

Federal Court



Cour fédérale

Date: 20250203

Docket: T-233-23

Citation: 2025 FC 225

Ottawa, Ontario, February 3, 2025

PRESENT: Madam Justice McDonald

SIMPLIFIED ACTION

BETWEEN:

POSEIDON, LLC

Plaintiff

and

CANADA (THE COMMISSIONER OF PATENTS)

Defendant

JUDGMENT AND REASONS

I. Overview

[1] Poseidon seeks an order under section 22 of the *Industrial Design Act*, RSC 1985, c I-9 [*ID Act*] to reinstate two Industrial Design registrations that expired when maintenance fees were not paid. Poseidon alleges that the registrations expired because of errors on the part of the Canadian Intellectual Property Office (CIPO). Poseidon says its agent attempted, unsuccessfully, to pay the maintenance fees to CIPO for these industrial designs in October

2020. They claim there were failures with the CIPO on-line payment system that prevented payments from being processed. Further they allege that CIPO failed to track and respond to the renewal instructions that were sent by facsimile.

[2] The validity of Poseidon's industrial designs is not at issue. The only issue is if the Court can grant a remedy under section 22 of the *ID Act* and reinstate the industrial designs that expired when the maintenance fees were not paid.

[3] For the reasons below, I am dismissing this action. There is no evidence that the maintenance fees were paid. The evidence is that the failure to pay the maintenance fees arose from human error on the part of Poseidon's agents, and not due to a failure of CIPO's processes or systems.

[4] I acknowledge the consequences for Poseidon in failing to maintain their exclusive rights to their industrial designs is harsh, but the Court cannot grant the relief sought.

I. Background

[5] By way of background, the following are the key facts from the Agreed Statement of Facts filed by the parties:

1. The Plaintiff is a professional corporation organized and existing pursuant to the laws of the state of Indiana in the United States of America, and is now known as Poseidon, LLC.
2. Poseidon LLC was formerly known as Poseidon Barge Ltd. prior to July 24, 2023.

3. Poseidon Barge Ltd. was formerly known as Mid-America Foundation Supply Inc. (Mid-America) (collectively, Poseidon LLC, Poseidon Barge Ltd., and Mid-America are referenced herein as Poseidon).
4. Poseidon designs, develops, manufactures, rents, and sells portable sectional barges for use in bridge construction, general marine construction, dredging, and other projects where heavy equipment, materials or people need to be floated on water.
5. Poseidon sells construction barge products in Canada.
6. In 2014, Mid-America filed an industrial design application for a “Construction Barge Deck” industrial design and, in 2015, a divisional application for another “Construction Barge Deck” industrial design (collectively, the Poseidon Designs).
7. Those applications share a filing date of March 24, 2014, and were assigned application numbers 155752 (the parent application) and 162804 (a divisional application has the same filing date as the original application).
8. The Poseidon Designs were registered on October 22, 2015 (collectively, the Poseidon Design Registrations).
9. Consequently, Mid-America is the registered proprietor of the Poseidon Design Registrations.
10. In order to maintain the Poseidon Design Registrations, a fee is required to be paid no later than five years after the date of registration (5-Year Maintenance Fee).
11. The 5-Year Maintenance Fees in respect of the Poseidon Design Registrations were due to be paid by October 22, 2020.
12. If a 5-Year Maintenance Fee is not paid on time, a six-month grace period is available to pay the 5-Year Maintenance Fee with an additional late fee (Grace Period).
13. The applicable Grace Period for the Poseidon Design Registrations ended on April 22, 2021.
14. On May 12, 2021, entries were made by the Canadian Intellectual Property Office (CIPO) to the Register of Industrial Designs (Register) noting the Poseidon Designs as expired.

15. At all material times, Poseidon intended to maintain the Poseidon Designs.

[6] The Defendant operates CIPO and has the statutory authority to administer the *ID Act*.

A. *Relevant statutory provisions*

[7] The *ID Act* was revised in 2018, however, pursuant to the transition provisions of the revised and current *ID Act*, section 32, the previous version of the *ID Act* applies to industrial designs registered before November 5, 2018. As Poseidon's industrial designs were registered in 2015, the pre-2018 version of the *ID Act* applies. All subsequent references in this decision to the *ID Act*, unless specified otherwise, are to the pre-2018 version of the *ID Act*.

