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Canadian Intellectual Property Office

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Canada

THE CANADIAN IMPLEMENTATION OF ARTICLE 11 OF THE PARIS CONVENTION

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Information session on the Temporary Protection Provided to Industrial Designs under
Article 11 of the Paris Convention
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Outline

- Article 11(1) of the Paris Convention
- Canadian implementation
 - Type of temporary protection
 - The grace period under paragraph 8.2(1)(a) of the Canadian *Industrial Design Act*
 - How to benefit from the grace period?
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Article 11(1) of the Paris Convention

The countries of the Union shall, in conformity with their domestic legislation, grant temporary protection to [...] industrial designs [...], in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any of them.

Article 11(1) of the *Paris Convention for the Protection of Industrial Property* (as amended on September 28, 1979)

Canadian implementation

Type of temporary protection

- Various means of temporary protection are available: right of prior use, right of priority, grace period.
- In Canada, temporary protection is provided using a **grace period for filing**: a period of time during which a disclosure of the design will be without prejudice to its novelty and/or originality.
- Novelty is important: a design is registrable if, among other things, it is novel (paragraph 7(b) of the Canadian *Industrial Design Act*).

Canadian implementation

The grace period under paragraph 8.2(1)(a) of the Canadian ID Act

- Generally, a design in an application for the registration of a design is novel if the same design, or a substantially similar design:
 - has not been disclosed, in Canada or elsewhere;
 - more than **12 months before the priority date** of the design in the application;
 - by the person who filed the application, that person's predecessor in title, or by a person who obtained knowledge of the design in the application from one of those two persons.
- The type of disclosure does not matter:
 - For example, publication of the design by another Intellectual Property Office, publication on a website, disclosure during an exhibition.

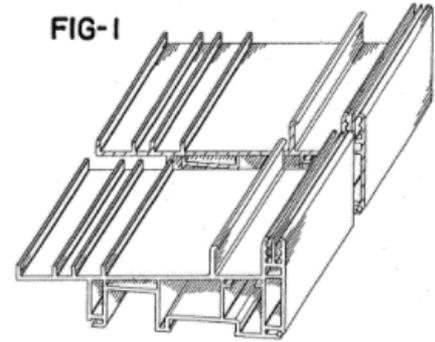
Canadian implementation

How to benefit from the grace period?

- There is no need to make a request and there are no fees associated with respect to the grace period.
- Barring exceptions, no documentary evidence is required.
- Information may be required to specify who made the disclosure:
 - The person who filed the application;
 - That person's predecessor in title;
 - A person who obtained knowledge of the design in the application from one of those two persons.

Other considerations

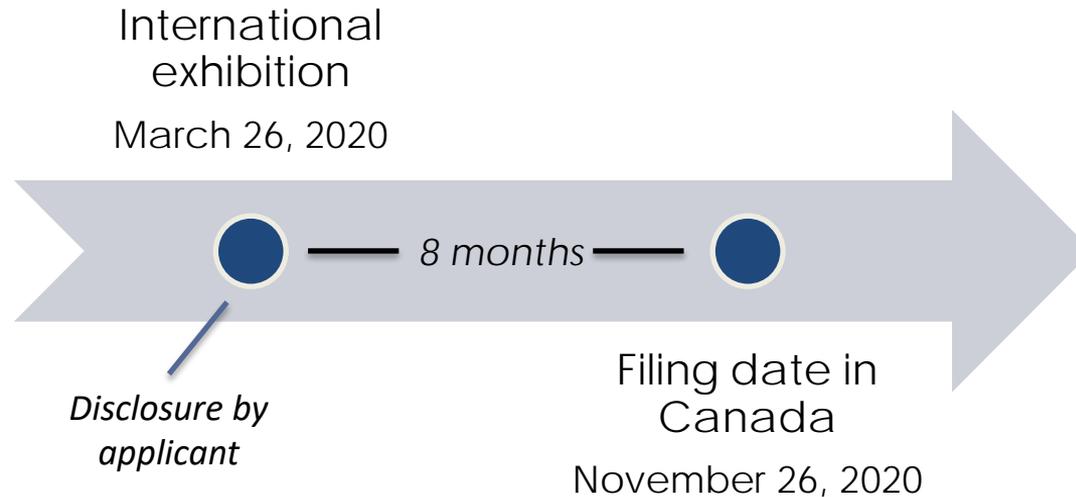
- The type of finished article to which the design is applied is relevant for the grace period to apply:
 - Same or analogous article.
- The temporary protection granted to an industrial design is not explicitly recorded or shown in the Register.



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Conclusion

- In Canada, temporary protection is provided using a **grace period for filing of 12 months**.



Thank you! Any Questions?



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