is closed to the public will be considered to have been received on the day on which CIPO is next open to the public. Please be advised that once CIPO receives correspondence it cannot be returned to the sender, even if the sender states that the correspondence was sent in error. All material must be addressed to the “Industrial Design Office” and enclosed in a sealed envelope.

1.02 – List of designated establishments

CIPO will accept physical delivery of documents, information or fees, at designated establishments. All material must be addressed to the “Industrial Design Office” and enclosed in a sealed envelope. The following establishments are designated:

1. Innovation, Science and Economic Development Canada

C.D. Howe Building
235 Queen Street, Room S-143
Ottawa ON K1A 0H5
Tel.: 343-291-3436
8:30 a.m. to 4:30 p.m. (local time) Monday to Friday

2. Innovation, Science and Economic Development Canada
Sun Life Building
1155 Metcalfe Street, Room 950
Montreal QC H3B 2V6
Tel.: 514-496-1797
Toll-free: 1-888-237-3037
8:30 a.m. to 4:30 p.m. (local time) Monday to Friday
3. Innovation, Science and Economic Development Canada
151 Yonge Street, 4th Floor
Toronto ON M5C 2W7
Tel.: 416-973-5000
8:30 a.m. to 4:30 p.m. (local time) Monday to Friday
4. Innovation, Science and Economic Development Canada
Canada Place
9700 Jasper Avenue, Suite 725
Edmonton AB T5J 4C3
Tel.: 780-495-4782
Toll-free: 1-800-461-2646
8:30 a.m. to 4:30 p.m. (local time) Monday to Friday
5. Innovation, Science and Economic Development Canada
Library Square
300 West Georgia Street, Suite 2000
Vancouver BC V6B 6E1
Tel.: 604-666-5000
8:30 a.m. to 4:30 p.m. (local time) Monday to Friday

Documents, information or fees delivered to a designated establishment on a day when CIPO is open to the public will be deemed to be received on the day on which they are delivered to that designated establishment. If CIPO is closed to the public, documents, information or fees will be deemed to be received on the day on which CIPO is next open to the public. For example, if correspondence intended for the Industrial Design Office is delivered to the designated establishment in Toronto on June 24, it will not be considered to be received on June 24 as CIPO is closed on that day (St-Jean-Baptiste Holiday in Quebec). It will be considered received on the day on which CIPO is next open to the public.

1.03 – Registered Mail™ and Xpresspost™ services of Canada Post

The Registered Mail™ and Xpresspost™ services of Canada Post are designated establishments to which documents, information or fees intended for the Industrial Design Office may be delivered.

CIPO considers documents, information or fees delivered through these services are received on the day indicated on the mailing receipt from Canada Post, provided that CIPO is open to the public on that day. If CIPO is closed to the public on that day, the documents, information or fees will be considered to be received on the day when CIPO is next open to the public.

1.04 – Electronic communications

Documents, information or fees may be sent by facsimile or by using the online services identified below. Documents, information or fees submitted by these electronic means are deemed to have been received on the day on which CIPO receives them (Eastern Time). Accordingly, the filing date of an application filed using facsimile or online services will be the date on which all required information was received by CIPO whether it is open to the public or not.

The Industrial Design Office's online filing system requires that an applicant indicate their preferred means of correspondence, electronic or paper. When the Industrial Design Office receives a paper application, it will continue to communicate by paper mail unless the application clearly indicates a preference for electronic communication. Please note that electronic services allowing communications between the Industrial Design Office and applicants will be made available at a later date.

1.04.01 – Facsimile

Correspondence may be sent by facsimile to the following numbers:

- (819) 953-CIPO (2476) or
- (819) 953-OPIC (6742)

Correspondence that is sent to any other number will be considered not to have been received by the Industrial Design Office.

The facsimile electronic transmission report will constitute acknowledgment of receipt from CIPO. Confidentiality of the facsimile transmission process cannot be guaranteed.

If there is a fee associated with the correspondence, the preferred method of payment must be prominently displayed on the [Fee Payment Form](#) to ensure expedient processing.

1.04.02 – Online services

Correspondence may also be sent via CIPO's website by accessing the following web pages:

- [Application for registration of an industrial design](#);
- [Ordering copies in paper, or electronic form of a document](#);
- [General correspondence relating to industrial designs](#); and,
- [Payment of industrial design maintenance fees](#).

1.04.03 – Electronic file formats

The acceptable file formats for documents submitted electronically via the website are WPD, DOC, DOCX and PDF.

The acceptable file formats for the representation of a design are PDF, JPEG, TIFF, and GIF. Dimensions of the scanned/stored images must match those of the paper requirements, namely 21.59 cm by 27.94 cm (8.5 in by 11 in) and be of a resolution of 300 dpi.

1.05 – Deadlines extended

If a deadline ends on one of the following days or on a day that is designated by the Minister, that deadline will be extended to the next day on which CIPO is open:

- Every Saturday and Sunday;
- January 1st, or if January 1st falls on a Saturday or a Sunday, the following Monday;
- Good Friday;
- Easter Monday;
- The Monday preceding May 25th;
- June 24 or, if June 24 falls on a Saturday or a Sunday, the following Monday;
- July 1st or, if July 1st falls on a Saturday or a Sunday, the following Monday;
- The first Monday in August;
- The first Monday in September;
- The second Monday in October;
- November 11, or if November 11 falls on a Saturday or Sunday, the following Monday;
- December 25 and 26 or, if December 25 falls on
 - a Friday, that Friday and the following Monday, or;
 - a Saturday or Sunday, the following Monday and Tuesday; and,
- Any day on which CIPO is closed to the public for all or part of that day during ordinary business hours.

Not all provincial, territorial and municipal holidays are days where deadlines will be extended. It is recommended that applicants be mindful of their specific local holidays and ensure that any response to the Industrial Design Office be filed as early as possible. If the time period to reply to a report is insufficient, the applicant may request an extension. See [section 14.01.01](#) of this manual for more details on extension of time.

1.06 – Communications with the Industrial Design Office

A person doing business before the Industrial Design Office must provide their postal address.

Generally, applicants choose to appoint an agent to represent them. See [section 2.01](#) of this manual for more information on how to appoint an agent. If an agent has been appointed, the Industrial Design Office will send communications to that agent.

If no agent has been appointed, the Industrial Design Office will only communicate with the applicant. If desired, an applicant may provide an address for correspondence that is different from the applicant's address.

If there is more than one applicant, the Industrial Design Office will communicate with the applicant authorized by the other applicant(s) to act as the address for correspondence. If an address for correspondence was not provided, the Industrial Design Office will communicate with the first applicant named in the application.

Any written communication in respect of an application must contain the name of the applicant and, if known, the application number.

In accordance with subsection 8(1) of the Regulations, written communications in respect of a registered design must contain the name of the registered proprietor and the registration number. All documents submitted to the Industrial Design Office must be clear, legible and permit direct reproduction. The Industrial Design Office may ask applicants to resubmit documents if they do not meet these requirements.

1.07 – Communications from a third party

Generally, the Industrial Design Office will not send correspondence to a third party concerning the prosecution of an application. Third party correspondence submitted to the Industrial Design Office with the apparent intent of protesting the registration of a design will be acknowledged and placed on file; no information will be provided to a third party as to the action taken by the Industrial Design Office. Note that this communication forms part of the file and will be made available to the public with the application or registration. For more information on the prescribed date on which an application will be made available to the public, see [section 20.01](#) of this manual.

1.08 – Material not in English or French

The Industrial Design Office will disregard any part of a document that is submitted in a language other than French or English with the exception of the representation of the design or a priority document. See [section 8.07.08](#) of this manual for more information on requests for priority documents.

Relevant provision(s): 24.1(1) IDA; 2, 4, 5(1) to (3), 6 to 11 IDR.

Section 2 – Agents and representation

2.01 – Appointment of agent

A person may represent themselves, or appoint an agent to represent them in business before the Industrial Design Office. If an agent is appointed, the applicant must use that agent to prosecute their application. If an agent has been appointed, the Industrial Design Office will accept only instructions from that agent to avoid receiving different or conflicting instructions.

2.01.01 – Requirements

In order for an agent to be considered appointed, the Industrial Design Office must receive a notice of appointment that includes the name and postal address of the appointed agent. The applicant's signed authorization to appoint an agent is not required.

The appointed agent should be identified clearly, either in the application itself or in a separate document. When the Industrial Design Office receives this information, it will send a confirmation of appointment to both the applicant and the appointed agent, except when the agent is appointed in the application at time of filing.

If the notice of appointment omits the required information, the Industrial Design Office will notify both the applicant and the requestor that the appointment is considered ineffective.

2.01.02 – Exceptions

Although the Regulations generally stipulate that if an agent is appointed, the applicant must use that agent to prosecute their application, exceptions exist where, notwithstanding the appointment of an agent, an applicant may represent themselves or be represented by an authorized person, to do any of the following:

- File an application;
- Pay a fee;
- Give notice of the appointment or revocation of an agent;
- Request a transfer; and
- Provide evidence of a transfer.

2.01.03 – Effective date

The appointment of an agent is effective beginning on the day the Industrial Design Office receives the notice of appointment.

2.02 – Revocation and change of agent

The appointment of an agent may be revoked at any time by sending a notice to the Industrial Design Office.

2.02.01 – Request for revocation

The appointed agent may be changed by sending a notice of revocation of the former agent to the Industrial Design Office and a notice of appointment with the name and postal address of the newly appointed agent.

When notice of the revocation is provided by the current agent, the applicant or the person authorized by the applicant, the Industrial Design Office will send a confirmation to the revoked agent and the applicant.

2.02.02 – Effective date

The revocation of an agent and the appointment of a new agent start on the day on which the Industrial Design Office receives the notice of revocation and the notice of appointment.

Relevant provision(s): 12(1) to (6) IDR.

Section 3 – Transfers

3.01 – Non-application to Hague applications or registrations

Specific rules apply to the transfer of Hague applications or registrations. These are outlined in [section 31](#) of this manual.

3.02 – Request for recordal or registration of a transfer

Every design, whether registered or unregistered is transferable, in whole or in part. The Industrial Design Office will record or register a transfer upon receipt of a written request that includes the name and postal address of the transferee and the fee of \$100 per application or registration, as set out in Item 4 of the Tarrif of Fees. An applicant or any person authorized by them may make a request to record a transfer and pay the prescribed fee, whether there is an agent on file or not.

3.03 – Evidence of a transfer

Evidence of the transfer is required when a request to record or register a transfer is submitted by the transferee. The Industrial Design Office will assess all evidence on a case-by-case basis and will contact the requestor if additional documentation or clarification is required.

Evidence of the transfer is not required when a request to record or register a transfer is submitted by the applicant or the registered proprietor.

3.04 – Removal of a recordal or registration of a transfer

If the Industrial Design Office receives satisfactory evidence that the recordal or registration of a transfer should not have been made, it will remove the recording or registration of that transfer.

The Industrial Design Office is not authorized to remove the registration of a transfer on a registered design for the reason only that the transferor had previously transferred the registered design to another person.

Relevant provision(s): 13(1) to (6) IDA; 34 IDR.

Section 4 – Licenses and security agreements, change of name or address

4.01 – Licenses and security agreements

The Act and Regulations do not provide for the recordal of licenses and security agreements. However, any person may provide the Industrial Design Office with copies of a licence and/or a security agreement that relates to a registered design or an application for the registration of a design. The Industrial Design Office will keep these documents on file and make them available to the public to the extent that they relate to a registered design or an application that is available to the public. See [section 20.01](#) of this manual for more information on when applications and related documents are made available to the public.

A confirmation of receipt will be sent to the requestor.

4.02 – Change of name or address

The Industrial Design Office will register a change of name or address of a registered proprietor upon request.

If an applicant requests to change the name or address on their application, the Industrial Design Office will process this request as an amendment to the application.

In both cases, a change that alters the identity of a person is considered to be a transfer and not a change of name. See [section 3.01](#) of this manual for more information on transfers.

In the event that the wrong applicant was named in the application, the Industrial Design Office may substitute the applicant before registration if it is satisfied that the person was the proprietor when the application was filed.

Relevant provision(s): 4(2) IDA; 25(2)(a), 35 IDR.

Section 5 – Fees

Fees are itemized in the Tarrif of Fees in the Schedule of the [Regulations](#).

5.01 – Payment

The applicant or any person authorized by the applicant may pay fees, even when an agent is appointed.

For more information on the payment of fees, please refer to the practice notices entitled [Fee Payment Practice of the Canadian Intellectual Property Office](#), and [Fee Payment: General Authorization to Charge a Deficiency](#), dated June 8, 2009.

5.02 – Refunds

Upon written request, the Industrial Design Office will refund any amount paid in excess of the prescribed fee(s). A request for refund must be received by the Industrial Design Office no later than three years after the day on which the payment was made.

Relevant provision(s): 12(4), 38 IDR.

Section 6 – Access to applications and related documents

6.01 – Access to applications

Industrial design applications are confidential until the prescribed date on which they are to be made available to the public. Please see [section 20.01](#) of this manual for details on determining the prescribed date.

Prior to being made available to the public, applications are available only to the applicant or the applicant's agent, unless the Industrial Design Office receives written authorization from the applicant or the applicant's agent allowing someone else to obtain them.

6.02 – Copies of documents

Please contact the [Client Service Centre](#) to order copies of an application or registration. More information on the Client Service Centre's products and services is found on the [Client Service Centre web page](#).

6.03 – Exception for Hague applications or registrations

For copies of Hague applications or registrations, please [contact](#) the WIPO International Bureau. See [the Extract and Certified Copies section of the Hague Guide for Users](#) for more information.

Copies of Canadian documentation in relation to Hague applications or registrations can be obtained by contacting the [Client Service Centre](#).

Relevant provision(s): 32 IDR.

Chapter 2 – Application procedures and requirements

Section 7 – Filing date of an application

7.01 – General

The filing date of an application, other than for a divisional or a Hague application, is the day on which the Industrial Design Office receives all of the following:

- An explicit or implicit indication that the registration of a design is sought, e.g., a clear title such as “Application for the Registration of a Design” in a covering letter;
- Information allowing the identity of the applicant to be established, e.g., a name;
- Information allowing the applicant to be contacted, e.g., a postal address, an email address, a phone number; and,
- A representation of the design (Information on representation requirements is provided in [section 8.05](#) of this manual).

The Industrial Design Office will issue a Notice of Filing after all of the above requirements are met. If these requirements are not met, the Industrial Design Office will notify and request that the applicant submit the missing information no later than two months after the date of the notice. No extension of time can be given. If the Industrial Design Office does not receive the missing information by the deadline indicated in the notice, the application will be deemed never to have been filed. Any fees paid will not be refunded.

7.02 – Divisional applications

The filing date of a divisional application is the same as that of the original application. Information on the Industrial Design Office's practices relating to divisional applications is provided in [section 8.08](#) of this manual.

7.03 – Hague applications

The filing date of a Hague application is the date of registration of the corresponding international registration. More information on international registration and the filing date of a Hague application is provided in [section 25](#) of this manual.

Relevant provision(s): 4(3) IDA; 21(2) to (4), 41(1) and (2) IDR.

Section 8 – Application content and requirements

8.01 – General

The use of a particular form is not required. The following table highlights key mandatory application requirements, as well as optional content that can be included in an application. These elements are explained below:

Mandatory content

- Name and postal address of applicant;
- Name of the finished article;
- Representation of the design(s); and,
- Examination fee.

Additional content where applicable

- Address of the agent, if one is appointed (see [section 2.01](#));
- Descriptive statement;
- Statement of limitation;
- Priority claim; and,
- Indication of divisional application.

Relevant provision(s): 4(1)(a) to (c), 8.1 IDA; 12(6), 16, 17(2), 18, 20(3), 26(2), 31, 37 IDR.

8.02 – Form requirements

Applications and documents submitted to the Industrial Design Office must meet the following form requirements:

- Documents must be clear and legible and permit direct reproduction; material may be submitted in French or English.
- If an application is filed in paper form, it must be printed on one side of the page only (e.g. no double-sided printing), on white paper with the following dimensions: between 20 cm and 22 cm (7.9 in and 8.5 in) by 25 cm and 36 cm (9.8 in and 14 in). The page orientation may be portrait or landscape.

Relevant provision(s): 9, 10 IDR.

8.03 – Information and fee required

Applications submitted to the Industrial Design Office must contain the following information:

- The name and postal address of the applicant;
- The name of a finished article. See [section 13.02.03](#) of this manual for more information;
- The examination fee. The basic fee for examining an industrial design application is \$400, as set out in Item 1 of Schedule 2 of the Tarrif of Fees in the [Regulations](#). An additional fee of \$10 applies for each page of representation that exceeds 10 pages; and,
- A representation of the design that meets the requirements set out in [section 8.05](#) of this manual.

Relevant provision(s): 4(1) IDA; 16, 37 IDR.

8.04 – One design or variants per application

An application should be limited to one design applied to a single finished article or set, or to variants applied to a single finished article or set. If an application contains more than one design, the applicant will be required to restrict the application to one design or variants, applied to a single finished article or set.

8.04.01 – Variants

“Variants” are defined as designs applied to the same article or set and not differing substantially from one another. Generally, to be accepted as variants, the designs must be very similar and possess the described features without substantial variation as illustrated in Example 1.

Example 1 – Variant designs

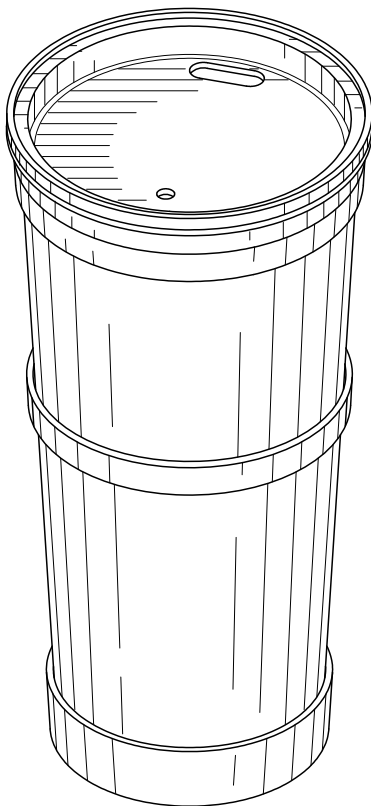


Fig. 1.1

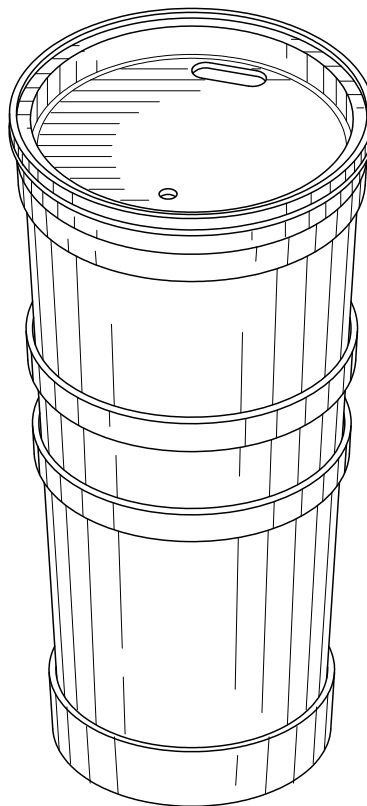


Fig. 2.1

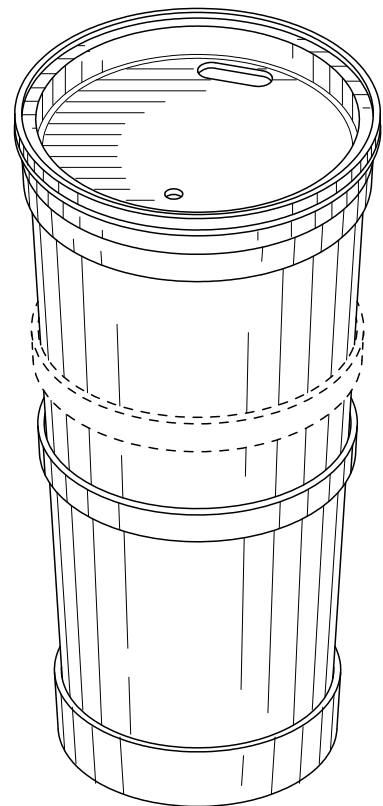


Fig. 3.1

Finished article: Coffee Tumbler

Statement: The design is limited to features of shape, configuration and ornament of the Coffee Tumbler as shown in the reproductions.

