

Bill C-43: incorporating the PLT and the Hague Agreement into Canadian law Canada - Smart & Biggar/Fetherstonhaugh

Design Government/policy

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On October 23 2014 the government of Canada introduced and moved for first reading of [Bill C-43](#), A Second Act to Implement Certain Provisions of the Budget Tabled in Parliament on February 11 2014 and Other Measures, also known by its short title Economic Action Plan 2014 Act, No 2.

In addition to implementing various tax measures and amending numerous and diverse federal acts, the bill seeks to make Canada's [Patent Act](#) and [Industrial Design Act](#) consistent with the [Patent Law Treaty](#) and the [Hague Agreement Concerning the International Registration of Industrial Designs](#), respectively. This update focuses on the amendments to the Industrial Design Act.

The amendments to the Patent Act include easing the requirements for obtaining a filing date for a patent application, requiring that an applicant be notified of a missed due date before an application is deemed to be abandoned and providing that a patent may not be invalidated for non-compliance with certain requirements relating to the application on the basis of which the patent was granted.

The bill also amends the Industrial Design Act to make that act consistent with the Geneva (1999) Act of the Hague Agreement Concerning the International Registration of Industrial Designs and to give the Governor in Council the authority to make regulations for carrying it into effect. The amendments also provide some modernisation to the language of the act. The amendments include provisions relating to the contents of an application for the registration of a design, the requirements to be a registrable design, the grace period for filing a design and the term of an exclusive right for a design.

Certain specific highlights of the amendments to the Industrial Design Act are as follows:

- The required contents of an application for an industrial design registration have changed. For example, the statute has changed the requirement that "a drawing or photograph of the design" be submitted. Instead, the statute now makes reference to the broader term "representation of the design" (see, eg, amended Section 4(1)(b)).
- The statute borrows from the language of the Patent Act and has replaced the requirement that the design not be "confounding" with a design already registered with a requirement that the design be "novel" (see, eg, new Section 8.2).
- The "priority date" is defined, again borrowing from the language of the Patent Act, and the grace period for pre-filing disclosures by the applicant has been tied to the priority date rather than the Canadian filing date, which was previously the case (see, eg, new Section 8.2(1)(a)).
- The term for the exclusive right afforded by an industrial design has been extended from 10 years beginning on the date of registration to the later of that date and the end of 15 years after the filing date (see, eg, amended Section 10(1)(b)).

The full effect of these amendments to the Patent Act and the Industrial Design Act remain to be seen following amendments to the Patent Rules and the Industrial Design Rules, which are each expected to be released in the coming months.

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