Canadian Intellectual Property Office
Office de la propriété intellectuelle du Canada

Canada

Protecting your IP in OAPI member states

Doing business abroad



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Doing business in the OAPI region

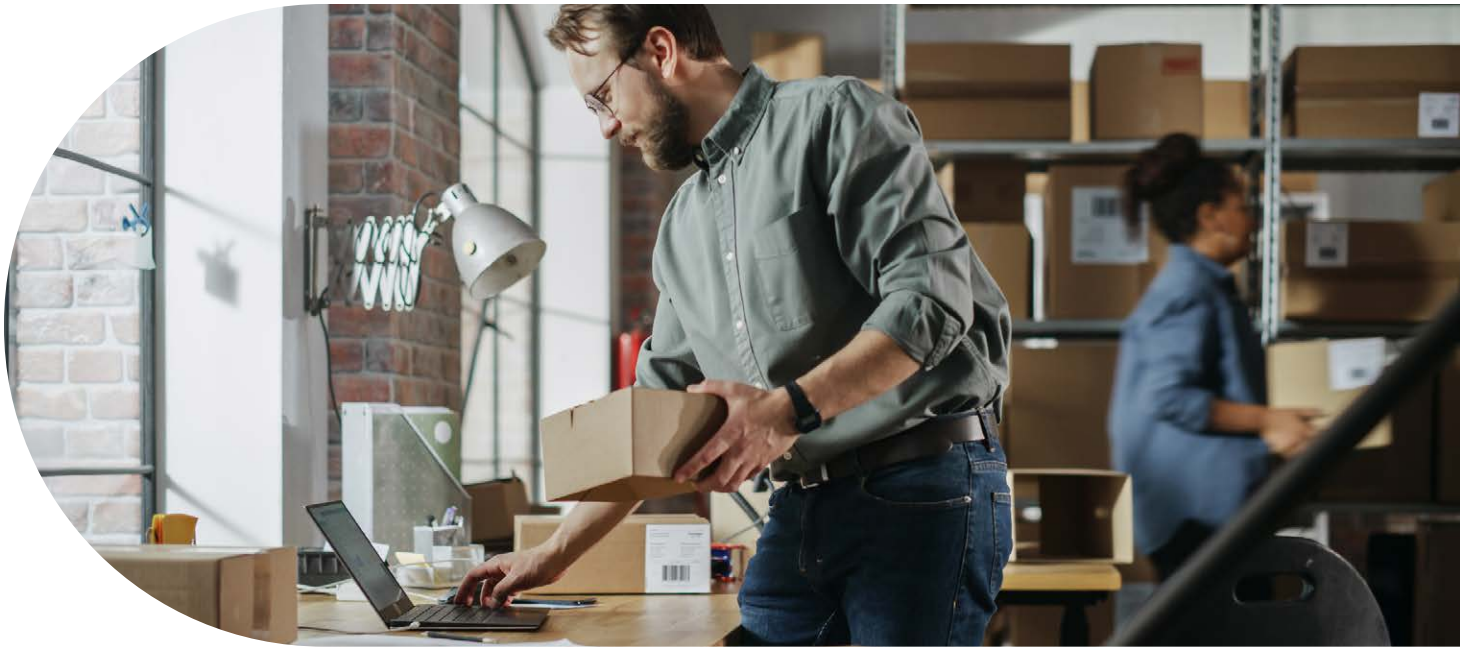
Today's global economy is characterized by intense competition, a race for innovation, and, as a result, a significant rise in counterfeiting. Companies seeking to grow or enter new international markets must not only protect their intangible assets, but also avoid infringing on the intellectual property (IP) rights of others. In a knowledge-based economy, IP has become a fundamental tool for protecting your products and services, both at home and abroad. Due to the territorial nature of the IP system, the various IP rights held by companies in Canada are generally not recognized abroad, and specifically not in the countries of the African Intellectual Property Organization (OAPI). This is why it's necessary to develop a strategy to protect your IP assets in the countries or regions where you plan to manufacture, use or sell your products and services.

Canadian entrepreneurs have long maintained business relationships with the various member states of OAPI (member states), a regional office established in 1962 that serves as the gateway to this vast market of 17 countries, with an estimated population of over 185 million people spread across a territory of 7,880,251 km^2.

It is therefore important to have your IP rights recognized, registered and enforced within the OAPI region, where you can apply for protection of a trademark, a patent, a utility model (inventions relating to tools), an industrial design, a geographical indication and a plant variety. This grants you protection across all 17 member states.











