

Industrial Design in Canada



L. Kerry Vickar
BUSINESS LAW CLINIC
Helping Manitobans Succeed

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What is an Industrial Design?

Definition and Scope of Industrial Design

Industrial design protects the visual appearance of products, focusing on aesthetic features like shape, configuration, pattern, or ornamentation that appeal solely to the eye.

Importance in Product Development

Industrial designs safeguard unique visual identities, enhancing brand recognition and commercial value by preventing unauthorized copying and encouraging innovation.

Examples of Industrial Designs

Examples include ergonomic gaming controllers, sleek coffee maker casings, and decorative floral patterns on wallpapers, covering both 3D shapes and 2D patterns.

Industrial Designs vs. Patents

1 Focus on Appearance vs. Function

Patents protect how an invention works, covering functional and technical aspects, while industrial designs protect the visual, aesthetic features of a product.

2 Duration of Protection Differences

Patents typically last up to 20 years protecting inventions, whereas industrial designs generally have protection terms of 10 to 15 years for visual appearance.

3 Legal Requirements Comparison

Patents require novelty and non-obviousness of functional features; industrial designs require novelty judged solely by visual design.

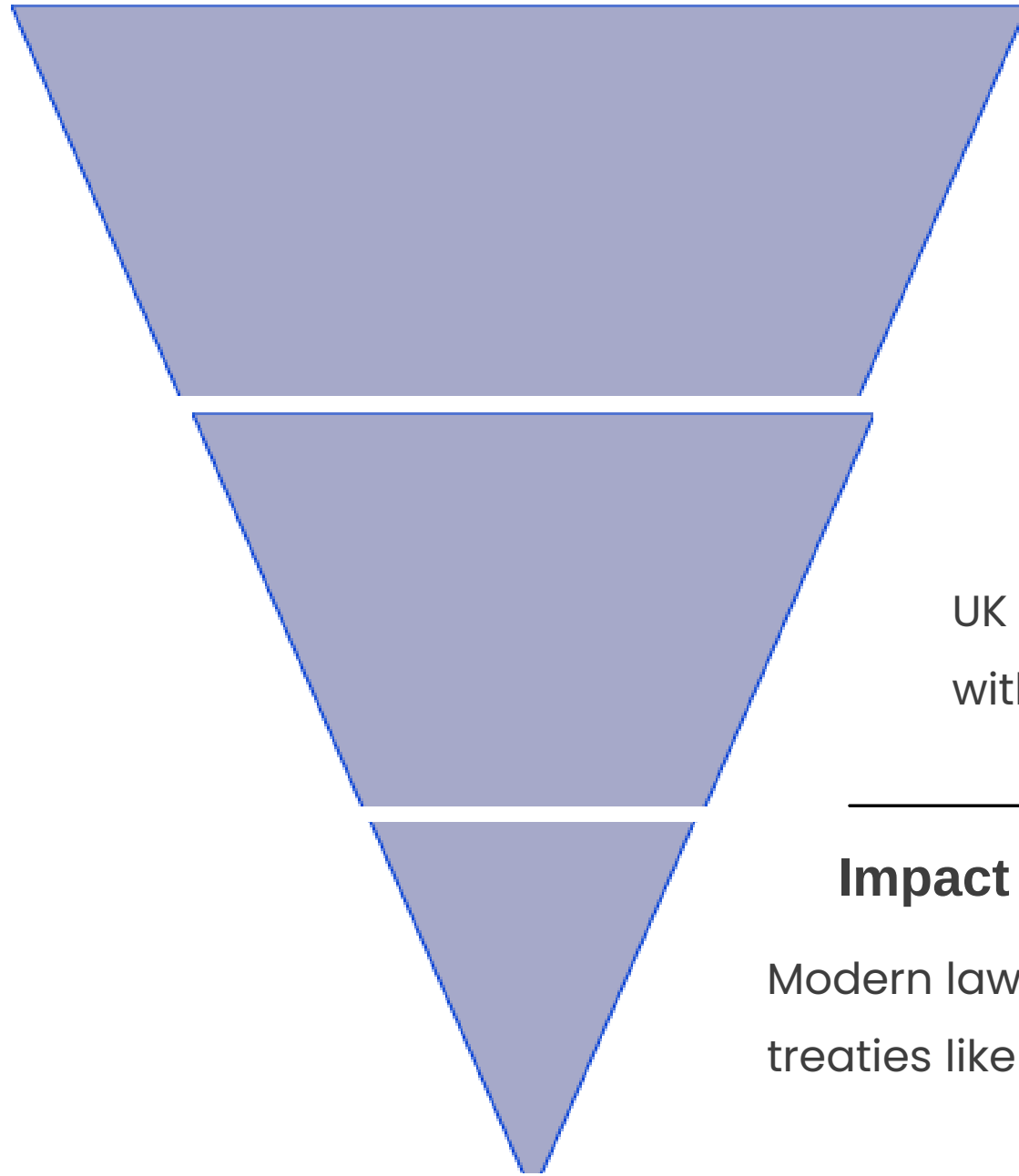
Industrial Designs vs. Copyright

Protection of Visual Design vs. Creative Works: Copyright protects original artistic or literary works, preventing unauthorized copying, while industrial designs protect aesthetic features applied to mass-produced articles.

Overlapping and Distinct Areas: Functional articles are primarily protected by industrial designs or patents, avoiding broad monopolies through copyright on common industrial items.

Examples Illustrating Differences: Original artistic works like textile patterns are covered by copyright, but when applied to mass-produced items like T-shirts, protection shifts to industrial design.

Historical Context: UK & Canada



Evolution of Industrial Design Laws

Industrial design protection began in the late 18th century UK, initially focusing on textile designs and later expanding to various manufactured articles emphasizing novelty.

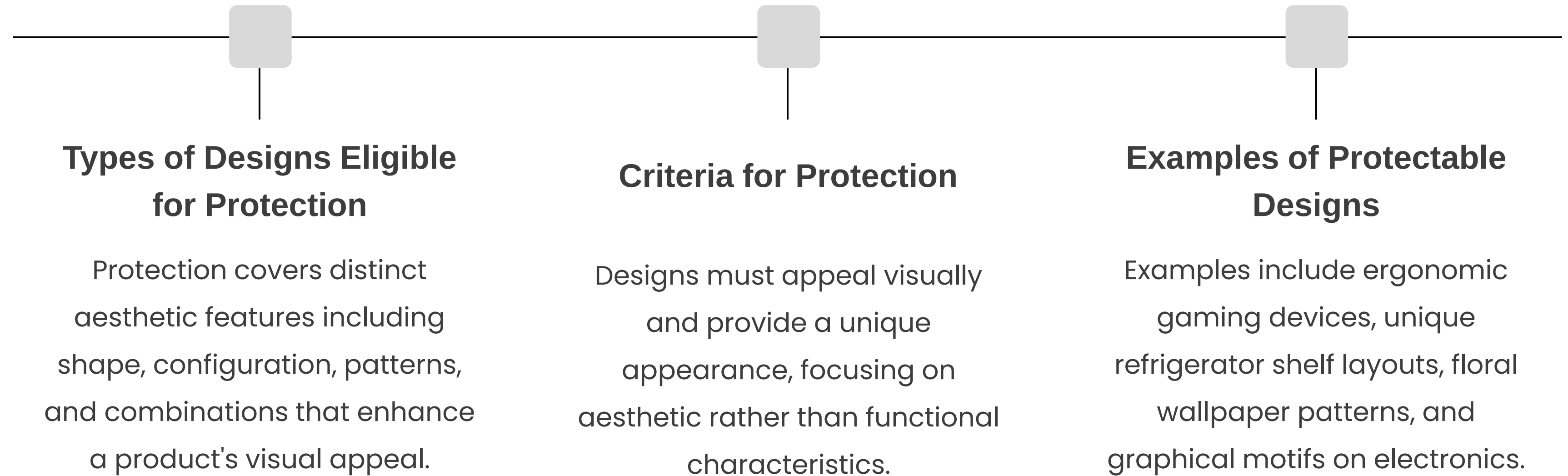
Key Milestones in UK and Canada

UK laws evolved from 18th century statutes; Canada enacted its first design law in 1861, with major amendments in 1988 and 2018 aligning with international standards.

