
DESIGN INFORMATION

Cameron IP

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What is design protection?

Designs protect the shape, appearance or ornamentation of manufactured articles. The exact name used for design protection varies from country to country. In Canada, they are called Industrial Design Registrations while in the United States, they are known as Design Patents.

Does design protection cover functional features of articles?

Design protection does not protect non-ornamental aspects of articles, particularly anything not seen in normal usage. Nor does it usually protect functional features which are seen, such as zippers, fasteners or hinges.

When is design protection appropriate?

Design protection is appropriate in at least two instances. The first of these is when it is the appearance of the article that requires protection. The designer may know that there is nothing new about the function or construction of the article, but its appearance may be new and unique.

In addition, design protection is appropriate when the function of a device is closely related to its shape so it would be difficult for a competitor to market a device which works as well, but has a different appearance. However, where the shape of an article is solely dictated by its function, it has no design qualities at all and cannot be protected in this manner.

Computer icons may be registered as Industrial Designs.

Is there a deadline for filing a design application?

In Canada, a design application must be filed within one year of making the design public in Canada.

In the United States, it is necessary to file a Design Patent application within one year of any printed publication of the design or within one year of putting the design on sale or using it in public in the United States.

In many countries, it is necessary to file an application before the design has been made public anywhere. However, under the International Convention it is enough to file an

application in one country and most other countries will allow a filing up to six months later even if the design has been made public since the initial filing.

How long does design protection last?

In Canada, an Industrial Design Registration is valid for five years, but is renewable for another five years by paying a renewal fee, for a maximum of ten years of protection.

In the United States, a Design Patent is valid for fourteen years from the date the patent issues.

How long does it take to get a design application approved?

In Canada, it normally takes at least several months to a year or more, although it takes longer if the Industrial Design Office has objections to registering the design so it is necessary to amend the application or make arguments to secure the registration.

In the United States, it normally takes at least one year for a Design Patent to issue. However it is possible to speed up the process if there are good reasons, such as infringement of the design.

Should a search be done to see if the design is original?

The Canadian Industrial Design Office will reject an application if it finds that the design is not original. The same is true for a United States Design Patent application although a higher standard of originality is necessary to secure a Design Patent compared to a Canadian Industrial Design Registration. A search can be done to see whether or not a similar design has already been registered prior to filing an application.

What information is needed to prepare and application?

The most important thing is a very close drawing or prototype of the article to be marketed. Design protection is for the shape and appearance of the article and good protection can be achieved only when the design covered in the Registration or Design Patent is very close to the article to be marketed.

If substantial changes are made before the article is marketed, it may be necessary to file a new design application to cover the improved version.

Is it possible to get a regular patent and design protection for the same article?

This is possible in cases where an article has a patentable feature, usually related to its construction or function, as well as a unique shape or appearance. Design protection is however not appropriate for purely functional items such as a set of gears which are not even seen in normal use.

It is often a good idea to seek design protection for an article in cases where its patentability is doubtful. This will give some degree of protection against infringers if the patent application is refused.

It is also possible that an infringer may avoid the patent, but may be caught by the design protection if he or she sells something which resembles the article, but does not have the improvement covered in the patent.

Disclaimer

The information above is a considerable simplification of design laws and procedures and is not intended to be legal advice.

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Norman holds a Bachelor of Engineering degree in Mechanical Engineering, and is a Member of the Bar of British Columbia, a registered Canadian Patent Agent, and a registered Canadian Trademark Agent. He has extensive experience through practicing many years exclusively in the area of Intellectual Property Law. He has obtained many patents in Canada, the United States and throughout the world, has obtained many trademark registrations and has wide experience in others areas of Intellectual Property Law such as technology agreements, copyright and industrial designs.

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Adrian holds a Bachelor of Science degree in Cellular, Molecular, and Microbial Biology. He is a Member of the Bar of British Columbia as well as a registered Canadian Patent Agent and registered Canadian Trademark Agent. He is well experienced in the preparation, filing and prosecution of patent and trademark applications, as well as other areas of Intellectual Property Law.

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