Fig. 1.1 is a perspective view of the first variant of the Coffee Tumbler;

Fig. 2.1 is a perspective view of the second variant of the Coffee Tumbler; and,

Fig. 3.1 is a perspective view of the third variant of the Coffee Tumbler.

Relevant provision(s): 2 IDA; 20(1) IDR.

8.04.02 – Set

Section 2 of the Act defines a “set” as a number of articles of the same general character ordinarily on sale together or intended to be used together, to each of which the same design or variants are applied such as a cutlery set where the same design is applied to a fork, a knife and a spoon would constitute a set according to this definition.

It should be clear from the application that the design applies to a set. If a statement is provided, it should refer only to the design features common among all pieces of the set (e.g. the identical design or variants applied to each piece of the set). It is also acceptable to indicate the location of these features on each piece. Individual views of each article of the set can also be included. Example 2 illustrates a set.

Example 2 – Set

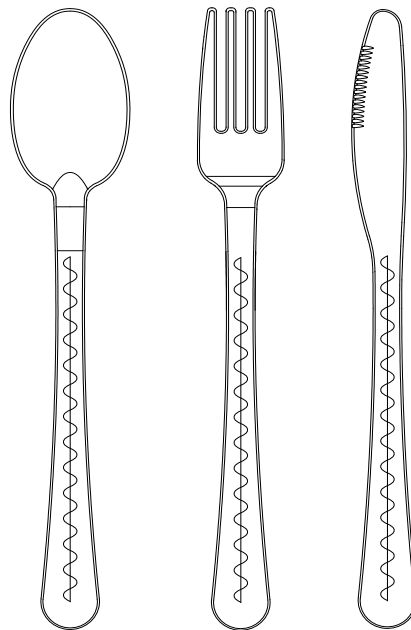


Fig. 1

Finished article: Set of Cutlery

Statement: Fig. 1 is a front view of the Set of Cutlery.

8.05 – Representation requirements

8.05.01 – Specific requirements for photographs and reproductions

Photographs or reproductions (drawings) contained in an application must be presented in the following manner:

- The representation of a design must be in the form of a photograph, reproduction, or a combination of both. Acceptable file formats include PDF, JPEG, TIFF and GIF.
- The representation of a design must include at least one photograph or reproduction that shows the design in isolation or the finished article in isolation.
- Reproductions and photographs must be numbered. We recommend one of the following methods:
 - Two numbers separated by a dot (e.g. 1.1, 1.2, 1.3, etc.) where the first number references the design and the second number represents the different views; or,
 - A single number representing each view (e.g. 1, 2, 3, etc.).
- Variants can either be numbered using a different first number for each variant such as: 1.1, 1.2, 1.3 – 2.1, 2.2, 2.3 – 3.1, 3.2, 3.3, etc. – or, by explaining in the figure reference that a particular design is a variant such as: "Figure 1 is a first variant; Figure 2 is a second variant; Figure 3 is a third variant; etc."
- Reproductions and photographs should be numbered consecutively, beginning with number 1. For photographs, it is suggested that the numbers be written, stamped or typed in permanent ink on the back of the photograph or in the margins.

8.05.02 – Fully disclose the design

The representation of a design must, taking into account the name of the finished article and any statement, be sufficient to fully disclose the design.

A representation of a design is composed of one or more photographs or reproductions (e.g. drawings).

The application may contain multiple views that show a design from different angles to fully disclose the design. These views may include a: 'perspective view'; 'front view'; 'back view'; 'right side view'; 'left side view'; 'top view'; and 'bottom view'. Example 3 presents a design applied to an article in seven different views.

Example 3 –Views

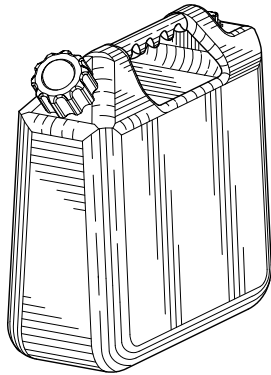


Fig.1.1

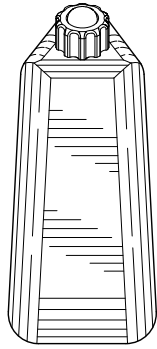


Fig.1.2

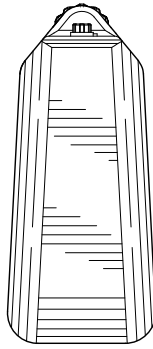


Fig.1.3

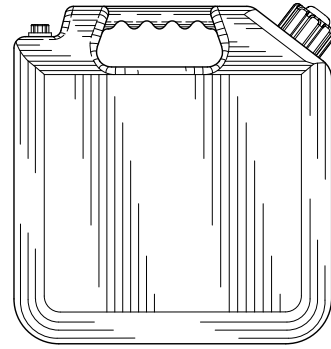


Fig.1.4

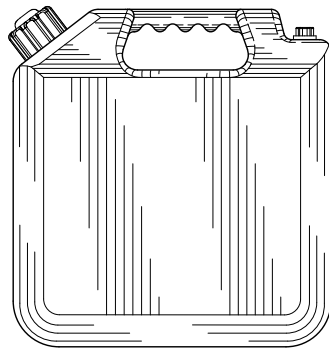


Fig.1.5

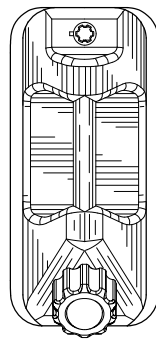


Fig.1.6

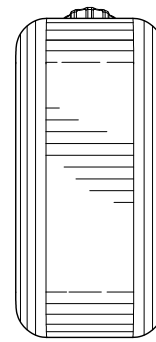


Fig.1.7

Finished article: Jerrycan

Statement:

- Fig. 1.1 is a perspective view of the Jerrycan;
- Fig. 1.2 is a front view of the Jerrycan;
- Fig. 1.3 is a back view of the Jerrycan;
- Fig. 1.4 is a right-side view of the Jerrycan;
- Fig. 1.5 is a left-side view of the Jerrycan;
- Fig. 1.6 is a top view of the Jerrycan; and,
- Fig. 1.7 is a bottom view of the Jerrycan.

The Industrial Design Office recommends that the applicant file as many views as necessary in order to fully disclose the features of the design for which protection is sought. However, in some cases, one view may be sufficient to fully disclose the design as illustrated in Example 4.

Example 4 – One view is sufficient to disclose the design

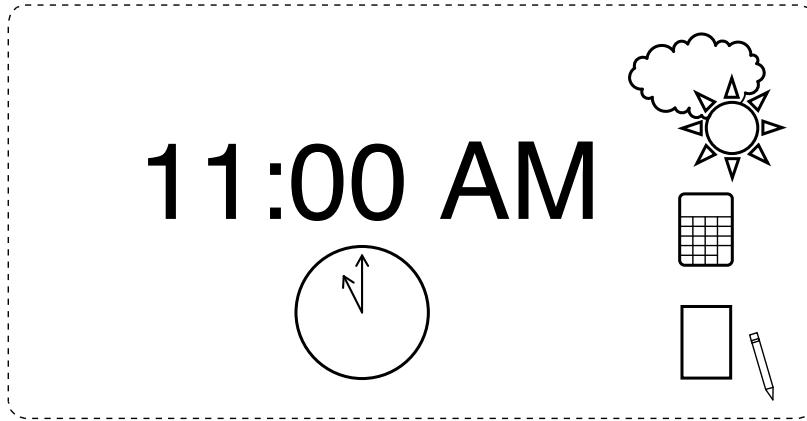


Fig. 1.1

Finished article: Display Screen

Statement: The design is limited to the feature of ornament of the Display Screen as illustrated in the reproduction.

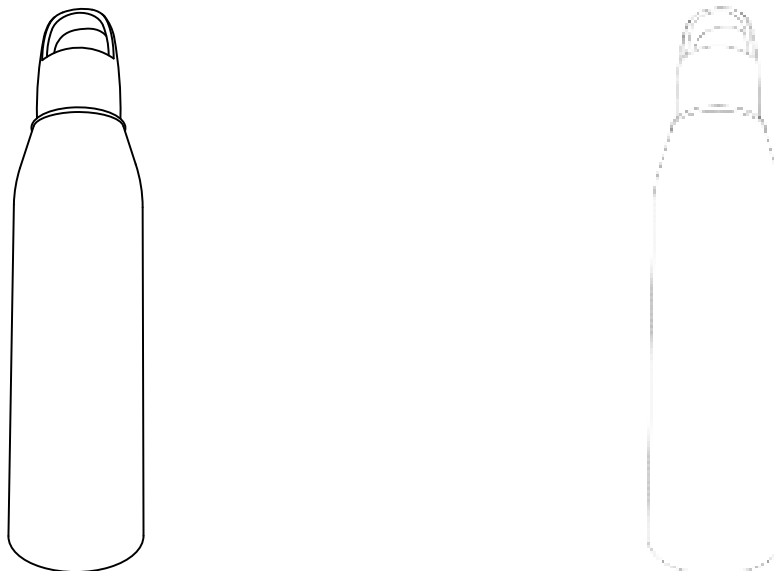
Fig. 1.1 is a front view of the Display Screen.

8.05.03 – Quality

8.05.03.01 – *Insufficient quality of reproductions*

The representation of a design must be of sufficient quality to permit the features of the design to be identified clearly and accurately. The Industrial Design Office may request that the applicant submit better-quality reproductions if the original images inadequately illustrate the design. Example 5 illustrates both acceptable and unacceptable reproductions.

Example 5 – Acceptable and unacceptable quality



Acceptable

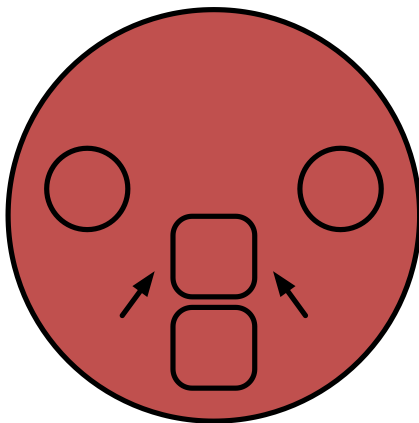
Unacceptable

Finished article: Bottle

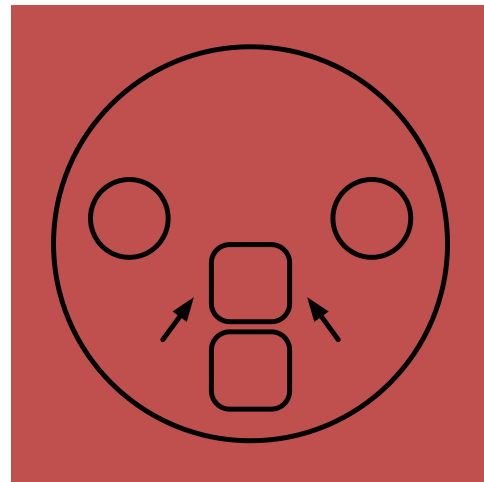
8.05.03.02 – Use of background

To ensure that the design features are clearly and accurately identified in the foreground, applicants should use an appropriate background. Applicants should consider factors such as colouration, contrast and shadow when choosing a background. Example 6 illustrates the correct and incorrect use of these principles.

Example 6 – Acceptable and unacceptable backgrounds



Acceptable



Unacceptable

Finished Article: Lid

8.05.03.03 – Shadow

Shadowing in a reproduction or photograph is acceptable if the shadows do not interfere with the features of the design. As illustrated in Example 7, the shadows interfere or distort the contours of the article making it difficult to clearly and accurately see the features of the design. In this instance, the Industrial Design Office would issue an objection for lack of clarity.

Example 7 - Unacceptable shadowing in a reproduction or photograph



Unacceptable

8.05.04 – Combination of photographs and reproductions

Photographs and reproductions can be included in the same application. However, the applicant should ensure that no ambiguity results from this combination. The Industrial Design Office will issue an objection if the features of the design are inconsistent between both the reproduction and photograph of the design.

To illustrate how combining photographs and reproductions in the same application can be inconsistent, Example 8 shows how details are lost between the photograph illustrated in Fig. 1.1 and the reproduction in Fig. 2.1. Note that ridges seen in the photograph are not present in the reproduction. This creates a different visual impression of the design features, which may lead to an objection.

To resolve this objection, an applicant may present the photographs and reproductions as variants of each other, if they comply with the definition of variant designs, as shown in Example 8. Alternatively, the applicant may also ensure that all design features are consistent between the photographs and reproductions.

Example 8 – Combination of photographs and reproductions



Fig. 1.1

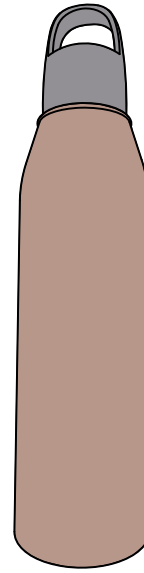


Fig. 2.1

Finished article: Bottle

Statement: The design is limited to the feature of shape and configuration of the Bottle as illustrated in the reproduction.

Fig. 1.1 is a front view of the first variant of the Bottle in a photograph; and, Fig. 2.1 is a front view of the second variant of the Bottle in a reproduction.

8.05.05 – Drawing techniques

8.05.05.01 – Shading

Shading the surface of an article can be used to illustrate its shape provided that it does not distort or obscure the design. Shading should be shown consistently throughout the reproductions and should be restricted to the design portions of the article. Example 9, illustrates an acceptable use of shading. Please note that no shading is added to the feet of the Stool as they do not form part of the design.

Example 9 – Shading

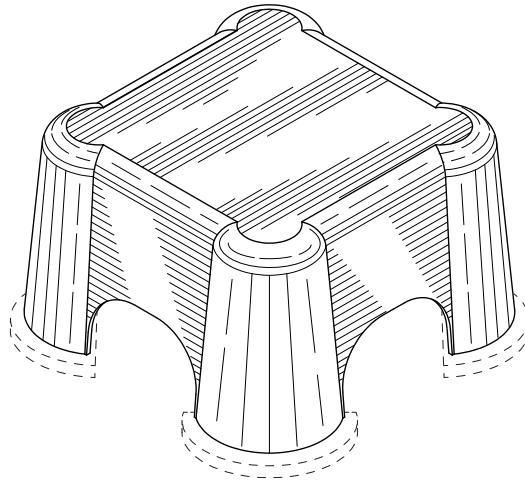


Fig. 1.1

Finished article: Stool

Statement: The design is limited to the features of shape and configuration of the Stool shown in the representation.

Fig. 1.1 is a perspective view of the Stool.

8.05.05.02 – Transparency and translucency

Transparency can be illustrated by the use of thin diagonal shade lines. Portions of the design and article that would be visible through the transparent section should be shown. Example 10, a Butter Dish, illustrates an acceptable use of transparency.

Example 10 – Transparency

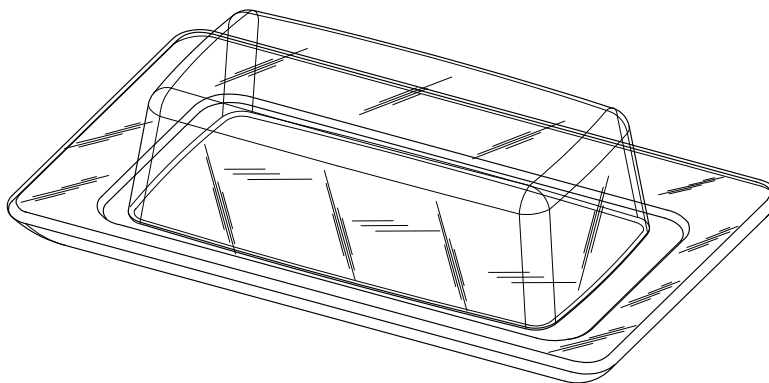


Fig. 1.1

Finished article: Butter Dish

Statement: The design is limited to the feature of shape of the Butter Dish as shown in the reproduction.

Fig. 1.1 is a perspective view of the Butter Dish.

Translucency can be shown with thin diagonal shade lines and light shading throughout the translucent area. Portions of the article that are visible through the translucent section should be shown. Example 11 illustrates an acceptable use of translucency. Optionally, a descriptive statement such as: "The area indicated by thin diagonal lines and light shading represent translucency" may be added to indicate the presence of translucency in the reproduction.

Example 11 – Translucency

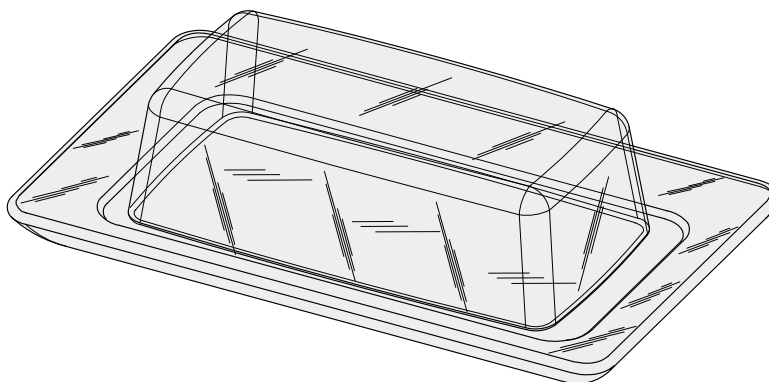


Fig. 1.1

Finished article: Butter Dish

Statement: The design consists of the features of shape and configuration of the Butter Dish as shown in the reproduction. The area indicated by thin diagonal lines and light shading represent translucency.