Impact on Current Legislation

Modern laws distinguish utilitarian from aesthetic features and harmonize with global treaties like the Hague Agreement, enhancing international design protection.

What Can Be Protected? (Subject-Matter)

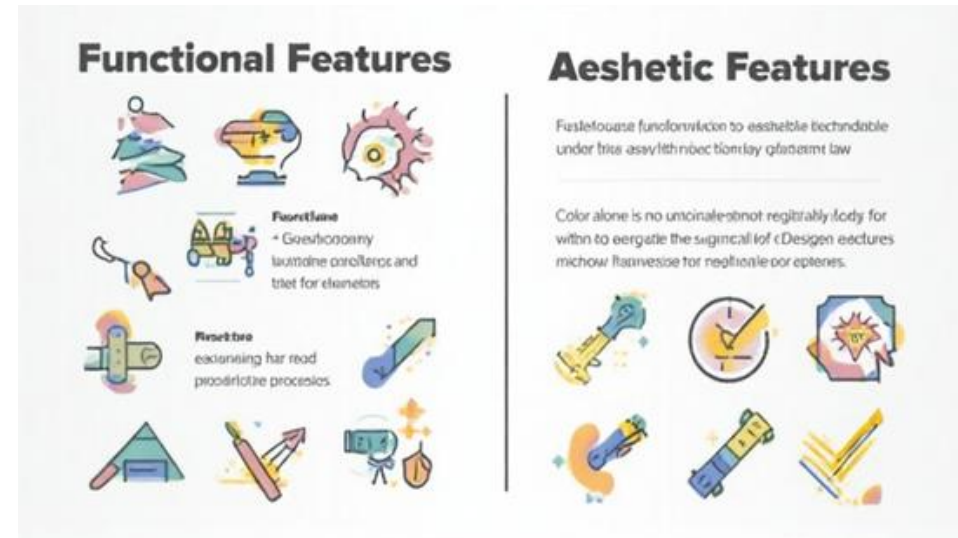


What Cannot Be Protected?



Exclusions from Protection

Industrial designs cannot protect features dictated solely by function; visual appearance must not be the only way to achieve the product's function.



Functional vs. Aesthetic Features

Protection excludes manufacturing methods and technical processes, which fall under patent law; color alone is not registrable without distinctive design elements.



Legal Limitations and Exceptions

Design protection focuses on aesthetic aspects, preventing monopolization of functional features better covered by patents, maintaining clear legal boundaries.

The "Eye-Appeal" Test

1

Definition and Purpose of the Eye-Appeal Test

The design must appeal visually and be judged solely by its visual impression, prioritizing aesthetics over functional advantages.

2

Application in Practice

Assessment is from the perspective of an informed consumer familiar with the product type and typical design variations in the market.

3

Examples of Passing and Failing Designs

Designs visually distinctive to informed consumers pass, while purely functional or non-distinctive designs fail the test.

Requirements for Registration: Novelty (The "New Look" Test)



Explanation of Novelty Requirement

Novelty requires a design to be new and not identical or substantially similar to any design publicly disclosed worldwide before the application date.

The "New Look" Test Criteria

The "New Look" test assesses if the overall visual impression differs from prior designs from the perspective of an informed consumer, focusing on aesthetic features only.

Importance in Registration Process

Novelty is essential for registration; lack of novelty leads to refusal after prior art searches by CIPO during examination.

Prior Art for Novelty Assessment



Definition of Prior Art

Prior art includes any design publicly disclosed or filed earlier in Canada before your design's priority date, focusing on similar products with analogous functions.

Sources of Prior Art

Prior art encompasses designs made public worldwide via sales, exhibitions, or online before your filing date, including earlier Canadian applications.

