

May 29, 2002

Rita Carreau  
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Copyright and Industrial Design Branch  
Canadian Intellectual Property Office (CIPO)  
50 Victoria Street  
Place du Portage, Phase 1  
Hull, Québec  
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Dear Ms. Carreau:

**RE: Proposed Industrial Design Amendments**

Thank you for requesting input from the National Intellectual Property Section of the Canadian Bar Association (CBA Section) in regard to proposed industrial design amendments for a possible Intellectual Property Law Improvement Bill, which were attached to your letter of December 19, 2001. The CBA Section's Industrial Designs Committee has reviewed the draft proposals on behalf of the Section. We hope that our comments will be helpful, and agree that, for the most part, the proposals should not generate significant controversy.

**I. General Issues**

1. & 2. We support these proposals.
3. We support providing for extensions of time. We assume that the test applied by the Registrar when exercising discretion will include a showing of, for example, good faith or a reasonable basis, similar to that employed within the *Patent and Trademarks Act*.
4. We would be interested in the motivation underlying this proposal, as it might possibly affect the definition of "novelty" for designs.
5. This is an interesting proposal, and we question whether CIPO believes that it does not have a basis for refusing the registered designs with these elements? Section 9 of the *Trademarks Act* may have some relevance.

6. We agree that a clearer appeal procedure is necessary. We question whether this is to be for applicants in the case of refusals only, or whether third parties could also appeal. For example, could the owner of an earlier registration or application for similar design appeal when the registrar does not make a section 6(1) refusal?
7. We understand this proposal provides a procedure for dealing with competing applications. The proposal will expand the basis for refusing a later filed application. We question whether “earlier filed application” should be described in such a limited way.

## **II. Horizontal Issues**

These proposals are generally acceptable. We assume that the provisions for electronic filing procedures would be consistent with those adopted for the Patent and Trademarks Office, so that the agent community only has to comply with one, or at most two, sets of standards for dealing with CIPO electronically.

The CBA Section appreciates this opportunity to comment on the proposals in your letter. Please feel free to contact us at your convenience should you wish to discuss these issues further.

Yours truly,

Glen B. Tremblay  
Chair  
Industrial Designs Committee