Fig. 1.1 is a perspective view of the Butter Dish.

8.05.05.03 – Indefinite length and/or width and variable length in a portion of the article

To illustrate articles of indefinite length and/or width, the reproductions should show break lines in the article's length and/or width. It should be obvious that the break lines are for illustrating a break in the article and do not form part of the design. To ensure clarity, the applicant may add a statement which indicates that indefinite length and/or width is shown. Break lines may be shown with double sinusoidal lines as illustrated in Example 12, sharp jagged lines as illustrated in Example 13, or a pair of angled parallel lines broken occasionally by a zigzag as illustrated in Example 14.

Exceptionally, articles of indefinite length and width with a repeating surface pattern can be illustrated with dotted or broken lines around the pattern to be repeated as illustrated in Example 17.

Example 12 – Double sinusoidal lines to illustrate an article of indefinite length

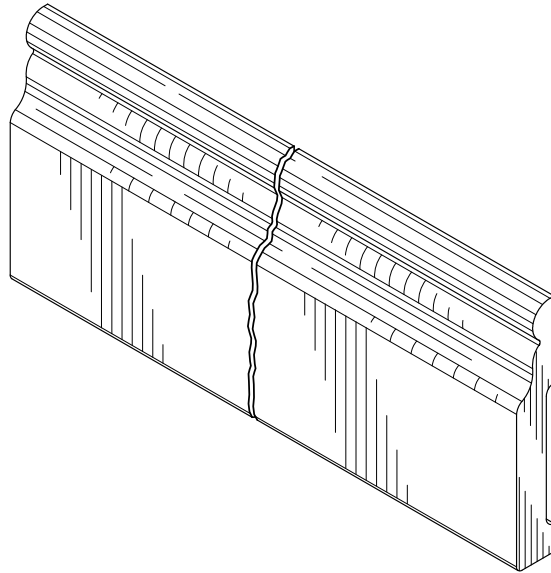


Fig. 1.1

Finished article: Decorative Moulding

Statement: The design is limited to the features of shape and configuration of the entire Decorative Moulding as shown in the reproduction.

Fig. 1.1 is a perspective view of the Decorative Moulding of indefinite length indicated by the double sinusoidal lines.

8.05.05.04 – Articles of indefinite length or width with a constant cross-section

Regardless of where an article is cut, the cross-section should remain identical and there should be no surface pattern and no three-dimensional (3D) features. Extrusions for mouldings or windows as illustrated in Examples 13 and 14 below, illustrate reproductions that are accepted by the Industrial Design Office.

Example 13 – Sharp jagged lines

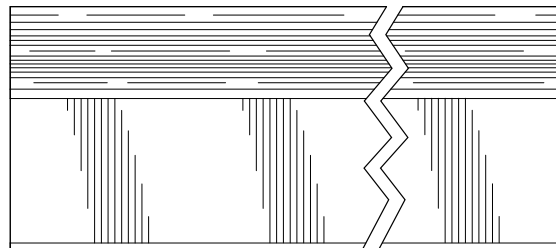


Fig. 1.1

Finished article: Extrusion

Statement: The design is limited to the features of shape of the Extrusion shown in the reproduction. The sharp jagged lines on the reproduction indicate that the article is of indefinite length.

Fig. 1.1 is a side view of the Extrusion.

Example 14 – Parallel lines broken by a zigzag

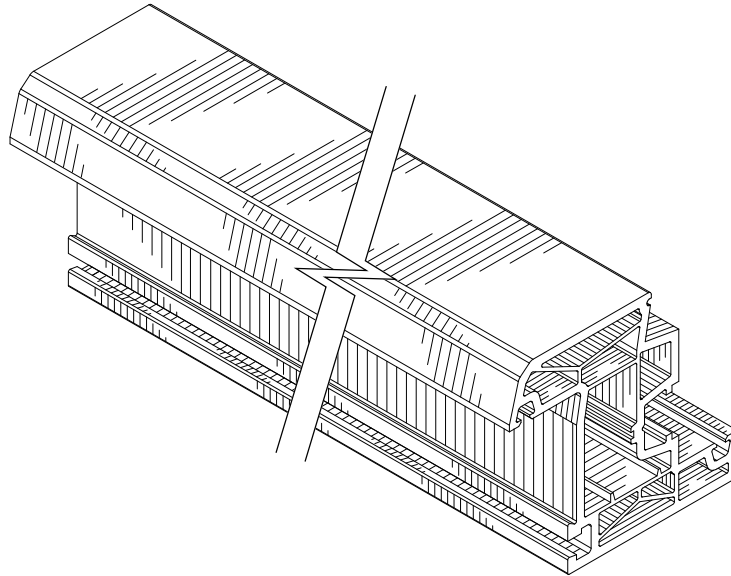


Fig. 1.1

Finished article: Window Extrusion

Statement: The design is limited to the features of shape and configuration of the Window Extrusion of indefinite length. The parallel lines broken by a zigzag in the reproduction indicate that the article is of indefinite length.

Fig. 1.1 is a perspective view of the front side and top of the Window Extrusion.

8.05.05.05 – Articles of indefinite length or width with a repeating surface pattern

This example refers to a design that has a repeating pattern on the surface of the article and does not affect the article's cross-section. A statement referring to indefinite length or width should be included in the application. The statement should also indicate that the pattern repeats at regular intervals throughout the length or width of the article. Example 15 shows an acceptable method of illustrating an article of indefinite length with a repeating surface pattern.

Example 15 – Repeating surface pattern

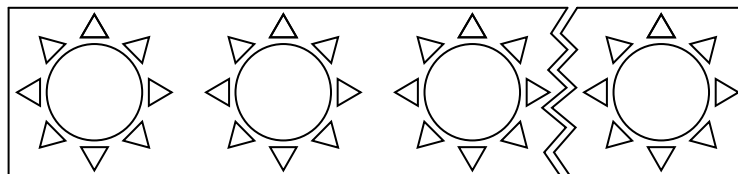


Fig. 1.1

Finished article: Ribbon

Statement: The design is limited to the feature of pattern as shown on the Ribbon. The pattern shown on the surface repeats throughout the length of the Ribbon of indefinite length.

Fig. 1.1 is a front view of the Ribbon of indefinite length.

8.05.05.06 – Articles of indefinite length or width with repeating 3D features

This example refers to a design that has constant 3D features, which repeat at regular intervals throughout the article's length and width. A statement referring to indefinite length or width should be included in the application. The statement should also indicate that such features repeat consistently and at regular intervals throughout the length or width of the article.

The combined reproduction and statement in Example 16 would be accepted by the Industrial Design Office for this type of article.

Example 16 – Repeating 3D features

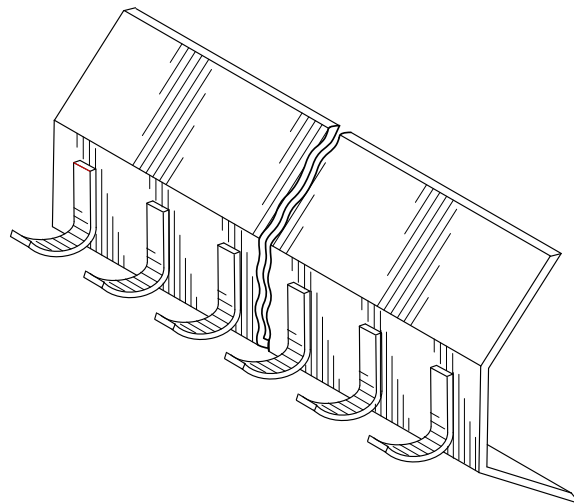


Fig. 1.1

Finished article: Backpack Hanging Rack

Statement: The design is limited to the features of shape and configuration of the Backpack Hanging Rack. The design is of indefinite length as shown in the reproduction. The three-dimensional features on the front surface of the article repeat consistently and at regular intervals throughout the length of the article.

Fig. 1.1 is a perspective view of the Backpack Hanging Rack.

8.05.05.07 – Articles of indefinite length and width with a repeating surface pattern

Articles having a repeating surface pattern of both indefinite length and width may be illustrated by dotted or broken lines around the pattern to be repeated. A statement should also be included that refers to the repeat pattern and the indefinite length and width. The combined

reproduction and statement in Example 17 below would be considered acceptable by the Industrial Design Office.

Example 17 – Repeating surface pattern

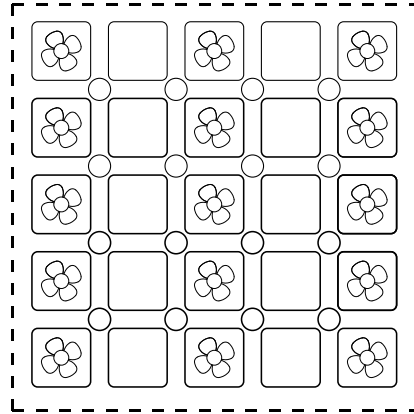


Fig. 1.1

Finished article: Paper Towel

Statement: The design is limited to the pattern on the Paper Towel. The design is of indefinite length and width as shown by the broken lines around the perimeter of the reproduction. The pattern shown on the surface repeats throughout the length and width of the Paper Towel.

Fig. 1.1 is a front view of the Paper Towel.

8.05.05.08 – Articles of variable length in a portion

An article having a portion of it that is of varying length can be illustrated through the use of break lines in the relevant portion. A statement should also be included indicating that the portion is of variable length. Example 18 includes a reproduction and statement that accurately reflects variable length.

Example 18 – Variable length in a portion

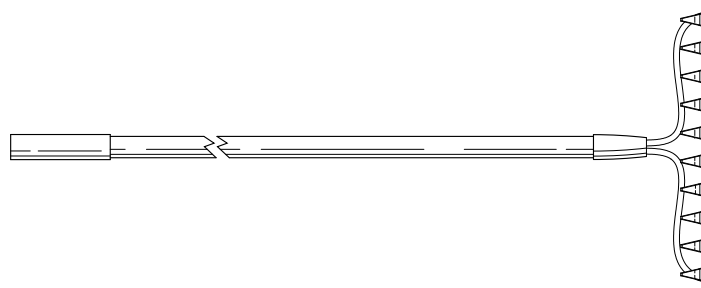


Fig. 1.1

Finished article: Rake

Statement: The design is limited to the features of shape and configuration of the Rake as shown in the reproduction. The handle portion of the Rake varies in length within the breaklines as

illustrated in the reproduction.

Fig. 1.1 is a front view of the Rake.

8.05.05.09 – Variable length in a portion that has repeating surface pattern

An article having a repeating surface pattern and variable length in only a portion of the article can be illustrated with break lines in the relevant portion. A statement indicating that the pattern repeats throughout the variable length of the portion should also be included.

8.05.05.10 – Variable length in a portion that has repeating 3D features

An article having repeating 3D features in only a portion of the article can be illustrated with break lines in the relevant portion. A statement indicating that the features repeat at regular intervals throughout the variable length of the portion should also be included. See Example 19.

Example 19 – Portion of variable length having 3D features

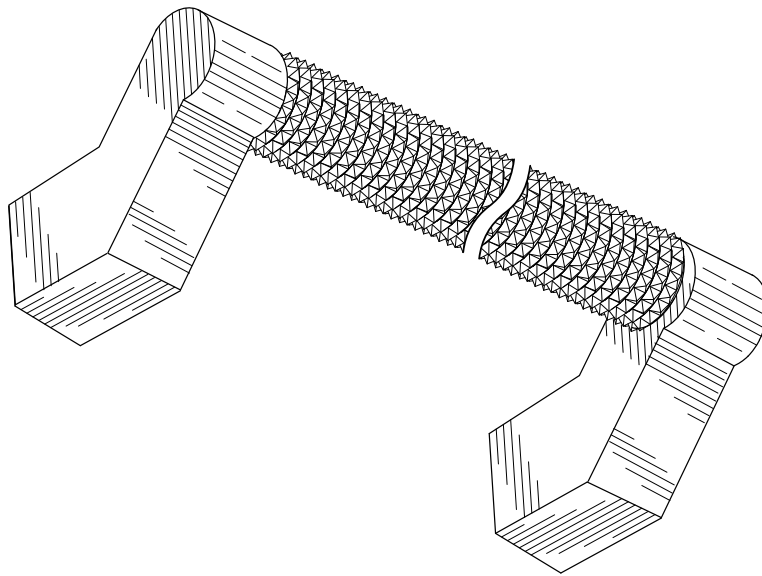


Fig. 1.1

Finished article: Paper Towel Holder

Statement: The design is limited to the features of shape, configuration and pattern of the Paper Towel Holder as shown in the reproduction. The 3D-elements repeat consistently and at regular intervals throughout the variable length of the bar portion of the Paper Towel Holder.

Fig. 1.1 is a front perspective view of the Paper Towel Holder.

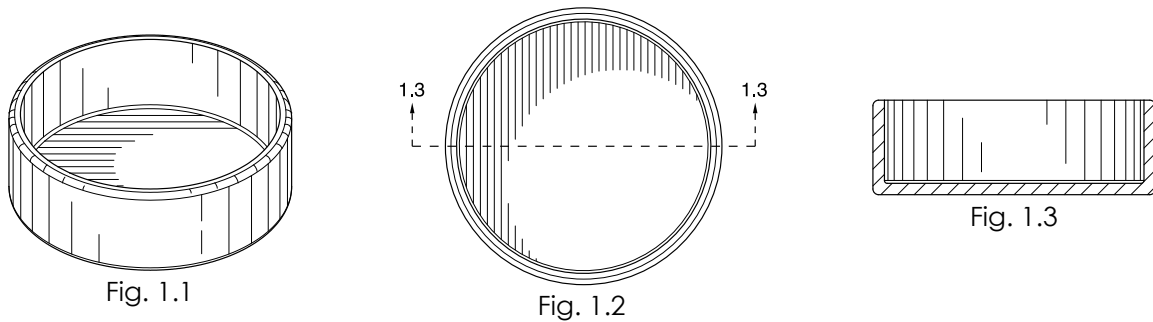
8.05.05.11 – Cross-sectional views

A cross-sectional view may be included in order to better disclose exterior features that are not adequately represented in the conventional views. Internal features that are not visible in the completely assembled article should not be shown.

Method to illustrate a cross-sectional view (Example 20):

- The cut surface of the article may be shown as a solid black area or by using parallel diagonal lines, dotted parallel diagonal lines, or broken parallel diagonal lines.
- The location of the cross-sectional view should be marked on one of the conventional views using arrows and numbers.
- The corresponding figure reference should identify the reproduction as a cross-sectional view.

Example 20 – Cross-sectional view



Finished article: Hockey Puck

Statement: The design is limited to the features of shape, configuration and pattern of the Hockey Puck as shown in the reproductions.

Fig. 1.1 is a perspective view of a Hockey Puck;

Fig. 1.2 is a top plan view thereof; and,

Fig. 1.3 is a cross-sectional view thereof, taken along lines 1.3-1.3 of Fig. 1.2.

8.05.05.12 – Enlarged fragmentary or magnified view

An enlarged or magnified view of a portion of the design, also known as an “enlarged fragmentary view” or “magnified view” may be included to show a portion of the design on a larger scale in order to better disclose small details.

Example 21 provides guidance on the acceptable method to illustrate an enlarged fragmentary view:

- On a conventional view, a circle or a box may mark the portion shown in the enlarged fragmentary view. The circle or box may optionally be numbered with the same figure number as the enlarged fragmentary view.
- The corresponding figure reference should identify the reproduction as an enlarged fragmentary view.

Example 21 – Enlarged fragmentary or magnified view

Fig 1.2

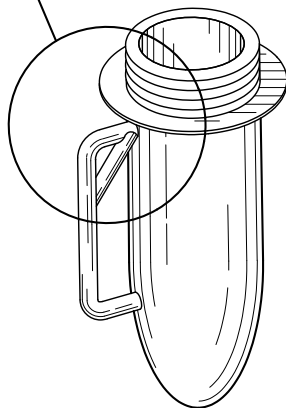


Fig 1.1

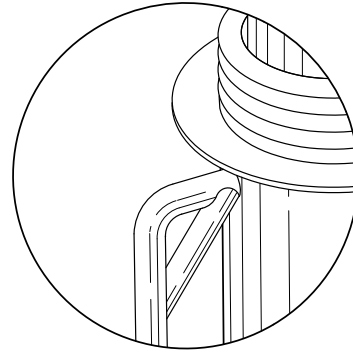


Fig 1.2

Finished article: Test Tube with Ergonomic Handle

Statement: The design is limited to the visual features of shape and configuration of the Test Tube with Ergonomic Handle as shown in the reproductions.

Fig. 1.1 is a front perspective view of the Test Tube with Ergonomic Handle; and, Fig. 1.2 is an enlarged fragmentary view of Fig. 1.1.

8.05.05.13 – Environment views

One or more environment views may be included to show the article in the context of its surroundings. The environment is subject matter that is not part of the finished article or design.

Method to illustrate an environmental view (Example 22):

- The environment must be shown in dotted or broken lines on a reproduction (not a photograph).
- The application must contain at least one other view that shows the article or the design in isolation.
- It must be clear from the combination of the reproductions, the statement and the name of the finished article what constitutes the environment, what are the features of the design and the finished article to which the design is applied.

Example 22 – Environmental view

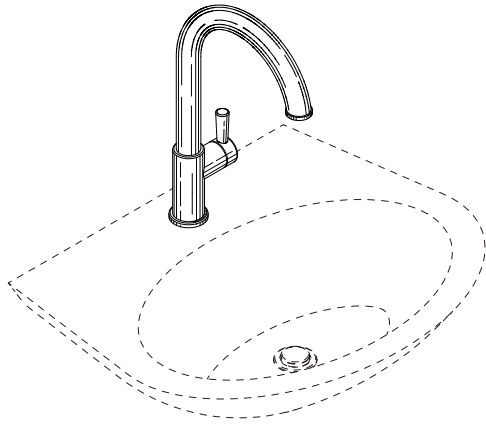


Fig. 1.1

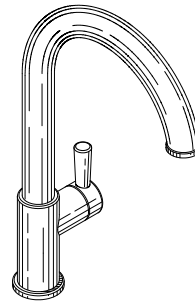


Fig. 1.2

Finished article: Faucet

Statement: The design is limited to the features of shape and configuration of the Faucet as shown in the reproductions. The dotted lines represent environment only, and do not form part of the design.

Fig. 1.1 is a perspective view of the Faucet showing the environment; and,
Fig. 1.2 is a perspective view of the Faucet.

8.05.05.14 – Contrasting tones

It is acceptable to use shading techniques to show contrasting tones provided they do not distort or hide the design. Contrasting tones should be restricted to the design portions of the article only as illustrated in Example 23.