Role in Assessing Novelty

CIPO assesses novelty by visually comparing your design to prior art from an informed consumer's perspective, requiring significant differences beyond minor or functional features.

Applying for an Industrial Design: Key Information

Required Documentation

Applicants must provide the common name of the finished product and high-quality images that fully disclose the design for proper examination.

Design Information

Clear visual representations and optional statements help define the scope of protection and clarify which design features are claimed.

Application Process Overview

Meeting documentation and information requirements streamlines the application process and facilitates effective design protection.

Filing Date & Public Availability

Significance of Filing Date: The filing date is the official date when all required documents and fees are received by CIPPO, determining priority for the industrial design application.

Effect of Public Disclosure Before Filing: Public disclosure prior to filing can jeopardize the novelty of the design, potentially invalidating the application.

Strategies to Maintain Novelty: Applicants may withdraw applications before public availability to protect confidentiality and preserve design novelty.

Examination Process

Steps in the Examination: CIPPO examiners review applications for legal compliance, novelty, subject matter, and formatting after filing.

Criteria Evaluated by Examiners: Examiners assess novelty against prior art, ensure proper subject matter, and verify correct application formatting.

Possible Outcomes and Responses: If objections arise, a report is issued; applicants have up to six months to respond or amend before registration proceeds.

Divisional Applications



Definition and Purpose of Divisional Applications

Divisional applications are filed when an initial design application contains multiple distinct designs, allowing separate protection for each design.

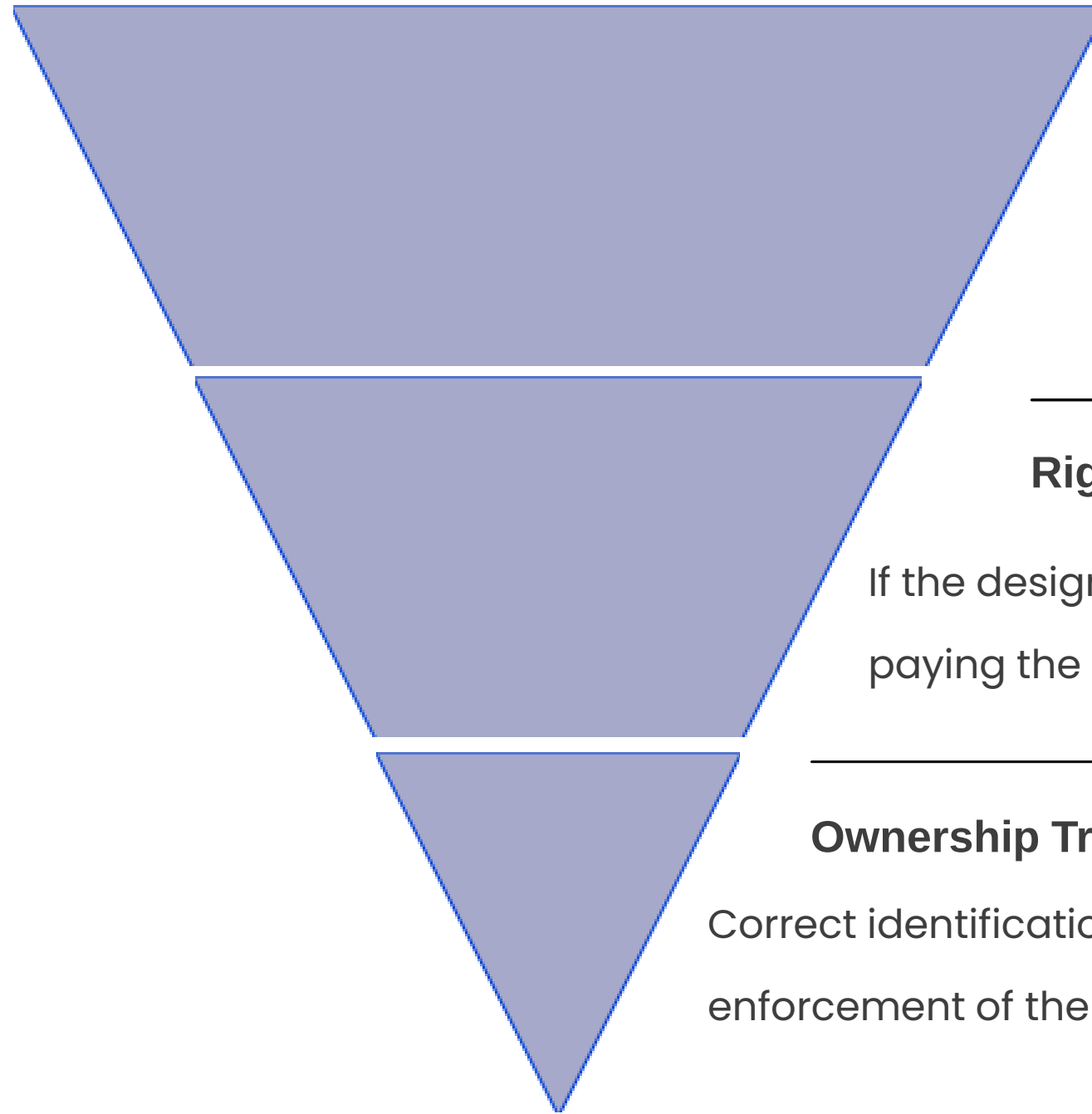
Timing for Filing Divisional Applications