Registering your intellectual property asset within the OAPI region

OAPI currently has 17 member states: Benin, Burkina Faso, Cameroon, the Central African Republic, the Comoros, the Congo, Côte d'Ivoire, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Mauritania, Niger, Senegal, Chad and Togo. OAPI is the regional office responsible for the administration and registration of the aforementioned IP rights—namely patents, trademarks, geographical indications, plant varieties, industrial designs, trade names and integrated circuit topographies—on behalf of the member states. OAPI's headquarters are located in Yaoundé, Cameroon, and it is represented in each member state by an administrative entity known as the OAPI National Liaison Structures (NLS/OAPI).

Applications may be filed directly at OAPI headquarters, at OAPI national offices or through OAPI-approved agents.

Before filing your applications for trademark or industrial design registration with OAPI or an NLS-OAPI, we recommend that you conduct a prior art search to verify that the intended use of your IP will not conflict with any third-party rights that have already been registered. To do so, you can consult the various databases (patents, trademarks and industrial designs) available on the OAPI website.

The OAPI IP system offers significant benefits for Canadian entrepreneurs:

- Uniform legislation across all 17 member states
- A single office for filing applications for protection throughout the region
- Centralization of procedures at the OAPI level
- The issuance of a single title valid in all 17 member states

Map of the member states of the OAPI region



Mauritania

Mali

Senegal

Ivory Coast

Benign

Central African Republic

Gabon

Ginea-Bissau

Burkina Faso

Niger

Cameroon

Congo

Ginea

Togo

Chad

Equatorial Ginea

Comoros



Protecting your intellectual property with OAPI

The OAPI IP system offers you several options for protecting your technical, aesthetic or commercial creations.

Protection of technical creations

For technical inventions, there are 3 types of protection: patents, utility models and plant variety certificates.

Patent

Patents are granted for inventions that meet the criteria of novelty, inventive step and industrial applicability, which enable the solution of a problem. Please note that, within the OAPI region, certain inventions are not patentable, including those whose exploitation would be contrary to public order or morality, including methods of treating the human or animal body, scientific theories and methods, discoveries (which already exist and have not been the result of human intervention), and architectural works (which are protected by copyright).

As in most countries, the OAPI system is based on the "first-to-file" principle, under which the right to a patent belongs to the first person, whether a legal entity or an individual, to file an application with OAPI or elsewhere in the world.

You can file your patent application at the OAPI headquarters in Yaoundé, at the OAPI NLS or under the Patent Cooperation Treaty for the international filing of patents.

However, if you do not have a permanent address or office within the OAPI region, you must be legally represented by an agent accredited by OAPI[1].

The term of protection for a patent is 20 years from the filing date, provided that the patent annuities are paid on time. The cost of the patent annuities, depending on the age of the patent, can be found on the OAPI website.

Utility model

A utility model protects technological inventions relating to the shape or structure of a new or improved product intended for practical use and capable of industrial application. These are generally small tools such as corkscrews, wood planers and scissors.

1 Any natural or legal person authorized to act on behalf of, whether professionally or otherwise, a natural or legal person for the purpose of conducting IP transactions with OAPI.



Under the OAPI system, utility models are protected for 10 years from the filing date of the application, subject to payment of the applicable prescribed fees, as indicated on the OAPI website.

Plant variety certificate

A plant variety certificate protects plant varieties that are new, distinct, stable[2] and uniform[3]. However, wild species and any variety that does not meet the criteria listed above are excluded from protection.

The term of protection for a new plant variety is 25 years, starting from the date the application is filed and subject to payment of the applicable prescribed fees, as indicated on the OAPI website.

Protection of aesthetic creations

Industrial designs protect the two-dimensional (designs) or three-dimensional (models) features of all or part of a finished product. They protect the novelty and uniqueness of industrial designs. Industrial designs registered within the OAPI region are protected for a period of 5 years, renewable twice.

You may file your application for industrial designs in the OAPI region in Yaoundé, Cameroon, at the NLS/OAPI offices, or under the Hague Agreement Concerning the International Registration of Industrial Designs.

However, you must be legally represented by an agent accredited with OAPI if you do not have a permanent address or office within the OAPI region.

Protection of distinctive signs

For distinctive signs, there are 3 types of protection: trademarks, geographical indications and trade names.

Product or service trademark

Within the OAPI region, a trademark is a sign used to distinguish your products or services from those of your competitors in the market. These include designations in various forms: words, figurative signs (logos), sound marks, audiovisual signs and series of signs. A series of signs represents a sequence of signs used to distinguish a product or service.

OAPI follows the “first-to-file” principle for trademark and service mark rights. Consequently, the exclusive right to use a trademark belongs to the first person to file an application, not necessarily to the first person to use it.