Example 23 – Contrasting tones

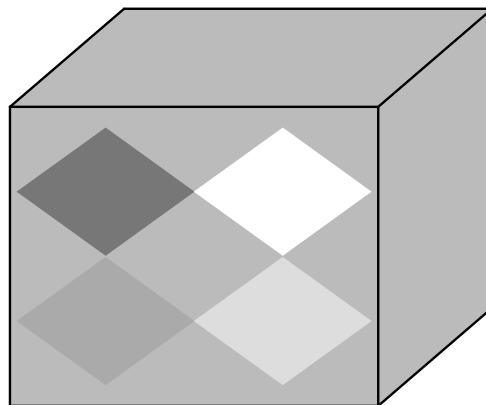


Fig. 1.1

Finished article: Toy Cube

Statement: The design is limited to the features of shape, configuration and ornament of the Toy Cube shown in the reproduction.

Fig. 1.1 is a perspective view of the Toy Cube.

8.05.05.15 – Open and closed positions

Views of the article in the open and closed positions may be included to reveal design features provided that the article is normally seen or used in those positions. It is recommended that the figure reference in the statement indicates the different positions shown, as illustrated in Example 24.

Example 24 – Open and closed positions

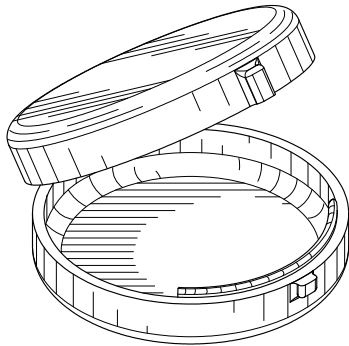


Fig 1.1

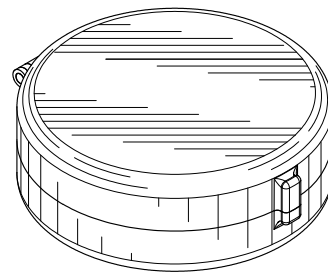


Fig 1.2

Finished article: Pill Container

Statement: The design is limited to the features of shape, configuration and ornament of the Pill Container as shown in the reproductions.

Fig. 1.1 is a perspective view of the Pill Container with the lid in an open position; and, Fig. 1.2 is a perspective view of the Pill Container with the lid in the closed position.

8.05.05.16 – Extended/retracted views

Views of the article in extended and retracted positions may be included in an application provided that the article is normally seen and used in those positions. It is recommended that the figure reference indicate the different positions shown as illustrated in Example 25.

Example 25 – Extended and retracted views

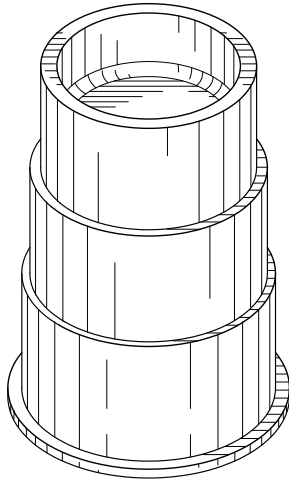


Fig. 1.1

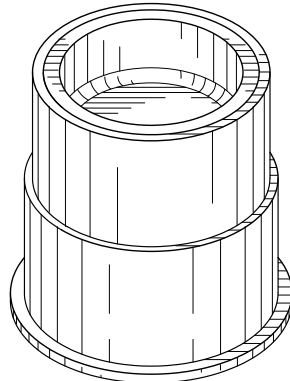


Fig. 1.2

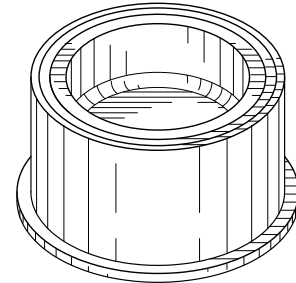


Fig 1.3

Finished article: Telescoping Container Cap

Statement: The design is limited to the features of shape and configuration of the entire Telescoping Container Cap as shown in the reproductions.

Fig. 1.1 is a perspective view of the Telescoping Container Cap in a fully extended position;

Fig. 1.2 is a perspective view of the Telescoping Container Cap in a semi-extended/retracted position; and,

Fig. 1.3 is a perspective view of the Telescoping Container Cap in a fully retracted position.

8.05.05.17 – Exploded views

A multi-component article should be shown fully assembled. An exploded view may also be included provided that the article is seen or used in that position. In exploded views, it should be clear how the components join together. Example 26 illustrates an acceptable exploded view.

Example 26 – Exploded view for multi-component articles

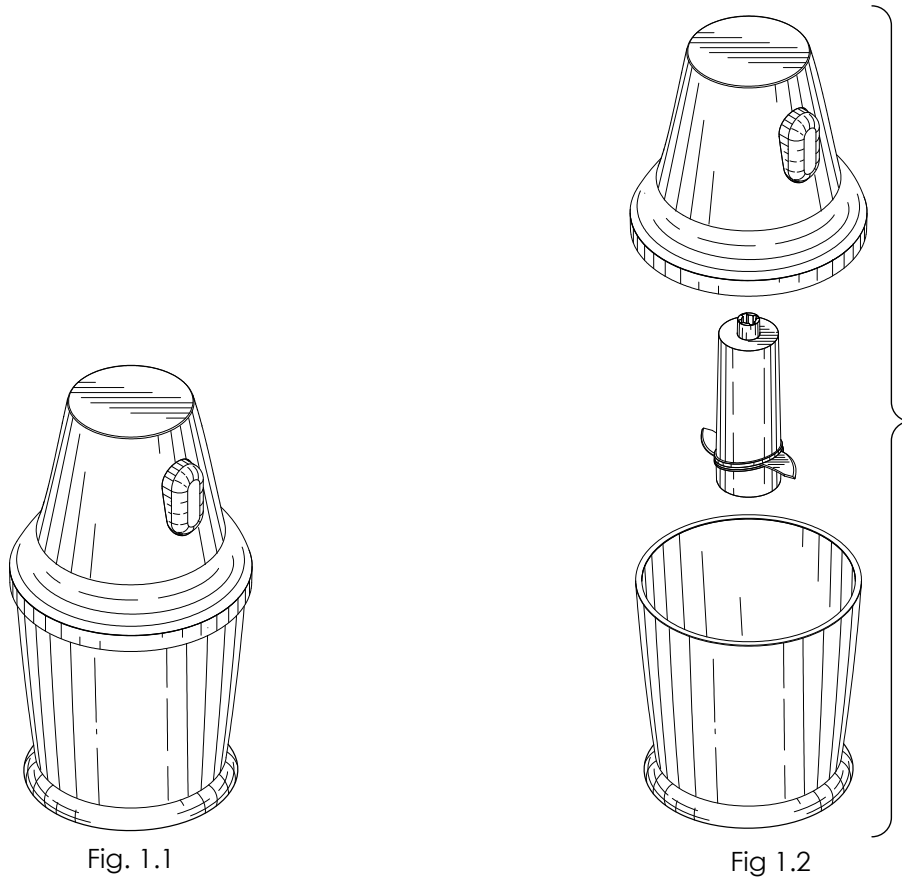


Fig. 1.1

Fig 1.2

Finished article: Food Processor
Statement:

Fig. 1.1 is a perspective view of the Food Processor; and,
 Fig. 1.2 is an exploded view of the Food Processor of Fig. 1.1.

8.05.06 – Colour

Colour may form part of a design as a feature of pattern or ornament. As such, colour photographs or reproductions may be submitted in an application. A descriptive statement referencing colour may also accompany colour reproductions. Any reference to colour in a descriptive statement must be clear and unambiguous. For example, the adjective "blue" is acceptable; "blue-ish" is not. Alternately, widely recognized colour systems may be used to describe the colours. In this case, applicants should include a descriptive statement of the colour and refer to the applicable colour system.

The Industrial Design Office recommends filing colour designs using the [e-filing application](#) rather than through a paper application as scanning the paper application may lead to inaccurate reproduction of the colour.

To ensure accurate colour claims, the applicant may consider using a colour identification system. While the Industrial Design Office does not endorse or recommend a particular colour identification system, any system used should be easy to identify and be reproduced by the

general public. If the colour system is the subject of a registered trade-mark, it should be identified using uppercase letters and should include a statement that it is a registered trade-mark such as: "The blue colour shown in the reproductions is PANTONE 3538C. *PANTONE is a registered trade-mark." Example 27 is an acceptable use of colour in an application.

As stated in [section 8.05.05.01](#) of this manual, it is unacceptable to show shading in the non-design portions of an article that have been defined by stippled lines. The Industrial Design Office applies the same principle for colour shown in non-design portions of an article and will issue an objection if colour is included in non-design portions.

Example 27 – Colour in the reproductions

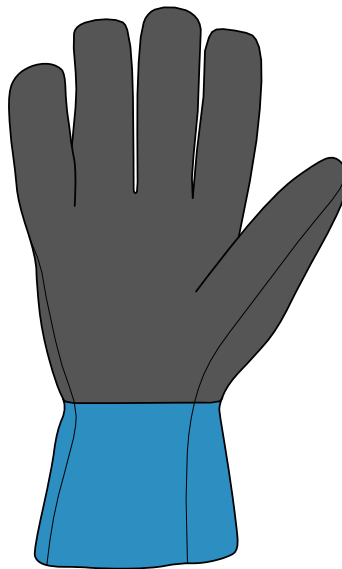


Fig. 1.1

Finished article: Glove

Statement:

Fig. 1.1 is a front view of the Glove illustrating a ventral side of the glove having a PANTONE* Blue 3538C cuff. The rest of the Glove is shown in PANTONE* Grey 425C. *PANTONE is a registered trade-mark.

8.05.07 – Electronic Icons

The design of an electronic icon can be shown applied to a finished article (Fig. 1.1 of Example 28) or in isolation (Fig 1.2). The name of the finished article in respect of which the design is to be registered should always be identified in the application as illustrated in Example 28.

Example 28 – Electronic Icon

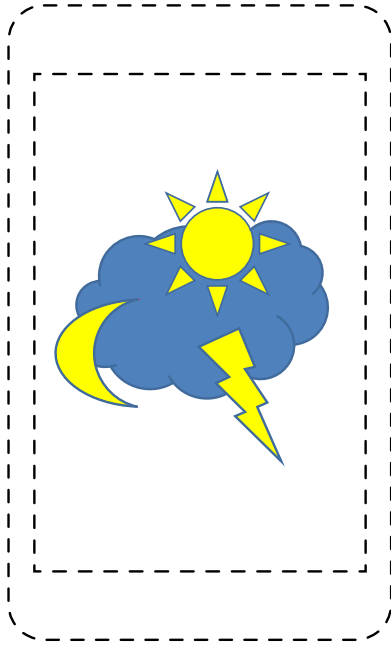


Fig. 1.1

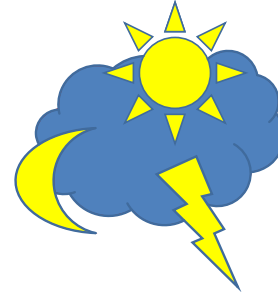


Fig. 1.2

Finished article: Display Screen with Electronic Icon

Statement:

Fig. 1.1 is a front view of the Display Screen with Electronic Icon; and, Fig. 1.2 is a view of the Electronic Icon.

8.05.08 – Computer-generated animated designs

The Industrial Design Office accepts as registrable subject matter computer-generated animated designs that change in appearance while viewing. The reproductions submitted in the application will be viewed as a sequence of frames that define the computer-generated animated design.

As illustrated in Example 29, it is strongly recommended that a figure reference accompany an application for the registration of an animated design. When included, the figure reference should read as “Figure 1.1 – first frame of the sequence,” “Figure 1.2 – second frame of the sequence,” etc. If there are no figure references and there is no descriptive statement of the sequence, the Industrial Design Office will interpret the order in which the figures appear as defining the sequence of the design for which protection is sought. The individual frames need not include substantially similar content to one another, as they are not assessed independently from their sequential arrangement.

Example 29 – Computer-generated animated designs

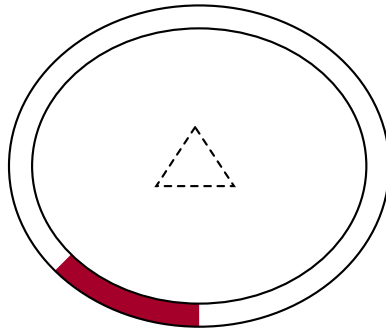


Fig. 1.1

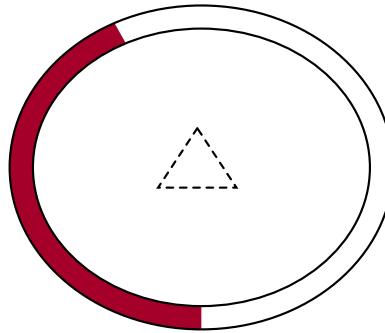


Fig. 1.2

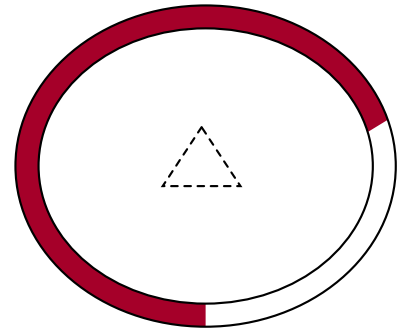


Fig. 1.3

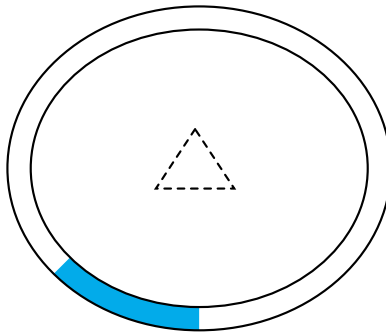


Fig. 2.1

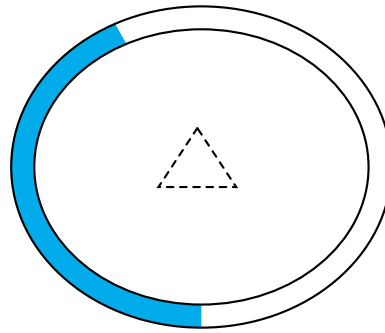


Fig. 2.2

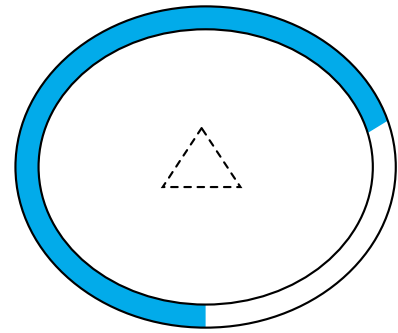


Fig. 2.3

Finished article: Thermostat Display Screen

Statement: The design is limited to the feature of ornament applied to a Thermostat Display Screen as shown in the reproductions.

Fig. 1.1 is a first frame of the sequence of the first variant;

Fig. 1.2 is a second frame of the sequence of the first variant;

Fig. 1.3 is a third frame of the sequence of the first variant;

Fig. 2.1 is a first frame of the sequence of the second variant;

Fig. 2.2 is a second frame of the sequence of the second variant; and,

Fig. 2.3 is a third frame of the sequence of the second variant.

Relevant provision(s): 9(b), 14(a) to (d), 15 IDR.

8.06 – Application deemed to relate to all features shown

An 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 described below applies.

8.06.01 – Statement of limitation

An applicant may use a statement in the application to limit some of the features from applying. For example, an acceptable statement of limitation would be: “The design is limited to the features of shape and configuration.” The statement must clearly describe which features are claimed and must not create alternatives that may lead to ambiguity as to the scope of the design. For example, the following statements would not be acceptable: “The design is the

visual features of the entire article shown in the reproductions, whether those features are features of one of shape, configuration, ornament or pattern or are a combination of any of these features.”

8.06.02 – Design applied to part of the article

8.06.02.01 – Statement to limit the design to part of the article

A statement may also indicate that the application relates to only some or all of the features of shape, configuration, pattern or ornament of a part of the finished article. As Illustrated in Example 30, the statement is used limit the features of the design and where the design is applied to the article: “The design is limited to the features of shape and configuration of the Table top. The legs do not form part of the design.”

Example 30 – Statement of limitation for part of the article

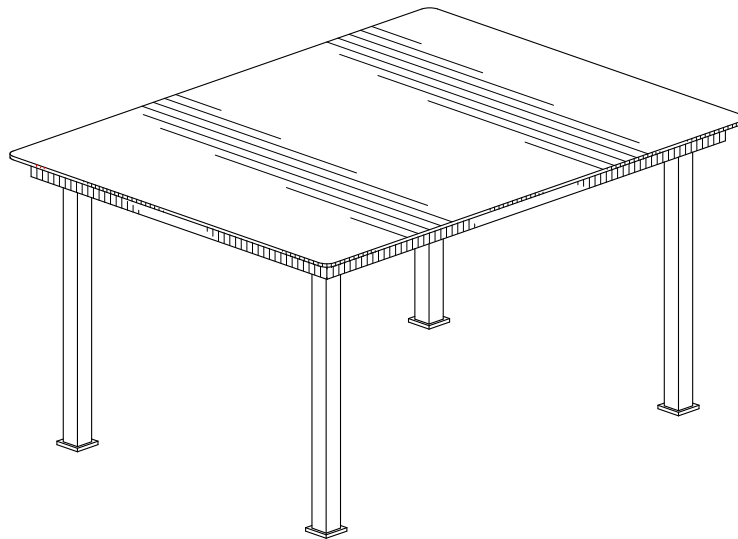


Fig. 1.1

Finished article: Table

Statement: The design is limited to the features of shape and configuration applied to the Table. The legs do not form part of the design.

Fig. 1.1 is a perspective view of the Table.

8.06.02.02 – Dotted or broken lines to limit the design to part of the article

A design may also be limited to parts of an article through the use of dotted or broken lines. In Example 31, the design portion is limited to the frame of the glasses. The features applied to the lenses do not form part of the design as they are illustrated using broken lines. It is unnecessary to include a statement in the application indicating that the broken (or dotted) lines do not form part of the design as this is deemed by the Regulations.

Example 31 – Features in dotted or broken lines

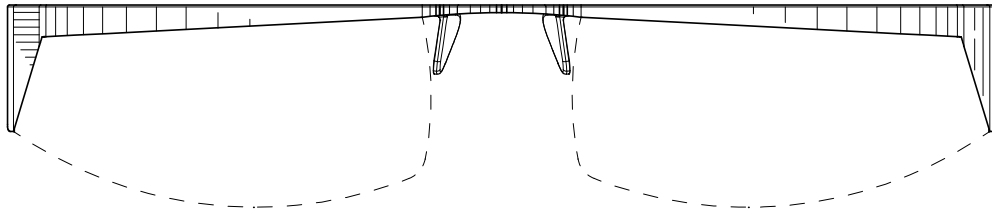


Fig. 1.1

Finished article: Glasses

Statement:

Fig. 1.1 is a front elevated view of the Glasses.

