

Patents, Trade-Marks, Copyright, Industrial Designs, and Integrated Circuit Topographies

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Patents

A patent is a document that grants an inventor the exclusive right to manufacture, use, and sell an invention in Canada. Once a patent is granted, however, the patent holder may choose to sell it or license it. To obtain a patent, the inventor must provide a complete and detailed description of the invention to the Patent Office. Patents protect inventions until 20 years after filing in Canada.

Patent applications are made public 18 months after filing. Until that time, anyone has the right to sell or manufacture the item under consideration. However, if someone exploits an applicant's invention between the time it is made public and the time the patent is granted, some retroactive protection is available. Full protection is in effect from the date a patent is granted. Making patents public at 18 months has become an increasingly important means of speeding up the diffusion of new ideas to the public and stimulating further innovation. After a patent has expired, anyone may use, manufacture, or sell the invention.

Although a patent gives the inventor the right to prevent others from exploiting his invention in Canada, the patent holder is responsible for protecting himself or herself through legal channels.

Patents are granted for inventions, which are defined as any new and useful product, composition, apparatus, process, or any new and useful improvement thereof, that are not obvious to someone skilled in the particular field.

Although a patent protects the exploitation of an invention's structure and function, it is occasionally confused with copyright, which protects literary and artistic works, or industrial design registration, which protects the design of industrially produced objects.

Applicants for patents must meet all the requirements of the *Patent Act*. For example, the patent will not be granted if the invention was made public more than a year before filing. If an inventor, or someone who found out about the invention from him or her, makes it public during the year preceding the application, a patent can still be granted. However, some foreign countries do not have this grace period. It is best to apply first and make the invention public only later. In cases of applicants claiming the same invention, the patent is granted to the one who filed first.

To obtain a patent for an invention, the inventor must file an application with the Commissioner of Patents. Please note that there are charges for this service. Refer to the end of this document for contact information.

Additional information can be obtained from a patent attorney. Please refer to the business pages of your local telephone book for a listing of those in your area.

Trade-Marks

A trade-mark is a word, symbol, design, or combination of these used to distinguish the goods or services of a person or organization from those of others in the marketplace. It is not mandatory to register a trade-mark, but ownership is more easily protected if it is registered. The main advantage is the national scope of a registration. A trade-mark is registered for a period of 15 years from the date of registration and can be renewed for further periods of 15 years provided it continues to be used.

While there are no prescribed forms of a trade-mark application, information must be supplied in the format outlined in a trade-mark information kit available from the Registrar of Trade-marks. A non-refundable filing fee must be submitted to the Registrar of Trade-marks. An additional fee is required before a certificate of registration can be issued. Inquiries may be directed to the Canadian Intellectual Property Office. Refer to the end of this document for contact information.

Additional information can be obtained from a registered trademark agent. Please refer to the business pages of your local telephone book for a listing of trademark agents in your area.

Copyright

A copyright in Canada is automatically acquired upon creation of an original literary, dramatic, musical or artistic work, provided the author is one of the following: a Canadian citizen, a British subject, a resident within Her Majesty's dominions, a citizen or subject of a country belonging to the Berne Copyright Convention, or a citizen or subject of a country belonging to the Universal Copyright Convention (or a country that grants citizens of Canada the benefits of its copyright statute on substantially the same basis as for its own citizens).

These original works include books, writings, musical works, sculptures, paintings, photographs, motion picture films, dictionaries, encyclopedias, and computer software. They also include mechanical contrivances such as records, cassettes and tapes. Titles, names, and short word combinations are usually not protected by copyright.

Generally, the term of a copyright in Canada exists for the life of the author and 50 years following his or her death; for records, tapes, other sound recordings and photographs, it exists for 50 years from the date of making the original plate or negative.

Although basic copyright protection exists for those who do not register a copyright, it is advisable to do so. Those who do register are issued a certificate that can be used in court to establish ownership.

There is a fee to register a copyright. This fee must be sent along with the application. Cheques should be made payable to the Receiver General of Canada. Please refer to the end of this document for contact information.

Industrial Design

While patent law is concerned with the functional or utilitarian qualities of an article, the *Industrial Design Act* covers the appearance of a useful article or aspects of the design intended to make it more appealing to the eye.

An industrial design is any original shape, pattern, or ornamentation applied to the manufacturing of useful articles (e.g. the shape of a table or the decoration on the handle of a spoon). The article must be mass produced or intended for mass production.

An industrial design may be registered in Canada if it is not identical or similar to others already registered. If a design has been published in Canada before being registered, it must be registered within 12 months of the publication date. The registered owner of an industrial design has the sole right to use the design in Canada for a period of five years, renewable for a further period of up to five years.

The registration of an industrial design requires the filing of an application, available from the Copyright and Industrial Design Branch, along with the payment of a fee. For every new application, the branch carries out a search of earlier registered designs. If no similar design is found, thus confirming the originality of the applicant's design, the design will be registered, and a certificate of registration will be issued to the owner.

Further information can be obtained from the Canadian Intellectual Property Office. Refer to the end of this document for contact information.

Excerpt from Industry, Science and Technology Canada's publication "Getting Started - Guide to Rules and Regulations Concerning the Establishment of Small Business in Canada".

Integrated Circuit Topographies

Integrated circuit topographies are now considered a form of intellectual property. Recognizing the growing impact of integrated circuit technology in virtually all fields of industry, and the need to protect Canadian innovations in this technology both nationally and internationally, Canada has introduced protection for integrated circuit topographies. Topographies are innovative, three-dimensional circuit designs used in many different products. Examples of such products are automobiles, industrial robots, cameras, spacecraft, and computers.

On May 1, 1993, the *Integrated Circuit Topography Act* and Regulations came into force. The *Act* defines the protection available for integrated circuit topographies, the three-dimensional configurations of the materials that form integrated circuits. Protection under this *Act* is extended to nationals of other countries on a reciprocal basis, thereby making protection in other countries available to Canadians.

Contact Information

For further information on all the types of intellectual property discussed above, please contact:

Canadian Intellectual Property Office (CIPO)
Industry Canada
2nd Floor C-227
50 Victoria Street
Gatineau QC K1A 0C9
Toll-free: 1-866-997-1936
Fax: 819-953-7620
E-mail: cipo.contact@ic.gc.ca

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For further information regarding starting a business, contact the

Canada-Saskatchewan Business Service Centre

#2 - 345 3rd Avenue South
Saskatoon, Sask. S7K 1M6

Phone: **306-956-2323** Toll-Free: **1-800-667-4374**

E-mail: saskatchewan@canadabusiness.sk.ca

Web site: <http://www.canadabusiness.ca/sask/>

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