2 Its relevant characteristics remain unchanged following successive reproductions or propagations, or, in the case of a specific cycle of reproductions or propagations, at the end of each cycle.

3 Sufficiently uniform in its relevant characteristics (subject to the variation that is to be expected given the particularities of its sexual reproduction or vegetative propagation) and bearing a denomination (the name assigned to the new plant variety for which protection is sought).

The OAPI trademark system is a multi-class system. Applicants may therefore file an application covering one or more classes of goods and/or services in accordance with the Nice Classification system.

You can file a trademark application at the OAPI office in Yaoundé, at the NLS/OAPI offices, or through the Madrid System. A trademark is registered in the OAPI region for a term of 10 years and is renewable indefinitely based on its use. Failure to use your trademark registered in the OAPI region for 5 consecutive years may result in litigation or opposition for non-use. You must be legally represented by an authorized agent if you do not have a permanent address or office within the OAPI region.

Geographical indication

The geographical indication system protects certain local products that meet criteria of quality, reputation, or other characteristics essentially attributable to their geographical origin.

The OAPI geographical indication system is a multi-class system. An applicant may therefore file an application for registration.

To apply for protection of a foreign geographical indication within the OAPI region, you must first secure protection for your product in your country of origin or region.

You may then file your application for a geographical indication within the OAPI region directly in Yaoundé, Cameroon (NLS/OAPI), or under the *Geneva Act of the Lisbon Agreement for the Protection of Appellations of Origin and Geographical Indications*.

The term of protection for a geographical indication is unlimited, provided that the specifications are complied with.

Trade name

A trade name is intended to protect the names of local businesses. Trade name protection is granted by OAPI in the same manner as other IP rights. However, this protection does not extend to all OAPI member states, but only to the country in which the commercial activity is conducted and in which protection is sought.

Protection of copyright and related rights

The OAPI system does not have common legislation governing literary and artistic property, but it does include a directive that serves as a minimum legal framework for member states, which are free to adopt more stringent national laws.

The protection of copyright and related rights within the OAPI region falls under the jurisdiction of each member state's legislation and is managed by national collective management organizations for copyright and related rights. Copyright in member states covers, among other things, books, computer programs, musical works, audiovisual works and architectural works.

For more information, visit the websites of the collective management organizations of member states from the OAPI list.



Enforcing your intellectual property rights

The OAPI system has several mechanisms for enforcing IP rights to protect rights holders against any infringement or unauthorized use of their rights.

Administrative litigation

This concerns the procedure for opposing and claiming ownership taking place before the director general (DG) of OAPI in accordance with the principle on adversarial proceedings. During this process, the parties involved are given the opportunity to present evidence in their defense.

In the event of disagreement with the DG's decision, the proceedings may be referred to the OAPI Higher Appeals Commission. This commission is a body established and composed of 6 judges from the member states, 3 of whom are permanent members. The permanent members are those who serve continuously for the duration of their term on the Higher Appeals Commission.

Opposition or a claim of ownership must be filed within 3 months of the publication of the application for registration.

Judicial proceedings

The OAPI system provides for legal proceedings in cases of infringement of IP rights within the territories of its member states.

Action for invalidity: A procedure designed to challenge the validity of a title issued by OAPI.

Action for revocation: A procedure designed to order the revocation and cancellation of a registered trademark that has not been used for 5 consecutive years.

At the request of any interested party, the national courts of OAPI member states may, on the one hand, order the revocation and cancellation of any trademark, or declare the registration of such trademark null and void.

Infringement action: A legal proceeding initiated by the owner of an IP right against a natural or legal person who infringes that right without authorization. This proceeding allows the owner of the infringed rights to request the cessation of infringing acts and the detention of infringing goods by the customs authorities of a member state. An infringement action may result, among other things, in the payment of damages, the destruction or confiscation of the counterfeit products or the materials used in their manufacture, and the full or partial publication of the court's decision.

Before initiating any litigation, it is advisable to consult an IP professional familiar with the legal system of the relevant member state to explore the various mechanisms available to enforce your IP rights.

Important notes

- IP rights are crucial to the growth of your business—it is very important to monitor and report any unauthorized use of your duly protected products and services
- IP rights registered in your country do not extend to the OAPI region, as they are subject to territorial jurisdiction
- Protect your IP rights in the regions of the world where you plan to offer your products or services
- Regularly monitor your markets to quickly identify any potential unauthorized uses of your products and services
- Hire a specialist who is familiar with the IP regime of the new markets you wish to enter