If the reproduction of the design contains dotted or broken lines illustrating elements that are meant to form part of the design such as stitching on a garment, a statement is required in the application to ensure that the dotted or broken lines are interpreted as stitching rather than a method of disclaiming features of the design (see Example 32).

Example 32 – Statement required when stitching is part of the design

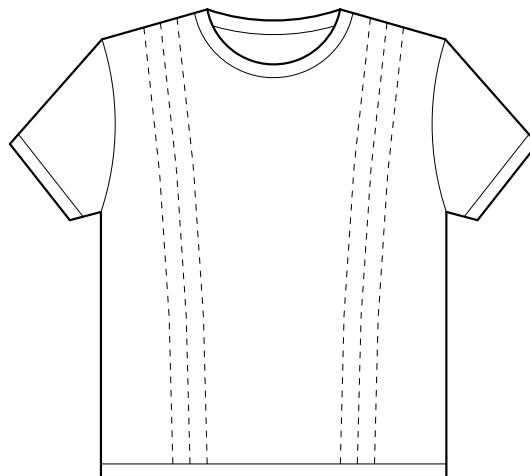


Fig. 1.1

Finished article: Shirt

Statement: The broken lines shown in the reproduction constitute stitching and are part of the design.

Fig. 1.1 is a front view of the design.

8.06.02.03 – Colouring to limit the design to part of the article

Colouring can also be used to limit the design. Contrasting colour tones can be used to obscure features that do not form part of the design. When using colouring, the features for which protection is sought should be clearly visible, whereas the disclaimed features should be

represented in a different tone so they appear blurred or imperceptible. Example 33 shows an acceptable use of colouring to disclaim portions of the article. If it is not evident that the purpose of the colouring is to indicate that the application does not relate to these features, a statement to this effect should be included in the application. To make it evident that the features do not form part of the design, the colouring can be extended to the background as illustrated.

Example 33 – Use of colouring to limit the design

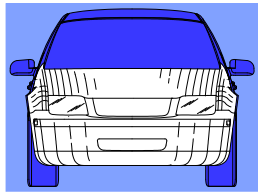


Fig. 1.1

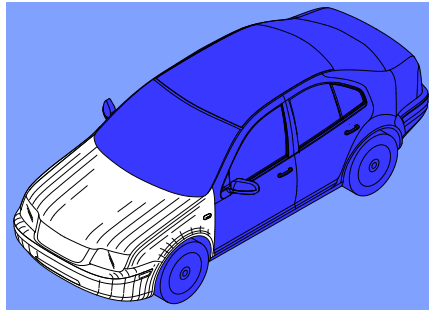


Fig. 1.2

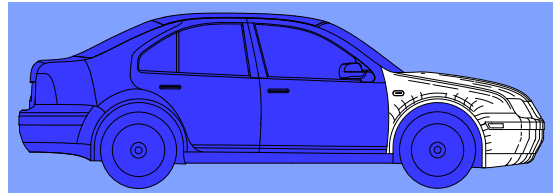


Fig. 1.3

Finished article: Car

Statement:

- Fig. 1.1 is a front view of the car;
- Fig. 1.2 is a left perspective view of the car; and,
- Fig. 1.3 is a right-side view of the car.

8.06.02.04 – Boundary line to limit the design to part of the article

Although the above options handle the majority of cases, there are exceptions that might warrant using an additional means to illustrate the distinction between design and non-design portions of the article. The Industrial Design Office will accept the use of boundary lines to define a boundary between the design and non-design portions of the article where the use of a statement of limitation, broken or dotted lines, colouring or blurring alone do not clearly show the design as applied to the article.

It should be clear by an accompanying statement that the boundary line is used to define design and non-design portions of an article. Due to the risk of including more than just the design within the boundary, boundaries should be used carefully in reproductions/photographs. Example 34 illustrates four types of acceptable boundary lines – using a dot-dash, coloured (red in this example), dotted and broken. Please note that other types of boundary lines are acceptable as long as their purpose is clearly defined.

Example 34 – Acceptable use of boundary lines

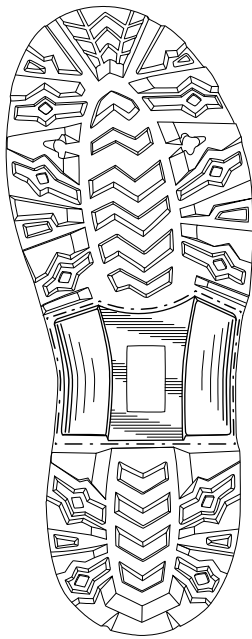


Fig. 1

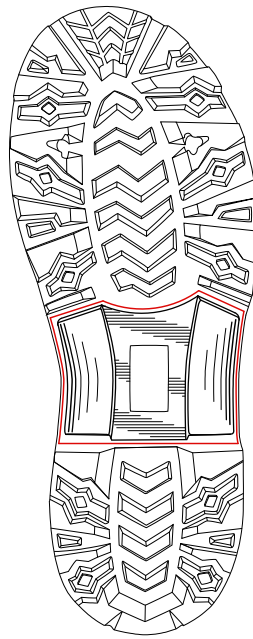


Fig. 2

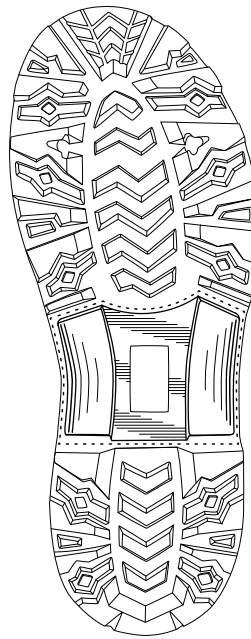


Fig. 3

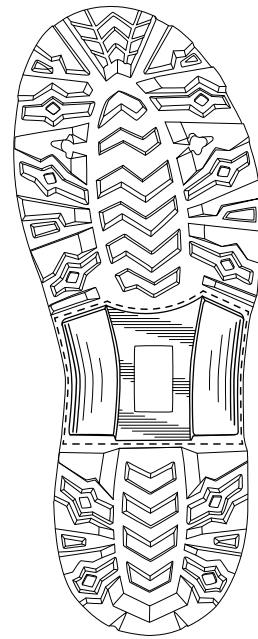


Fig. 4

Finished article: Shoe Sole

Statement: The dot-dash (Fig. 1), coloured red (Fig. 2), dotted (Fig. 3) and broken (Fig. 4) boundary line does not form part of the design and is included to indicate that the design is limited to the features within its boundary.

8.06.02.05 – Blurring to limit the design to part of the article

Part of an article can be blurred in the representation so that some of features are vague or imperceptible creating a contrast between the design and non-design portions of the article. Example 35 shows an acceptable use of blurring, where the claimed front end of the car is shown clearly and the remainder of the car is blurred. If it is not evident that the purpose of the blurring is to indicate that the application does not relate to blurred features, a statement should be included in the application.

Example 35 – Use of blurring to limit the design

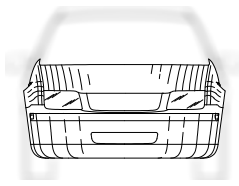


Fig. 1.1

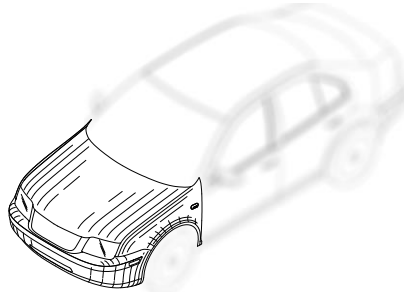


Fig. 1.2



Fig. 1.3

Finished article: Car

Statement:

Fig. 1.1 is a front view of the car;
Fig. 1.2 is a left perspective view of the car; and,
Fig. 1.3 is a left-side view of the car.

8.06.03 – Optional descriptive statement

The applicant may include in the application a brief descriptive statement of the representation or features of the design. This descriptive statement must not refer to utilitarian function or a method or principle of manufacture or construction. It is acceptable to include in that statement an indication that a particular feature is considered to be an important feature of the design. For example, “The most significant feature of the design is the appearance of the rose at the base of the handle.” In that case, any feature of the design that is referred to must be visible in the photographs or reproductions.

Relevant provision(s): 17(1) to (4), 18 IDR.

8.07 – Priority

8.07.01 – Request for priority

An applicant can take advantage of the priority of a previously filed industrial design application by filing an application for the registration of an industrial design in Canada and by making a request for priority accompanied by the required information. Provided that the request for priority is made correctly, the priority date of the design will be used for the purpose of novelty assessment, instead of the filing date of the application.

To illustrate, an applicant may file an application for the registration of a design in Canada on May 31, 2017, and include a request for priority in the application indicating that an application for registration of the same design was previously filed in the United States of America, on January 10, 2017. Provided that the request for priority is made correctly, the Industrial Design Office would use January 10, 2017, as the date to assess novelty of the design. Any conflicting designs with a priority date that is after January 10, 2017, would generally be refused registration.

8.07.02 – Priority request requirements

An applicant can make a request for priority either in the application or in a separate document. The request for priority must include the filing date, the name of the country or office where the previously regularly filed application was filed and, while not mandatory, its application number. For the purposes of identifying the country or office, two-letter alphabetic codes may be used provided they are based on [WIPO's standard ST.3](#), the recommended standard on two-letter codes for the representation of states, other entities and intergovernmental organizations.

If the request does not include the filing date or the name of the country or office where the previously regularly filed application was filed, the priority request will be deemed never to have been filed.

The filing date of the previously regularly filed application cannot be the same date as the filing date in Canada; if it is, the request for priority will be deemed never to have been filed.

The design disclosed in the previously regularly filed application must be the same design as the design the applicant is seeking to register in Canada. Drawing techniques will not have an impact on the assessment of whether the design is considered to be the same.

Any request for priority in respect of a particular variant must be based on an application that fully discloses that same variant.

Any request for priority in respect of a particular design disclosed in the environment – which could be made the subject of a divisional application – must be based on an application that fully discloses that same design.

When filing an application, it is recommended to include all requests for priority for all subject matter disclosed in the application (including in the environment). Note that in all cases, the priority claim must be for the same design and fully disclosed in the previously regularly filed application.

If these requirements are met, the Industrial Design Office will assess the novelty of the design based on the date of priority, rather than based on the Canadian filing date.

Specific rules apply to requests for priority in respect of Hague applications. See [section 30](#) of this manual for more detail.

8.07.02.01 – Deadline

The Industrial Design Office must receive any request for priority, including all of the required information before the earlier of:

- Six months after the earliest filing date of the previously regularly filed applications; and
- The date of registration of the design that is the subject of the pending application.

8.07.02.02 – Countries

The countries in or for which a previously filed application may serve as the basis for priority are:

- A country that is a member of the Union for the Protection of Industrial Property constituted under the Paris Convention; or,
- Members of the World Trade Organization as defined in subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

8.07.03 – Withdrawal of a request for priority

An applicant may withdraw a request for priority, either entirely or with respect to one or more previously regularly filed applications.

8.07.04 – Impact on the date on which an application is made available to the public

Where a request for priority is made in respect of an application, the earliest filing date of the priority application(s) will affect the date on which an application is made available to the public. If a request for priority is withdrawn at least two months before the date on which an application would have been made available to the public, the publication date will be recalculated without taking into account that priority request.

8.07.05 – Correction to a request for priority

An error in the filing date, the name of the country or office of filing or the number of a previously regularly filed application in respect of which a priority claim has been made may only be corrected before the design is registered. The following two exceptions apply to this rule.

8.07.06 – Exceptions

If an application has been made available to the public prior to registration, the Industrial Design Office may correct an error in the name of the country or office of filing only if it is obvious from the documents in the Industrial Design Office at the time the application is made public.

The Industrial Design Office will not correct an error in the filing date of a previously regularly filed application if more than six months have passed since the filing date of the pending application in Canada.

8.07.07 – Non-application to Hague applications

An applicant must contact the International Bureau of WIPO to correct any information relating to their priority claim in an international application under the Hague Agreement or to a divisional application resulting from a Hague application. The Industrial Design Office will disregard any request it receives to make a correction to a Hague applications priority claim or to a divisional application resulting from a Hague application.

8.07.08 – Request for priority documents

If the priority date is relevant in order to assess novelty under section 8.2 of the Act, the Industrial Design Office will request, by notice, that the applicant either submit a certified copy of priority document(s) or make a copy of the previously regularly filed application available on the WIPO's Digital Access Service.

The applicant must provide the requested information no later than three months after the date of the notice. This deadline can be extended by six months upon request. Only one six-month extension is available.

8.07.08.01 – Translation

If the previously regularly filed application is in a language other than French or English, the Industrial Design Office will require a translation. The applicant should provide the requested translation no later than three months after the date of the notice. This deadline can be extended by six months upon request. Only one six-month extension is available.

If the Industrial Design Office believes the translation is inaccurate, it may by notice request that the applicant:

- Submit a statement by the translator indicating that the translation is accurate; or
- Submit a new translation and a statement by the translator indicating that the new translation is accurate.

The applicant must provide the requested statement or new translation no later than three months after the date of the notice. This deadline can be extended by six months upon request. Only one six-month extension is available.

8.07.08.02 – Consequence for non-compliance

If an applicant does not comply with the request to provide the priority documents or a translation by either the initial deadline, or the extension if applicable, the priority claim will be deemed to have been withdrawn at the end of that time period. The applicant's priority request would be removed only in respect of the previously regularly filed application that was the subject of the request for priority documents.

When a priority claim is removed the publication date of the application will be recalculated based on the Canadian filing date or the earliest priority claim remaining in the application, if any. See [section 20.02](#) of this manual for more information on publication when changes are made to the date of priority.

8.07.09 – Search based on priority

Generally, the Industrial Design Office conducts the prior art search six months after the filing date of an application because of the possibility of subsequent filed applications containing designs having earlier priority dates. However, the Industrial Design Office will conduct the

search as early as six months from the latest priority date of any of the designs that are the subject of the application if the applicant submits a certified copy or makes available a copy of the previously regularly filed application through WIPO's Digital Access Service for each previously regularly filed application on which the priority claim is based.

A certified copy of the foreign application and a certificate from the foreign office showing the filing date of the application can be submitted to the Industrial Design Office in a language other than English or French, as long as they are accompanied by a translation of the documents into English or French. If not, the Industrial Design Office will not be able to assess the documentation and advance the search for prior art.

The design disclosed in the priority document must be for the same design as the design the applicant is seeking to register in Canada. Drawing techniques will not have an impact on the assessment of whether or not the design is considered to be the same. See [section 16](#) of this manual for more detail on the novelty assessment.

A request for a search based on priority can be combined with a request for advanced examination. See [section 10](#) of this manual for more detail on advanced examination.

Relevant provision(s): 8, 8.1 IDA; 26(2) to (5), 27(1) to 27(6), 28 IDR.

8.08 – Divisional applications

8.08.01 – Divisional applications

The applicant may file a divisional application with the Industrial Design Office for any design applied to a finished article that was disclosed in the original application on its filing date. The finished article must also have been disclosed in the original application. Divisional applications are available for both national and Hague applications.

A divisional application is a separate application, including with respect to the payment of any fees.

8.08.02 – Requirements

The original application – in other words, the application being divided – must be pending (e.g. the application must not be withdrawn, abandoned and past the reinstatement date, refused or registered).

The applicant must include a statement that identifies the application as a divisional. This statement must be submitted to the Industrial Design Office as part of the application or in a separate document, no later than three months after the date on which the divisional application was received in the Industrial Design Office. To facilitate processing within the Industrial Design Office, it is strongly advised that applicants indicate that an application is a divisional when it is filed.

8.08.03 – Deadline to file a divisional

A divisional application can be filed up to two years after the filing date of the original application, or the earliest original application in the series of applications from which the divisional results.

8.08.03.01 – Exception

After the two year period has expired, an application can still be divided if a report by the Industrial Design Office requires that the applicant limit its application to one design or to variants, applied to a single finished article.

Divisional application(s) can be filed for designs identified as separate designs in the examiner report. These applications must be filed as long as no more than six months have elapsed since the day on which the original application was limited to one design or to variants and the original application is still pending. To ensure that the original application remains pending, applicants may request a delay of registration on the original application. See [section 11](#) of this manual for more information.

8.08.04 – Deemed actions in relation to request for priority

If any of the following actions have been taken in respect of the original application, on or before the day on which a divisional application is received, they are deemed to have been taken, on the same day, in respect of the divisional application:

- A request for priority has been made and has not been withdrawn;
- Information required for a request for priority has been submitted to the Industrial Design Office;
- A copy or a translation of a previously regularly filed application, or a certificate showing its filing date, has been submitted to the Industrial Design Office;
- A copy of a previously regularly filed application has been made available through WIPO's Digital Access Service.

Relevant provision(s): 20(2) to (6), 29 IDR.

Section 9 – Classification

9.01 – New classification system

To align with international standards, the Industrial Design Office has introduced a new Canadian industrial design classification standard with the [Locarno Classification System](#) as its core framework. This international standard is administered by WIPO and is reviewed and updated by the Committee of Experts of the Locarno Union every five years. If required, the Industrial Design Office will review and update the Canadian Industrial Design Classification Standard on the same schedule to ensure the Industrial Design Office continues to align with the international classification standard.

The Industrial Design Office classifies each design in order to conduct a novelty assessment. Specific classes are assigned based on the particular type of article to which the design is applied, e.g., a design for a paintbrush would be classified in the subclass 04 "Paint Brushes, brushes for use in cooking" of class 4 "Brushware" (04-04). Some classes may also contain subclasses that further categorize the type of article to which the design is applied.

It is important that the application clearly identifies the finished article so that the design can be classified accurately. For articles with a specialized area of use or a technical nature, additional information about use or purpose may assist the Industrial Design Office in the classification exercise; this information may be provided in a covering letter accompanying the application.

Section 10 – Advanced examination

10.01 – Request and fee

The Industrial Design Office will advance examination of an application out of the routine order on request including payment of the \$500 fee as set out in Item 10 of the Schedule to the Regulations.

Relevant provision(s): 23 IDR.

Section 11 – Delay of registration

An applicant may wish to delay registration of a design for a variety of reasons. For example, to allow more time to file a divisional application or to file another application for the same design in another country (some jurisdictions may reject an industrial design application if the design has already been registered in another country).

11.01 – Request and fee

A request for delay of registration can be made at any time before registration, provided that the Industrial Design Office has enough time to implement the delay of registration. The request must identify the application affected and be submitted with the \$100 fee as set out in Item 11 of the Schedule to the Regulations.

The Industrial Design Office will delay the registration of the design until the day that is 30 months after the filing date of the application or, if a request for priority was made, 30 months after the earliest filing date of the previously regularly filed application on which the request for priority is based.

The Industrial Design Office will send the applicant a confirmation letter acknowledging receipt of the request once the required information and fee are received.