Applicants may file divisional applications up to two years after the original filing date, with possible extensions based on examiner reports.

Effect on Protection Scope

Divisional applications ensure individual registration and protection for each design, preserving enforcement rights over all original designs. Divisional applications are not necessary however and will vary based on the specific circumstances of the design. Divisional applications are beyond the scope of the services the Clinic offers, and it is recommended to speak to an experienced IP attorney.

Who is the Proprietor?



Definition of Proprietor

The first proprietor is typically the author who creates the design, providing its visual expression through drawings or models.

Rights and Responsibilities

If the design is made for another under agreement and for compensation, the person paying the compensation becomes the first proprietor with ownership rights.

Ownership Transfer Considerations

Correct identification of the proprietor is crucial for ownership rights, registration, and enforcement of the design.

Transferring Rights



Methods of Transferring Industrial Design Rights:

Industrial design rights can be transferred wholly or partially, whether registered or pending application.

Legal Requirements for Transfer: Transfers must be recorded with the Canadian Intellectual Property Office.

Impact on Enforcement: Unregistered transfers may be void against subsequent registered ones, making registration crucial for protection.

Length of Protection (Term)



Duration of Protection

Protection terms vary by filing date: before 1994, 5 years renewable to 10; between 1994 and 2018, 10 years with maintenance fee; after 2018, 10 to 15 years depending on registration or filing date.



Renewal and Maintenance Requirements

Renewal is possible for designs registered before 1994, while designs after require a maintenance fee at the 5-year mark to maintain protection.



Consequences of Protection Expiration

Upon expiration, exclusive rights cease, allowing public use and reproduction of the design without infringement.

Registration Fees



01

Typical Fee Structure: Application filing fees vary by method: approximately \$450 for online and \$500 for paper submissions.

02

Additional Costs to Consider: Maintenance fees are required at the 5-year mark, with online payments around \$350 and paper payments about \$400.

03

Payment Timelines: Late fees apply if maintenance fees are unpaid within a six-month grace period, risking design right expiry.

Why Register Your Industrial Design?



Benefits of Registration

Registration grants exclusive rights to make, import, sell, or rent products with your design, enhancing commercial value and market distinction.

Competitive Advantages

Registered designs increase product and brand value, providing a clear market edge and deterring unauthorized copying through visible markings.

Legal Protection and Enforcement

Registration offers strong legal presumption of validity, simplifying enforcement against infringers and enabling international protection via the Hague Agreement.

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The word "Canada" is written in a large, black, serif font. A small Canadian flag is positioned above the letter 'a'.

Thank You



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