11.02 – Timing of request

Applicants are advised to submit a request to delay registration and the prescribed fee as early as possible to ensure that it is technically feasible to delay registration. If the Industrial Design Office does not receive the request and fee within a reasonable time, it may be unable to process the request prior to registration. Consequently, applicants are advised to submit their request to delay registration together with the fee when the application is filed, or as early as possible in the process.

11.03 – Withdrawal of a delay of registration

A request for delay of registration may be withdrawn on request from the applicant or their agent.

There is no fee to withdraw a request for delay of registration. The Industrial Design Office will not issue a refund for a withdrawn request.

Relevant provision(s): 24 IDR.

Section 12 – Withdrawing an application

12.01 – Request

An application may be withdrawn at any time prior to registration, upon written request. The request must clearly identify the application that is to be withdrawn. The examination fee will not be refunded.

If the Industrial Design Office receives the request after a design has been registered, the registration cannot be withdrawn. However, the request for withdrawal will be placed on file.

12.02 – Impact on the date on which the application is made available to the public

An application will not be made available to the public if it is withdrawn at least two months before the prescribed date. However, applicants are encouraged to submit a request to withdraw an application as early as possible to ensure it is technically feasible to withdraw the application. Information on the prescribed date for making an application available to the public is provided in [section 20.01](#) of this manual. If the application is withdrawn less than two months before the prescribed date, it will nevertheless be made available to the public.

Relevant provision(s): 8.3(5) IDA; 32(4) IDR.

Chapter 3 – Examination

Section 13 – Industrial design subject matter

13.01 – General

The Industrial Design Office examines an application for the registration of a design to assess if:

- The application was filed correctly (see chapter 2 for application requirements);
- The subject matter of the design is registrable (see section 13.02 and 13.03);
- The design was created by the applicant or the applicant's predecessor-in-title; and
- The design is novel (see section 16 on novelty assessment).

When an application is filed, the Industrial Design Office will conduct an examination to ensure it was filed correctly. The Industrial Design Office will first determine the filing date of the application. Following this, the design will be classified based on the particular type of article to which the design is applied and formalities will be examined. Formality issues can be raised at any time prior to registration. If there are no formality issues, or they have been addressed following a report, the Industrial Design Office will examine to ensure the subject matter of the design is registrable. The Industrial Design Office also will consider that the applicant or his predecessor in title created the design. Once these steps are completed, the Industrial Design Office will conduct a search for prior art and will assess the novelty of the design.

13.02 – Registrable subject matter

"Design" or "industrial design" is defined in section 2 of the Act as meaning "features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye".

13.02.01 – "Features of shape, configuration, pattern or ornament"

Features of "shape" and "configuration" refer to the finished article's 3D structure. "Shape" refers to the external form⁴ or outline⁵ of the article and "configuration" refers to the arrangement of the parts that make up the finished article.⁶

Features of "pattern" and "ornament" refer to the two-dimensional elements placed on the finished article for decorative purposes. A "pattern" refers to repeating decorative elements which are all the same. Finally, "ornament" refers to any other decorative element placed on the surface of the finished article.

⁴ *Gramophone Co v Magazine Holder Co* (1910), 27 RPC 152, (1911) RPC 221 (UK CA).

⁵ *Schmitzhe v Roberts* [1959] RPC 347 (UK HCJCD).

⁶ *Ibid*, See also *Cow (PB) & Co Ltd v Cannon Rubber Manufacturers Ltd* [1959] RPC 347.

13.02.02 – “and any combination of those features”

The Industrial Design Office considers “and any combination of those features” in the Act’s definition of “industrial design” to mean that a design may be comprised of any combination of shape, configuration, pattern or ornament.

13.02.03 – “in a finished article”

13.02.03.01 – Definition of “finished article”

A finished article means anything that is made by hand, tool or machine. It does not need to be a useful article. The Industrial Design Office applies this definition broadly and considers that a design can be applied to any physical embodiment.⁷

If an application is unclear about what the article is and how it should be classified, the Industrial Design Office will issue an objection to the design’s registration and require additional information or modifications to be made to the name of the finished article.

13.02.03.02 – Name generally known and understood by the consumer

In an application for the registration of a design, the “finished article” should be identified by a name generally known and understood by the consumer. Limited references to function or construction principles may be accepted provided they are not overly descriptive.

13.02.03.03 – Component parts of an article

The name of the finished article must identify the complete article and not its component parts. When a design is applied to an article with multiple independent parts that assemble to form one finished article, the article should be identified as a single entity.

If the name of the finished article implies that the application contains more than one design or variants, the name will not be accepted. See [section 8.04](#) of this manual for more information.

Designs applied to component parts of an article may be the subject of separate applications. For example, the Industrial Design Office considers that a light bulb is a finished article even though it is used as part of a lamp because it is sold separately from the lamp. On the contrary, the heel of a sock cannot itself be an article as it cannot be sold separately from a sock.

13.02.04 – “appeal to and are judged solely by the eye”

The features of shape, configuration, pattern and ornament must “appeal to and be judged solely by the eye”. This assessment is from the perspective of the informed consumer who is familiar with the relevant market field.⁸

⁷ *Milliken & Co v Interface Flooring Systems (Canada) Inc* (1998), 3 FCR 103, 83 CPR (3d) 470 (FCTD), *Milliken & Co v Interface Flooring Systems (Canada) Inc* (2000), 5 CPR (4th) 209 at 218 (FCA).

⁸ *Rothbury International Inc v Canada (Minister of Industry)*, [2005] 1 FCR 130 at para 31, 2004 FC 578 (FC) [*Rothbury*].

This requirement is intended to exclude designs where a consumer chooses an article because the design is useful to them and not for its visual appeal.⁹ This “appeal” does not need to be judged in an aesthetic or artistic sense. The visual appeal must only attract the attention of the consumer.¹⁰

13.03 – Unregistrable subject matter

13.03.01 – Solely Functional Designs

A design is not registrable if it is composed only of features that are dictated solely by a utilitarian function.¹¹

13.03.02 – Design contrary to public morality or order

A design is not registrable if it is contrary to public morality or order.

The Industrial Design Office considers whether an application is “contrary to public morality” on a case-by-case basis, taking into account generally accepted mores of the time.

As an example of objection on the basis of public order, the Industrial Design Office may refuse to register designs that incorporate images of the 11-point Maple Leaf (Example 37 - Fig. 1) such as the Canadian flag (Example 37 - Fig. 2) or the Official Canadian Coat of Arms (Example 37 - Fig. 3). For more information, please consult the [Commercial Use of Canadian Symbols](#) page on the Government of Canada's Website.

Example 37 – Official Canadian symbols



Fig. 1



Fig. 2

⁹ *Amp Incorporated v Utilux Proprietary Ltd* [1972] RPC 103 at 108 (HL)[*Amp Incorporated*].

¹⁰ *Ibid* at p 112.

¹¹ *Industrial Design Application 1998-2446, Re* (2003), 25 CPR (4th) 256 (Can Pat App Bd & Pat Commr); *Justice Stratas in Zero Spill Systems (Int'l) Inc v Heide*, 2015 FCA 115 at paras 24-27, 130 CPR (4th) 291.



Fig. 3

Relevant provision(s): 2, 7, 11.1 IDA.

Section 14 – Examiner reports

14.01 – Reports

If after examination, the Industrial Design Office has reasonable grounds to believe that a design is not registrable, it will send the applicant a report indicating its objections to registration. Applicants will be invited to respond to the objections no later than three months after the date of the report.

If the response does not overcome all of the objections, the Industrial Design Office may send another report raising new objections or maintaining the outstanding objections to registration and give another opportunity for the applicant to respond to the objections. Alternatively, the Industrial Design Office may send a Notice of Possible Refusal, which will identify the outstanding objections and the applicant will have three months to request a review by the Patent Appeal Board. See [section 18](#) of this manual for more information on refusal, review and appeal.

14.01.01 – Response time and extension of time

The applicant must reply to the objections no later than three months after the date of the report. This time period to reply may be extended by six months by submitting a request for extension of time to the Industrial Design Office. Only one request may be made in respect of a particular report.

Note that the request must be submitted before the end of the deadline stated in the report otherwise; the application will be deemed abandoned. See [section 15.01](#) of this manual for more information on abandonment.

14.01.02 – Examination - Relevant Applications

14.01.02.01 – Applications that cannot be disclosed

During the examination of an application for the registration of a design, a Hague application or national application may be relevant to an objection but cannot yet be disclosed to the public. If this occurs, the applicant will be informed that a relevant application has been identified but

cannot be disclosed yet. Once the relevant application has been made available to the public or is withdrawn, the Industrial Design Office will issue a report if necessary.

14.01.02.02 – If assessment of priority claim is necessary for novelty

During the examination of an application for the registration of a design, prior art dated between the requested priority date and the filing date may be relevant. If this occurs, the Industrial Design Office will request the applicant to either submit a certified copy of their priority documents or make a copy of the previously regularly filed application available on the WIPO Digital Access Service. For more information, see section 8.07.09 of this manual.

Relevant provision(s): 5 IDA; 22(1) to (5) IDR.

Section 15 – Abandonment and reinstatement

15.01 – Abandonment

If the applicant does not reply in good faith to a report in the time period allotted, the application is deemed to be abandoned. Once the application has been abandoned, the Industrial Design Office will send a "Notice of Abandonment" to the applicant as a courtesy. The notice will set out the reason(s) for abandonment and the requirements for reinstatement.

15.02 – Reinstatement

An abandoned application may be reinstated provided that the applicant makes the request within six months after the day on which the application is deemed to be abandoned. Such request must be accompanied by the following:

- A response, in good faith, to the outstanding report; and
- The reinstatement fee of \$200.

If these requirements are not met within the prescribed period, the application will become "inactive" and no further action can be taken.

Relevant provision(s): 22(6), (7) and item 9 of the Tariff of Fees, IDR.

Section 16 – Novelty assessment

16.01 – Guiding principles

16.01.01 – Novel design

The Industrial Design Office determines whether a design is novel by:

1. Determining the features of the design;
2. Establishing the priority date of the design;

3. Identifying relevant prior art; and,
4. Comparing the design to the relevant prior art.

16.01.02 – Priority date of the design

The priority date of a design is the filing date of the application in Canada, unless a request for priority is made in accordance with the Regulations. See [section 8.07.01](#) of this manual for additional information on request for priority.

16.01.03 – Features of the design

The features that constitute the design are determined by the representation of the design, the name of the finished article to which the design is applied and any accompanying statement.

For example, if the representation of the design depicts a bottle with a pattern applied to it and a statement limits the design to the feature of shape of the bottle and not the pattern, then only the shape is relevant for the novelty assessment. If, on the other hand, the application is not limited to any particular feature, then all the features of the design as a whole will be considered when assessing novelty.

It is also possible to limit the design to a part of the article. See [section 8.06.02](#) of this manual for more information.

16.01.04 – Relevant prior art

Subject to the novelty exceptions described in the following section of this manual, relevant prior art includes any design applied to the same or analogous finished article that was made available to the public (disclosed to any person) in Canada or elsewhere before the priority date of the design as well as any design disclosed to the Industrial Design Office in a pending application with an earlier priority date. Generally, the Industrial Design Office considers that articles are analogous if they share the same function.¹²

16.01.04.01 – Exclusions from prior art

When a design in an applicant's earlier filed application does not differ substantially from a design in the same applicant's later filed application, registration of the later filed design would generally be blocked by the earlier one for lack of novelty. If however, the filing date of the later filed application is no later than 12 months after the filing date of the earlier filed application, that application will not be considered in the prior art as described by section 31 of the Regulations.

Another exclusion is described in paragraph 8.2(1)(a) of the Act. Essentially, this provision creates a grace period for designs that have been made available to the public, in Canada or elsewhere, by either the person who filed the application, a predecessor in title or by a person who obtained, from them, knowledge of the design. The Industrial Design Office will not include

¹² *Dover, Ltd v Numberger Celluloidwaren Fabrik Gebrüder Wolff* (1910), 27 RPC 175 at 179 (ChD).

in the prior art a design that was disclosed less than 12 months before the priority date of the design in the application. Please note that not all jurisdictions allow for this grace period. Therefore, applicants should carefully consider the timing of their public disclosure.

16.01.05 – Comparison of the prior art with the applied for design

The Industrial Design Office compares the design in an application with the prior art in order to assess if the same or a substantially similar design is applied to a finished article that is the same as or analogous to the finished article in respect of which the design is to be registered.

It is difficult to define with precision what a substantial change is and by how much a design needs to differ from the prior art before it is considered novel. In some cases, the jurisprudence indicates that a new design may be one in which the difference from previous designs is very slight.¹³ In others, simple variations,¹⁴ a slight change of outline or configuration, or an unsubstantial variation is not sufficient to enable the author to obtain registration.¹⁵ Laddie, Prescott and Victoria, in *The Modern Law of Copyright and Designs*, stated that:

It is somewhat unsafe to rely upon expressions used by a court in one case when deciding on validity as laying down a reliable test for use in other cases. After all, the courts are trying to explain in words what is normally incapable of being so explained. What amounts to sufficient novelty is a matter of feel rather than science. At best looking at the words used and the decision reached in past cases gives an indication of the considerations which the courts have borne in mind when answering the simple question 'is this design too close to the prior art?'.¹⁶

To assess whether a design is novel remains a question of fact that is dependent on the nature and character of the design.¹⁷ The Industrial Design Office conducts a visual test from the perspective of the eye of the informed consumer.¹⁸ The courts have developed techniques to assess the similarities and differences between two designs:

- The designs being compared should not only be examined side by side,¹⁹ but also separately so that imperfect recollection comes into play, e.g. are the differences between the designs so insignificant that a consumer would be unable to tell the differences apart after a short period without the designs in front of them;²⁰
- One is to look at the design as a whole;²¹
- Articles which are in a field that existed for a long time and which are in constant and daily use must present design differences that are marked and substantial;²²
- When an article is primarily functional, minimal aesthetic differences may suffice;²³ and,

¹³ *Bata Industries Ltd v Warrington Inc* [1985], 5 CPR (3d) 339, 55 NR 291 (FC) [Bata] citing *Lewis Falk Ltd v Jacobowitz* (1944), 61 RPC 116 at 124 [Lewis]; *Rollason's Design* (1898), 15 RPC 447.

¹⁴ *Bodum USA, Inc v Trudeau Corporation (1889) Inc*, 2012 FC 1128 at para 96, 105 CPR (4th) 88 [Bodum].

¹⁵ *Clatworthy & Son Ltd v Dale Display Fixtures Ltd*, [1929] SCR 429 at 431, [1929] 3 DLR 11 (SCC) [Clatworthy].

¹⁶ Hugh Laddie, Peter Prescott & Mary Victoria, *The Modern Law of Copyright and Designs*, 2nd ed (London, Dublin, Edinburgh: Butterworths, 1995) at p 1129.

¹⁷ *Bata*, supra note 14 at para 23.

¹⁸ *Rothbury*, supra note 8 at paras 30-31.

¹⁹ *Jones v Teichman*, [1930] Ex CR 103 at 105, [1930] 3 DLR 437.

²⁰ *Dunlop Rubber Co v Golf Ball Developments Ltd* (1931), 48 RPC 268 at 281 (ChD); *Re: Paramount Pictures Corporation Industrial Design Application* (1981), 73 CPR (2d) 273 (Can Pat App Bd & Pat Commr).

²¹ *Lewis*, supra note 13.

²² *Bodum*, supra note 15 at para 98, citing *Le May v Welch* (1884) 28 Ch D 24 at 34-35, 33 WR 33 (CA).

- Features that appeal to the customer not because of their visual appeal but only because of their functional advantage should be ignored.²⁴

There is no requirement that the “concept, idea or expression” of the design be novel. It is only required that the design applied to a finished article be new and substantially different from the prior art. A design can be new even if it is made by blending known designs together as long as the combination of these known designs creates a design that is new and substantially different from the prior art.²⁵

16.02 – Search based on date of priority

Generally, the Industrial Design Office conducts the prior art search six months after the filing date of an application because of the possibility of subsequent filed applications having earlier priority date. However, the Industrial Design Office will conduct the search as early as six months from the latest priority date of any of the designs that are the subject of the application if the applicant submits a certified copy or makes available a copy of the previously regularly filed application through WIPO's Digital Access Service for each previously regularly filed application on which the priority claim is based.

16.02.01 – Language requirements

A certified copy of the foreign application and a certificate from the foreign office showing the filing date of the application can be submitted to the Industrial Design Office in a language other than English or French, as long as they are accompanied by a translation of the documents into English or French. If not, the Industrial Design Office will not be able to assess the documentation and advance the search for prior art.

16.02.02 – A supported priority claim

The design disclosed in the priority document must be for the same design as the design the applicant is seeking to register in Canada. Drawing techniques will not have an impact on the assessment of whether or not the design is considered to be the same.

Relevant provision(s): 7(b), 8, 8.2(1)(a) to (c) IDA; 31 IDR.

Section 17 – Amendments to an application

17.01 – General rule

An application may be amended at any time prior to the registration of the design except in the circumstances outlined below:

²³ *Rothbury*, supra note 8 at para 38.

²⁴ *Amp Incorporated*, supra note 9.

²⁵ *Clatworthy*, supra note 14 at 433-434.

17.02 – Limitations on amendments

17.02.01 – Modify the identity of the applicant

An application may not be amended to change the identity of the applicant except, for a national application, to correct an error in the applicant's name or as a result of the recording of a transfer.

17.02.02 – Add a representation of a design

An application may not be amended to add a representation of a new design. For example, it is unacceptable to add a new design or a new variant in the application. The addition of a photograph or reproduction of the design in the application is acceptable provided that it does not add new subject matter.

17.02.03 – Change a design or a statement

The representation of a design or any statement may not be amended if it results in a substantial change to the design as filed.

17.02.04 – Add an indication of divisional application

An application may not be amended to add an indication that it is a divisional application after three months have passed since the date on which the application was received.

17.02.05 – Change to a substantially different name of the finished article after the application is made available to the public

An application may not be amended to change the name of the finished article to the name of a substantially different finished article, on or after the date on which the application has been made available to the public.

17.03 – Clerical errors

A request to correct a clerical error is treated as a request to amend the application. For correcting obvious errors affecting a registration, see [section 19.05](#) of this manual.

Relevant provision(s): 25 IDR.

Section 18 – Refusal, review and appeal

18.01 – Notice of Possible Refusal and the refusal

Objections to registration are set out in examination reports. If the objections raised in the examination reports are not overcome, a Notice of Possible Refusal will be issued by the

Industrial Design Office. Before sending a Notice of Possible Refusal, the Industrial Design Office will inform the applicant that it may issue the Notice of Possible Refusal in an examination report if the applicant does not address or overcome the objections in that report.

Once a Notice of Possible Refusal has been issued, the applicant will have three months to request a review of the application by the Patent Appeal Board. The request for review should be sent to the Industrial Design Office. If no request is received within three months of the Notice of Possible Refusal, the application will be considered for refusal and a final decision will be communicated to the applicant.

18.02 – Review by the Patent Appeal Board

The Patent Appeal Board will review an application for the registration of a design at the request of an applicant and after a Notice of Possible Refusal has been sent. The Patent Appeal Board may hold an oral hearing if requested by the applicant. After reviewing the application, a recommendation will be made to the Commissioner of Patents. A final decision will be communicated to the applicant.

18.03 – Appeal of a refusal

18.03.01 – National applications

If the applicant disagrees with a refusal from the Industrial Design Office on a national application, an appeal to the Federal Court may be available under section 22 of the Act.

18.03.02 – Hague applications

Specific rules apply to appeal a decision in regards to a Hague application. See section 28 of this manual for more detail.

Relevant provision(s): 6(1), 22 IDA

Chapter 4 – Registration and publication

Section 19 – Registration and exclusive right

19.01 – General information

If the Industrial Design Office is satisfied that the design is registrable, it will proceed to registration unless a delay of registration is requested. The Industrial Design Office will send the applicant a registration package containing:

- A Notice of Industrial Design Registration;
- A copy of the application, including all representations of the design(s);

- A Registration Details Report that summarizes information relevant to the registration; and,
- A Notice to Registrants regarding the maintenance of the exclusive right.

19.02 – Duration of exclusive right

19.02.01 – Duration: National registrations

The exclusive right begins on the date of registration and ends on the later of the end of 10 years after registration and 15 years from the Canadian filing date. To maintain the exclusive right for its complete duration, a maintenance fee must be paid. See [section 21](#) of this manual for more details on the maintenance of a registration.

19.02.02 – Duration: Hague registrations

Specific rules apply to the term of the exclusive right in respect of a Hague registration. See [section 28.02](#) for more information.

19.03 – Delay of registration

It is possible to delay the registration of a design. See [section 11](#) of this manual for more information.

19.03.01 – Non-application to Hague applications

The registration of a design that is the subject of a Hague application cannot be delayed.

19.04 – The Register of Industrial Designs

Particulars of a registration will be entered in the Register of Industrial Designs (the Register). The Register will contain prescribed information such as, among other things, the filing date of the application, particulars of any transfers, information pertaining to the registered proprietor and the date of registration of the design.

19.04.01 – Hague registrations

Hague registrations will not be found in the Canadian Register of Industrial Designs. Particulars of a Hague application or a Hague registration will be recorded in the International Register. See [section 25](#) of this manual for more details on the International Register.

19.05 – Correction to a registration

An error in a registration may be corrected within six months of registration if the error is obvious from documents relating to the registered design that are in the Minister's possession at the time of registration. After six months, a correction to a registration may only be possible under the authority of the Federal Court.

A correction cannot be made after the six-month period from registration has ended, even if the request for correction was received prior to the end of that period. Accordingly, it is recommended that the registered proprietor or the appointed agent verifies the registration package (see [section 19.01](#) of this manual) and request any required corrections as soon as possible.

19.06 – Expungement and invalidation

The Federal Court may add, expunge or vary a registration. A copy of the order will be communicated to the Industrial Design Office and placed on file. The Industrial Design Office will rectify or alter the Register in conformity with the order.

19.06.01 – Non-application to Hague registrations

Specific rules apply to the invalidation of Hague registrations. See [section 29](#) of this manual for more details.

Relevant provision(s): 3, 3.1, 10(1), 22 IDA; 13, 40(1) IDR.

Section 20 – Applications and information made available to the public

20.01 – Prescribed date for making the application available to the public

20.01.01 – Applications made available to the public

An application and its related documents will be made available to the public on the earlier of the date of registration of the design and the day that is 30 months after the filing date of the application or from the earliest priority date of any design in the application. Note that this means that an application could be made available to the public prior to registration.

20.01.02 – Documents relating to multiple applications

If a document provided to the Industrial Design Office relates to more than one application or registration, the document will be made available to the public at the earliest date that an application or registration to which that document relates is made available to the public.

20.01.03 – Non-application to Hague applications

The prescribed date for making an application available to the public does not apply to Hague applications and divisional applications resulting from a Hague application. Rather, these applications and documents are made available to the public on the date of publication set

out by the International Bureau. Generally, these applications will be public during the course of prosecution before the Industrial Design Office. See [section 24.01](#) of this manual for more details.

20.01.04 – Withdrawn applications

If an application is withdrawn at least two months before the date on which it must be made available to the public, the application and its related documents will not be made available to the public. Otherwise, the application and its related documents will be made available to the public. See [section 20.01.01](#) of this manual for more information on the prescribed date on which an application is made available to the public.

20.02 – Changes made to the date of priority

Where there is a request for priority made in respect of an application, the earliest date of priority will affect the date on which an application is made available to the public. If the priority date is changed, the date on which an application is made available to the public will be reassessed. If a request for priority is withdrawn at least two months before the date on which an application should have been made available to the public, this date will be recalculated without taking into account that priority request.

20.03 – Canadian Industrial Designs Database

20.03.01 – Applications made available online

Once an application is made available to the public, it will be entered in the Canadian Industrial Designs Database. The database contains information pertaining to industrial designs registered in Canada since 1861.

20.03.02 – Weekly update

This database is for information purposes only. Recent updates, corrections or changes may not be included at time of viewing due to mail processing delays and as the information is updated only once a week.

20.03.03 – Hague Express database

Hague applications and registrations will be listed in the Canadian Industrial Designs Database and users will be redirected to WIPO's Hague Express database for detailed information pertaining to international registrations.

Relevant provision(s): 8.3 IDA; 32 IDR.

Section 21 – Maintenance of exclusive right

21.01 – General information

21.01.01 – Payment of the maintenance fee

The proprietor of a design must pay a maintenance fee in order to maintain the exclusive right accorded by the registration of their design. Generally, the fee must be paid by the proprietor or any person authorized by them, no later than five years after the registration date. If the maintenance fee is not paid within the five years (exception for late maintenance, see [section 21.01.02](#)), the exclusive right will be deemed to have expired.

21.01.02 – Late maintenance

The proprietor may benefit from a six-month grace period after the end of the five-year period to maintain an exclusive right if the proprietor or any person authorized by them also pays, along with the maintenance fee, an additional late fee. If the maintenance fees and the late fee are not paid within that period, the exclusive right will be deemed to have expired as of five years after registration.

21.02 – Non-application to Hague registrations

The Industrial Design Office does not record the maintenance of a Hague registration. See [section 33](#) of this manual for more information on the maintenance of a Hague Registration.

Relevant provision(s): 10(2) IDA; 33 IDR.

Part 2 – Practices in respect of Hague applications and registrations

Chapter 5 – Filing an international application and designating Canada

Section 22 – Entitlement to file

22.01 – Eligible Hague System users

Under the Article 3 of the *Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, adopted at Geneva on July 2, 1999 (hereafter referred to as the “Geneva Act”), the entitlement to file an international application is limited to

any person that is a national, or that has a domicile, a habitual residence or a real and effective industrial or commercial establishment in a contracting party, including Canada.

22.02 – Eligible designated countries

An applicant for which the state of origin is Canada can designate a contracting party that is a signatory of the Geneva Act. A list of all contracting parties is available from WIPO's website at <http://www.wipo.int/hague/en/members/>.

Section 23 – How to file an international application

23.01 – Filing with WIPO

An international application must be filed directly with WIPO's International Bureau and must designate the contracting parties in which protection is sought. The international application may be filed either on paper or through [WIPO's electronic filing interface](#). It may be filed in English, French or Spanish and must contain all the mandatory content prescribed under the Geneva Act and its related regulations. For more information on how to file an international application, please consult WIPO's website at <http://www.wipo.int/hague/en/guide/>.

23.02 – Examination of formalities

The International Bureau will verify that an international application complies with the prescribed formal requirements. Examples for formal requirements include: name and address of the applicant, no more than 100 industrial designs of the same class were included in the international application and the appropriate fees are paid for each designated contracting party. If any formal requirement is not met, the International Bureau will inform the applicant of an irregularity and invite them to make the required corrections within three months. If the formal requirements are met, the international application will be recorded in the International Register, will become an international registration and, in due course, will be published in the International Designs Bulletin.

Section 24 – The International Register and Bulletin

24.01 – Publication of international registrations

WIPO manages the publication of an international registration. By default, an international registration is published on the International Bulletin six months after its date of registration on the International Register. An applicant may request immediate publication or deferment of publication for up to 30 months.

The period of deferment available will depend on the laws of the various contracting parties designated in the international application. Contracting parties may provide up to 30 months of deferment, some may provide for no deferment of publication at all. Canada allows for the

maximum period of deferment allowed under the Hague Agreement, which is 30 months from the filing date or, if there is a priority request, from the earliest date of priority. If the international registration includes the designation of contracting parties that provides for less than 30 months of deferment, publication will take place on the expiry of the shortest of these periods.

Generally, once Canada has been designated as a contracting party, the Industrial Design Office will receive information about the international registration once it has been published in the International Bulletin. Following which, the Industrial Design Office will proceed with the examination of the file to ensure substantive requirements of the Canadian legislation are met. In cases where an international registration has not yet been published, Canada will receive a confidential copy to ensure the accuracy of the search for novelty, but adopting WIPO's best practices, will only proceed with substantive examination once it is published in the International Bulletin.

24.02 – Copies of Hague applications and registrations

Anyone wishing to obtain extracts from the International Register, certified or uncertified copies of any recording made in the International Register or of items in the file of an International Registration must make such request directly to the International Bureau.

The International Register and items in the file of an International Registration are evidence of their contents. A copy certified by the International Bureau is evidence of the particulars of the recording or item and is admissible in any court.

Relevant provision(s): 40(2) and (3), 46 IDR

Chapter 6 – Examination and registration of Hague Applications

Section 25 – Hague Applications

25.01 – International registration deemed to be a Hague application

An international registration may contain up to one hundred designs from the same class of the International Classification of Locarno, as opposed to a Canadian industrial design application which must be limited to one design applied to a single finished article or set or to variants applied to a single finished article or set. In order to accommodate this requirement, CIPO will divide each design that is the subject of an international registration designating Canada into its own application. Such an application is deemed to have been filed and is known as a "Hague application".

25.02 – Filing date of a Hague application

The filing date of a Hague application or of a divisional application resulting from a Hague application is the date of its corresponding International Registration.

25.03 – Holder

The holder means the person in whose name an international registration is recorded in the International Register. The holder of the corresponding international registration will be deemed to be the applicant on a corresponding Hague application and, after registration, the registered proprietor of the corresponding Hague registration.

Relevant provision(s): 20(1), 41(1) and (4), 42(2), 44(5) IDR.

Section 26 – Notification of Refusal

26.01 – Examination report through a Notification of Refusal

If there are reasonable grounds to believe that a design is not registrable, a first examiner report setting out objections to registration will be sent to the International Bureau in the form of a Notification of Refusal. This Notification of Refusal will be recorded by the International Bureau and forwarded to the holder. From that point on, all communications regarding the Hague application will occur directly between the holder and the Industrial Design Office.

26.01.01 – Objection in relation to Class 32

Note that subject matter belonging to Class 32 of the International Classification of Locarno (e.g. graphic symbols or logos) generally cannot receive protection under Canadian law.

26.02 – Time period for the Industrial Design Office to issue a Notification of Refusal

The Industrial Design Office has 12 months from the date of publication of the international registration in the International Bulletin to issue a Notification of Refusal. If a Notification of Refusal is not sent within this time period, the design will be deemed to be registered. In that case, the date of registration of the design will be the first day after the end of the 12-month period.

26.03 – Response to a Notification of Refusal

The Notification of Refusal that is sent in respect of a Hague application is equivalent to the first examination report sent under the national regime. It is not a final refusal under 6(1) of the Act.

If the applicant disagrees with the objections outlined in the examination report attached to the Notification of Refusal, they must submit a response directly to the Industrial Design Office, not to the International Bureau, within three months of the date of the Notification of Refusal. The

response may be in English or French and the Industrial Design Office will respond in the correspondent's language of choice. The applicant's response to the Notification of Refusal is equivalent to a response that would be filed for an examination report issued under the national regime. As such, the same remedies are available for both national and Hague applications. For example, the applicant may submit an argument disagreeing with the objection, or they may amend the application.

After the Notification of Refusal, subsequent communication relating to the prosecution of the Hague application will continue between the applicant and the Industrial Design Office. For example, subsequent examination reports will be sent directly to the applicant, who must in turn reply directly to the Industrial Design Office. The applicant may appoint an agent to represent them in business before the Industrial Design Office, see [section 2](#) of this manual for more information.

26.03.01 – Refusal maintained

If the applicant fails to overcome the objection to registration, the Industrial Design Office will issue a Notice of Possible Refusal. Once this notice has been issued, the applicant will have three months to request a review of the application by the Patent Appeal Board. The request for review must be sent to the Industrial Design Office. If the request is not received within three months of the Notice of Possible Refusal, the application will be considered for refusal and a final decision under 6(1) of the Act will be issued by the Industrial Design Office and communicated to the applicant.

26.03.02 – Objection overcome

If the objection to registration is overcome and the Hague application is registrable, the Industrial Design Office will send a Statement of Grant of Protection in respect of the design to the International Bureau. If the objection to registration is overcome and the Hague application is amended before the Industrial Design Office, the amended Hague application will be communicated to the International Bureau along with the Statement of Grant of Protection. See [section 28.01](#) of this manual for more information on the registration of a Hague application.

Relevant provision(s): 22(2) and (3), 42, 44(3) and (4)(b) IDR

Section 27 – Appeal

27.01 – Appeal to the Federal Court

A final refusal by the Industrial Design Office may be appealed to the Federal Court within two months of the date of the notice of refusal. If the final judgment given in the appeal reverses the refusal, the Industrial Design Office will send a statement of grant of protection in respect of the design to the International Bureau.

Relevant provision(s): 6(1) IDA; 50(2) and (3) IDR.

Section 28 – Hague registration

28.01 – Statement of grant of protection

If a Hague application is registrable, the Industrial Design Office will send a statement of grant of protection in respect of the design to the International Bureau. Such application is deemed to have been registered under the Act and is known as a “Hague registration”. The date of registration of the design is the date of the statement of grant of protection.

28.02 – Term of protection

The term of protection begins, for a Hague registration, on the date of its registration in Canada and ends on the later of the end of 10 years after registration in Canada or the end of 15 years after the date of international registration. The term may also end upon the expiry, in respect of Canada, of the international registration in respect of that particular design.

Relevant provision(s): 44(2) to (4)(a), 47(2) IDR.

Section 29 – Invalidation

29.01 – Jurisdiction of the Federal Court

The Federal Court of Canada has exclusive jurisdiction to grant an order invalidating a Hague registration, in so far as it relates to Canadian rights. Any person may petition the Federal Court for an order invalidating a Hague registration. Once an invalidation order is no longer subject to appeal, the Industrial Design Office will notify the International Bureau in order for the invalidation to be recorded in the International Register. Invalidation revokes or cancels the effects, in Canada, of a Hague registration.

Relevant provision(s): 50(4) and (5) IDR.

Chapter 7 – Other information pertaining to Hague applications or registrations

Section 30 – Request for priority

30.01 – Request made through the International Bureau

An applicant must submit a request for priority through the International Bureau of WIPO. The Industrial Design Office will not accept priority requests for Hague applications that are submitted directly to the Industrial Design Office.

A request for priority may relate to all or some of the designs included in the International Registration. The applicant will be deemed to have made a request for priority if the

corresponding international registration contains a declaration claiming priority together with an indication of the filing date and the name of the country or office of filing of the previously regularly filed application onto which the request is based.

30.02 – Correction of a request for priority

Corrections to the filing date, the name of the country or office of filing or the number of a previously regularly filed application for a priority claim can only be done through the International Bureau.

30.03 – Withdrawal of a request for priority

An applicant may withdraw a request for priority on a Hague application. Such request must be filed directly with the Industrial Design Office. See [section 8.07.03](#) of this manual for more information on the withdrawal of a request for priority.

Relevant provision(s): 26(1), 28, 45(2) and (3) IDR.

Section 31 – Transfer of an international registration

31.01 – Request for transfer

Transfers of ownership affecting any Hague applications or registrations must be recorded through the International Bureau.

31.02 – Attestation

In cases where the transferee cannot obtain the signature of the transferor, the Industrial Design Office will provide an attestation that the transferee appears to be the successor in title of the holder if the holder is a national of Canada or, has a domicile, a habitual residence or real and effective industrial or commercial establishment in Canada, and if the transferee submits satisfactory evidence that the transferee appears to be the successor in title of the holder of the international registration.

A request for attestation must be accompanied by a statement to the effect that the transferee made efforts to obtain the signature of the holder or their representative and that these efforts were unsuccessful.

Relevant provision(s): 48, 49 IDR.

Section 32 – Corrections

32.01 – Correction by the International Bureau

Where the International Bureau, acting on its own initiative or at the request of the holder, considers that there is an error in the International Register concerning an international registration, it will modify the International Register and inform the holder accordingly.

32.02 – Refusal of the correction

If the Industrial Design Office considers that the effects of a correction cannot be recognized, a notification of refusal of the effects of the correction together with detailed reasons will be sent to the International Bureau within 12 months after the date on which the correction was published in the International Bulletin. The International Bureau will then forward the notification to the holder. The holder may reply directly to the Industrial Design Office within three months from the date of the notification. If, after taking into consideration the reply provided by the holder, the Industrial Design Office considers that the correction can be recognized, it will send a withdrawal of refusal of the effects of the correction to the International Bureau. Each correction made by the International Bureau will be assessed on a case-by-case basis.

Relevant provision(s): 51(1) to (3) IDR.

Section 33 – Maintenance of a Hague registration

33.01 – Request for maintenance

The maintenance of a Hague registration cannot be recorded with the Industrial Design Office. The registered proprietor must proceed with the renewal of an international registration in respect of Canada through the International Bureau. Note that the holder may choose to renew all, some, or none of the designs in respect of Canada.

33.02 – Fees for renewal

The fees due for the renewal must be paid directly to the International Bureau. The holder will have to pay a basic fee plus different fees depending on each designated contracting party as well as on the number of designs contained in the international registration. In respect of Canada, the declared fee for renewal is the same as the fee for the maintenance of a registration of a design in Canada, which is \$350 as set out in Item 2 of the Tariff of Fees of the Regulations.

33.03 – Renewal period

In respect of Canada, the international registration is valid for an initial period of five years from the date of international registration and may be renewed for two additional five-year periods.

Six months before the expiry of each five-year term, the International Bureau will send a notice indicating the date of expiry of the international registration, along with the maximum term of protection for the contracting parties designated in the international registration. Note that the fact that the holder or its representatives did not receive the notice cannot constitute an excuse for failure to comply with any time limit concerning the renewal of an international registration.

33.03.01 – Renewal request and payment

Within five years of the date of international registration, the holder may choose to renew the international registration for one or more designs, in respect of Canada. Upon request and payment of the required renewal fees, the International Bureau will renew the international registration accordingly, which will maintain the exclusive right in Canada for the remainder of the term of protection. If using a paper form, the holder may pay the fees to the International Bureau any time before the registration expiry date. If using the [e-renewal interface on the WIPO website](#), the renewal may be requested no earlier than 3 months before the expiry of the international registration.

The holder is required to renew again within ten years from the date of international registration, but no fees are required. This will ensure that the international registration remains maintained in respect of Canada.

33.03.02 – Late renewal

The renewal fees should be paid to the International Bureau by, at the latest, the date of expiry of the registration. However, payment may still be made within six months from the date on which the renewal of the international registration is due, provided that the surcharge specified in the [Schedule of Fees](#) is paid at the same time. If the required fees are not paid on time, the international registration will be deemed to have expired in respect of Canada.

Relevant provision(s): 47(1) IDR.

Part 3 – Transitional measures

This section details how the Industrial Design Office will treat applications with a filing date prior to the coming into force of the Act as well as designs already registered under the former Act. For greater certainty, the former Act and the former Regulations are the Act and Regulations that were in force prior to November 5, 2018).

Chapter 8 – Transitional provisions: Act

Section 34 – Applicability of the Act to applications with a filing date before the coming into force

34.01 – Former Act applicable

An application whose filing date has been established under the former Act will be dealt with in accordance with provisions from the former Act. However, some exceptions apply.

34.01.01 – Duration of exclusive right

In accordance with subsection 10(1) of the former Act, the term limited for the duration of the exclusive right is 10 years beginning on the date of registration of the design.

34.02 – Exceptions

34.02.01 – Section 5: examination

Section 5 of the former Act stipulates that there must be examination prior to registration, and outlines how the Industrial Design Office must proceed with the report of objections, the abandonment and the reinstatement of an application. This section of the former Act does not apply. Rather, it is replaced by section 5 of the Act, which outlines that examination shall occur in accordance with the Regulations; more specifically subsections 22(2) to 22(7). These rules replace the ones previously found in section 5 of the former Act and contain essentially the same information. See [sections 14](#) and [15](#) of this manual for the practices applicable to the report of objections, abandonment and reinstatement.

34.02.02 – Section 13: assignments and transfers

Section 13 of the former Act stipulates that designs are assignable by an instrument in writing, which shall be recorded by the Industrial Design Office on payment of the prescribed fees. This section of the former Act does not apply. Rather, it is replaced by section 13 of the Act, which outlines that designs are transferable and that the Industrial Design Office shall record or register the transfer of a design on request and in accordance with the Regulations, more specifically section 34 which outlines that such a request should include the name and postal address of the transferee and the fee prescribed. See [section 3](#) of this manual for the practice applicable in relation to transfers.

34.02.03 – Section 20: clerical errors

Section 20 of the former Act gives the Industrial Design Office authority to correct clerical errors. In accordance with section 30 of the Act, this section no longer applies. Under the Act or Regulations, this section has been repealed and there are no specific provisions to replace the

former section 20. As such, clerical errors may generally be corrected by way of amendment. For applications filed before the coming into force of the Act, the applicable amendment provision is found in section 16 of the former Regulations. For applications filed on or after the coming into force of the Act, the applicable amendment provision is found in section 25 of the Regulations.

34.02.04 – Section 21: time period extended

Section 21 of the Act is a new section that applies to all applications, including applications filed prior to the coming into force of the Act. This section allows time periods to be extended, by operation of law, to the next day on which the Industrial Design Office is open to the public. Specific days on which the Industrial Design Office is closed are prescribed under section 36 of the Regulations. The Minister may also, on account of unforeseen circumstances and if he or she is satisfied that it is in the public's interest, designate a day on which the deadlines will be extended. See [section 1.05](#) of this manual for the practice applicable in relation to extension of deadlines.

34.02.05 – Section 24.1: electronic form and means

Section 24.1 of the Act is a new section that applies to all applications, including applications filed prior to the coming into force of the Act. This section ensures that any document, information or fee may be provided in electronic form and by electronic means. See [section 1.04](#) of this manual for practices applicable in relation to electronic communications.

Section 35 – Applications without a filing date

35.01 – Cannot establish filing date

In accordance with subsections 11(1) and 9(2)(a) to (c) of the former Regulations, for an application received before the coming into force to receive a filing date, the applicant must have submitted to the Industrial Design Office:

- their name and address;
- if an agent is named, the name and address of the agent;
- a title identifying the finished article;
- a description identifying the features that constitute the design; and
- drawings or photographs.

In accordance with section 31 of the Act, if the filing date of an application received before, but processed after the coming into force of the Act cannot be established because the requirements set out above were not met, the application will be deemed never to have been filed. Consequently, the applicant will have to file the application again. As the application will be received after the coming into force of the Act and Regulations, the filing date requirements that apply are the ones set out in [section 7](#) of this manual.

Section 36 – Applicability of the former Act to registered designs

36.01 – Applicable sections of the former Act

Any matter arising in respect of a design registered under the former Act will be dealt with in accordance with provisions from the former Act. However, some exceptions apply.

36.02 – Exceptions

36.02.01 – Section 3: Register of Industrial Design

Section 3 of the former Act stipulates that there shall be a register called the Register of Industrial Designs for the registration of industrial designs. This section of the former Act does not apply. It is replaced by section 3 of the Act which stipulates that there shall be a Register of Industrial Designs and that the Register is evidence of its contents and that a certified copy of an entry can serve as evidence in any court.

36.02.02 – Section 13: assignments and transfers

Section 13 of the former Act stipulates that designs are assignable by an instrument in writing, which shall be recorded by the Industrial Design Office on payment of the prescribed fees. Similarly to the transitional measures in place for transfers of applications, section 13 of the former Act does not apply to registered designs. Rather, it is replaced by section 13 of the Act, which outlines that designs are transferable and that the Industrial Design Office shall record or register the transfer of a design on request and in accordance with the Regulations, more specifically section 34 which outlines that such request must include the name and postal address of the transferee and the fee prescribed. See [section 3](#) of this manual for the practice applicable in relation to transfers.

36.02.03 – Section 20: clerical errors

Section 20 of the former Act gives the Industrial Design Office authority to correct clerical errors. In accordance with section 32 of the Act, this section no longer applies. The correction of a clerical error affecting registered designs, whether they were registered before the coming into force of the Act or after, are made under the authority of section 3.1 of the Act. See [section 19.05](#) of this manual for more information on how to correct registrations.

36.02.04 – Section 21: extension of time

As it is the case for applications, section 21 of the Act is a new section that applies to all registrations, including registrations filed prior to the coming into force of the Act. This section allows time periods to be extended, by operation of law, to the next day on which the Industrial Design Office is open to the public. Specific days on which the Industrial Design Office is closed

to the public are prescribed under section 36 of the Regulations. The Minister may also, on account of unforeseen circumstances and if he or she is satisfied that it is in the public's interest, designate a day on which the deadlines will be extended. See [section 1.05](#) of this manual for the practice applicable in relation to extension of deadlines.

36.02.05 – Section 24.1: electronic form and means

As it is the case for applications, section 24.1 for the Act is a new section that applies to all registered designs, including designs registered prior to the coming into force of the Act. This section ensures that any document, information or fee may be provided in electronic form and by electronic means. See [section 1.04](#) of this manual for practices applicable in relation to electronic communications.

Chapter 9 – Transitional provisions: Regulations

Section 37 – Applicability of the Regulations to applications with a filing date before the coming into force of the Act and designs registered on the basis of such applications

37.01 – Current Regulations applicable

In accordance with section 33 of the Act, the Regulations in force as of November 5, 2018, apply to all applications with a filing date before the coming into force of the Act and all designs registered on the basis of such applications, unless the Regulations provide otherwise.

37.02 – Exceptions

37.02.01 – Communications

Section 10 of the Regulations, which stipulates that the Industrial Design Office must not have regard to any part of a document submitted in a language other than English or French, does not apply. Rather, section 13 of the former Regulations, which remains applicable, states that the Industrial Design Office shall refuse any document that is not in English or French, unless a translation is provided. Section 13 also specifies that the text of an application shall be wholly in English or wholly in French.

Section 11 of the Regulations stipulates that the Industrial Design Office will acknowledge receipt of a communication with the stated or apparent intent of protesting the registration of a design, but will give no information as to the action taken. This section also provides that, in accordance with section 8.3 of the Act and section 32 of the Regulations, an application and all its related documents are to be made available to the public. In that case, should there be any protest on file; it will be made available to the public. Since section 8.3 of the Act does not apply to applications filed before the coming into force, section 11 of the Regulations cannot apply.

Rather, it is replaced by subsection 8(2) of the former Regulations. The former provision is essentially the same; however applications filed before the coming into force are not to be made available to the public until registration.

37.02.02 – Applications

The following sections of the Regulations do not apply to applications filed before the coming into force:

- Section 14 of the Regulations, which contains requirements for the representation of a design;
- Section 15, which contains information on the manner of presenting photographs or reproductions;
- Section 16, which requires the name and postal address of the applicant;
- Section 17, which indicates that an application is deemed to relate to all of the features of shape, configuration, pattern or ornament shown in the representation and provides for mechanisms of exception (statement, broken lines, colouring, blurring);
- Section 18, which allows the inclusion of an optional descriptive statement;
- Section 19, which deems Hague applications to be in compliance with requirements found in sections 14(b) to (d) and sections 15, 16, 18; and,
- Section 20, which states that an application must be limited to one design and provides for the filing of divisional applications.

Rather, the requirements of section 9(1), 9(2)(a) to (d), 9.1, 10 and 12 of the former Regulations remain applicable.

Sections 9(1) and (2) of the former Regulations state that an application must be made in the prescribed form, include the name and address of the applicant, the name and address of the agent (if one is appointed), a title, a description, a drawing or photographs. Paragraph 9(2)(e) does not apply as a representative for service is no longer required for any applications filed before or after the coming into force of the Act.

Section 9.1 of the former Regulations provides information on the manner of presenting drawings or photographs, the manner of showing the designs and disclaiming parts of it. The applicant may also provide one view on a drawing that includes environment (meaning subject matter that is not part of the finished article and that is illustrated only for the purpose of showing the article in context) provided that the application contains more than one view and all other views show the article in isolation, that the environment is shown in well-defined stippled lines and that the inclusion of the environment in the application helps to provide a better understanding of what are the features of the design and what is the finished article to which the design is applied. It must be clear from the combination of the drawings, the description and the title what is the environment, what are the features of the design and what is the finished article to which the design is applied.

Section 10 of the former Regulations requires that the application must relate to one design applied to a single finished article or set or to variants applied to a single finished article or set. If

after examination it is considered that the application relates to more than one design, the applicant will be advised that the application must be limited to only one of the designs disclosed. The Industrial Design Office will also advise the applicant that a separate application (commonly called a "divisional") may be filed for any of the other design(s). Note that the \$400 examination fee (Item 1 of the Tariff of Fees) is required for each divisional filed. A divisional must be filed before the registration of the design in the original application (commonly called the "parent"). It is the responsibility of the applicant to notify the Industrial Design Office when an application is being filed as a divisional of another application. A divisional application will have the same filing date as the parent application and the Industrial Design Office may register the parent (filed before the coming into force of the Act) and divisional(s) on the same date.

Section 12 of the former Regulations provides information on how to present documents and any other materials to the Industrial Design Office. The application must be clear and legible. If filed in paper form, the application must only be printed on one side on white paper that measures between 20 cm and 22 cm (7.9 in and 8.5 in) in width and between 25 cm and 36 cm (9.8 in and 14 in) in length.

37.02.03 – Filing date

Section 21 of the Regulations, which outlines the filing date requirements, will not apply and rather the filing requirements found in section 11 of the former Regulations will continue to apply. As the application is filed before the coming into force of the Act, it will establish a filing date in accordance with section 11 of the former Regulations.

To obtain a filing date under the former Regulations, the applicant must have submitted to the Industrial Design Office prior to the coming into force their name and address, the name and address of the agent if one is appointed, a title identifying the finished article, a description identifying the features that constitute the design and drawings or photographs.

37.02.04 – Examination

Subsection 22(1) of the Regulations, which specifies that the Industrial Design Office must examine an application to determine if the design is registrable under section 7 of the Act, does not apply to applications filed before the coming into force of the Act. Rather, an application filed prior to the coming into force of the Act will be examined in accordance with section 5 of the Act and section 6 and subsection 7(3) of the former Act. Section 7(3) has been interpreted to mean that a design must be original in order to be entitled to registration.²⁶ For guiding principles in relation to originality, see [Annex A of the previous Industrial Design Office Practice Guide](#). Section 6 of the former Act specifies that a design will not be registered if:

- the design is identical to or closely resembles any other design already registered; or
- the design was published more than one year prior to the date of filing in Canada.

In accordance with section 32 of the Regulations, applications are made available to the public either at registration or 30 months from the filing date or earliest priority date, if any. Section 24 of

²⁶ *AFX Licensing Corporation v HJC America, Inc*, 2016 FC 435 at paras 107-111.

the Regulations sets out an outer time limit for delay of registration which is harmonized with the prescribed date for making an application available to the public set out in section 32 of the Regulations. Section 32 of the Regulations does not apply to applications filed before the coming into force of the Act; consequently, section 24 of the Regulations does not apply.

37.02.04.01 – Delay of registrations and associations

Applications filed before the coming into force of the Act may benefit from one or more six-month delay of registration from the time the application is allowed. Other associated applications may also benefit from this delay of registration when applicants request that related designs be registered on the same day or if they have submitted original and divisional applications, so that they all register on the same day. Consequently, when a delay of registration is requested for a particular application that is associated with other applications, those other applications may also be delayed as a result.

For example, if a delay of registration is requested on application "A" which is associated with other applications, application A will hold back from registration all associated applications until the delay of registration expires. At that time, all associated applications will proceed to registration on the same day if they are all in an allowable state. Please note that if an application that has been delayed from registering is disassociated from a group of applications, only the application to which the delay was applied will be held back from registration. The others will proceed to registration if they are in an allowable state.

However, note that applications filed after the coming into force of the Act may not be associated to request registration on the same day. As such, it is recommended to request a delay of registration on each application individually.

37.02.05 – Amendments

Section 25 of the Regulations states that an application may be amended at any time before registration and includes a list of limitations to amendments; this section does not apply to applications filed before the coming into force of the Act. Rather, section 16 of the former Regulations applies, which states essentially the same requirements, but includes fewer limitations on amendments.

In accordance with subsection 16(1) and (2) of the former Regulations, an application may be amended any time before registration. However, it is unacceptable to amend the application in a way that would substantially alter the design to which the application relates. In particular, changes to the title, the description or drawings that describe or disclose a substantially different design are unacceptable.

37.02.06 – Priority

The following sections do not apply to applications filed before the coming into force of the Act:

- Section 26 of the Regulations, which outlines requirements for making and correcting a request for priority;

- Section 27, which allows the Industrial Design Office to obtain a copy of priority documentation and sets out the consequence for non-compliance with such request;
- Section 28, which sets out requirements for the withdrawal of a request for priority;
- Section 29, which indicates that priority information is carried over from an original application to a divisional application; and,
- Section 30, which identifies that an international application is equivalent to a regular filing of an application for the purposes of making a request for priority.

Rather, section 29 of the former Act and section 20 of the former Regulations apply.

In accordance with section 29 of the former Act, in order for an applicant to make a request for priority based on an earlier filed application in or for a foreign country, the foreign application must be the application for the registration of the same industrial design, and the request must be filed with the Industrial Design Office within a period of six months from the date of filing of the foreign application.

Subsection 20(1) of the former Regulations requires that a request for priority be made in writing and include:

- the name of the country in or for which the application was filed;
- the foreign application number; and,
- the filing date of the foreign application;

The Industrial Design Office considers that in order for an applicant to make a claim for priority based on an earlier filed application, both the request for priority and all of the priority information required by subsection 20(1) of the former Regulations must be filed within a period of six months from the date of filing of the foreign application. Therefore, if any or all of the required priority information as listed above is not provided, it cannot be rectified by the Industrial Design Office after the expiry of the six-month period specified in subsection 29(1) of the former Act.

In accordance with subsection 20(2) of the former Regulations, if entitlement to registration is disputed because the application is made for a design that is identical to, or closely resembles the design so as to be confounded with it, the Industrial Design Office will request from the applicant that claims an earlier priority date a certified copy of the foreign application accompanied by a certificate from the foreign office showing the date of filing in that country. Until these documents are submitted to the Industrial Design Office, the priority request is suspended. If the certified copy shows that the foreign application relates to a different design than that of the Canadian application, the priority claim will not apply to the Canadian application.

37.02.07 – Exclusion from prior art

Section 31 of the Regulations provides an exclusion from relevant prior art for a design in an applicant's earlier filed application that does not differ substantially from a design in the same applicant's later filed application. Registration of the later filed design would generally be blocked by the earlier one for lack of novelty. If however, the filing date of the later filed

application is no later than 12 months after the filing date of earlier filed application, that application will be excluded from the relevant prior art.

This section does not apply to applications filed before the coming into force of the Act, as they are not assessed for novelty under section 8.2 of the Act but rather they are assessed for originality under section 6 and subsection 7(3) of the former Act. See [section 16](#) of this manual for more information on the novelty assessment.

If a design in an applicant's application that is filed before the coming into force of the Act does not differ substantially from a design in the same applicant's application that is filed after coming into force of the Act and that the later filed application registers before the one filed prior to the coming into force of the Act, the exclusion from prior art provided for by section 31 of the Regulations will not apply. Consequently, the Industrial Design Office will send a report objecting to registration of the earlier filed application, resulting in self-collision. In order to reduce the risk of this situation arising, the Industrial Design Office recommends that the applicant request a delay of registration on the subsequently filed application. This should prevent self-collision issues by giving sufficient time for the first filed design in that application to proceed to registration.

37.02.08 – Applications made available to the public

Section 32 of the Regulations sets out the prescribed date on which an application and all its related documents are to be made available to the public. It also includes information pertaining to the impact of the withdrawal of an application and withdrawal of priority claim on the prescribed date on which an application is made available to the public. This section does not apply to applications filed before the coming into force of the Act. Rather, these applications will only be made available to the public only upon registration.

37.02.09 – Maintenance and term of protection

The maintenance of all registered designs will be dealt with in accordance with subsections 33(2) and (3) of the Regulations and the required fees are prescribed under Items 2 and 3 of the Tariff of Fees of these Regulations.

Subsection 33(1) of the Regulations states the prescribed maintenance period does not apply. Rather, the maintenance period for applications filed before the coming into force of the Act is prescribed by paragraph 53(2)(b) of the Regulations. The prescribed period for which maintenance fees are to be paid begins five years after the date of registration of the design and ends 10 years after the date of registration of the design.