[8] The relevant provisions from both versions of the *ID Act* and regulations are listed in the Appendix to these reasons.

II. Issues

[9] The core issue in this case is if the Court can grant the relief sought by Poseidon by reference to the following:

- (a) What is the nature of this proceeding?
- (b) Does the evidence support granting the relief sought under section 22 of the *ID Act*?
- (c) Does the court have jurisdiction to retroactively grant registration?

III. Analysis

A. *What is the nature of this proceeding?*

[10] Poseidon seeks an Order pursuant to Section 22 of the *ID Act* to make or vary the Register to reinstate or add, effective October 20, 2020, Poseidon's Industrial Design Registrations Nos. 155752 and 162804 that were noted as expired on May 12, 2021. The maintenance fees for the industrial designs were due on October 22, 2020. A 6-month grace period to pay the fees ended on April 22, 2021; however, as there was no request made within the 6-month window to extend the time to pay the maintenance fees, that provision is largely irrelevant to this matter. Poseidon says it requires relief under section 22 of the *ID Act* to amend the Register because it cannot simply re-register the industrial designs due to sections 7 and 8.2 of the *ID Act*.

[11] Section 22 of the *ID Act* states:

Federal Court may rectify entries

22 (1) The Federal Court may, on the information of the Attorney General or at the suit of any person aggrieved by any omission without sufficient cause to make any entry in the Register of Industrial Designs, or by any entry made without sufficient cause in the Register, make such order for making, expunging or varying any entry in the Register as the

Correction des inscriptions par la Cour fédérale

22 (1) La Cour fédérale peut, sur l'information du procureur général, ou à l'instance de toute personne lésée, soit par l'omission, sans cause suffisante, d'une inscription sur le registre des dessins industriels, soit par quelque inscription faite sans cause suffisante sur ce registre, ordonner que l'inscription soit faite, rayée ou modifiée, ainsi qu'elle le juge à propos ou peut rejeter la demande.

Court thinks fit, or the Court
may refuse the application.

[12] The parties concede that Poseidon is a “person aggrieved” within the meaning of section 22 and therefore has standing to bring this application. The parties also agree that this action under section 22 is not a judicial review in the ordinary sense as there is no substantive underlying decision to review. This is also not an appeal from a decision of CIPO regarding the registrability of Poseidon’s industrial designs. In other words, had the maintenance fees been paid as required, the registrations for the industrial designs would have been maintained.

[13] On the specific relief sought, the parties acknowledge that there is little jurisprudence on a proceeding under section 22 in the circumstances of this case – namely a party seeking to reinstate registrations that expired due to the non-payment of maintenance fees.

[14] Some guidance is provided in *Rothbury v. Canada* 2004 FC 578 [*Rothbury*], as follows:

[15] Subsection 22(1) of the Act states that the Court should only intervene when it is satisfied there has been an omission to make an entry in the Register without sufficient cause.

[16] Accordingly, the Court must assess the record as it stood before the Commissioner. There thus cannot be a trial *de novo* in the strict sense, since that term refers to a trial that requires creation of a new record, as if there had not been any record previously prepared (*Molson Brewery v. John Labatt Ltd*, [2000] 3 F.C. 145 (C.A.)).

[17] The defendants maintained that an appeal under section 22 of the Act must be dealt with in a manner similar to an appeal under section 56 of the *Trade-marks Act*, R.S.C. 1985, c. T-13, and an appeal covered by section 41 of the *Patent Act*, R.S.C. 1985, c. P-4. I feel that they are right, since in the same way in the latter actions the record prepared by the Commissioner was the basis for

the evidence in the Federal Court, to which additional evidence could be added.

[15] Here, if the Court were restricted to considering the record before CIPO as it was on May 12, 2021 (the date the registrations were marked as expired), there would be no record to consider other than the registrations themselves. If, however, pursuant to *Rothbury*, an application under section 22 is to be treated like an appeal under section 56 of the *Trademark Act*, then new evidence can be considered. On the new evidence, the Court engages in a *de novo* or correctness review to assess if the new evidence is material, and if it would have changed the Registrar's finding of fact or exercise of discretion (*Miller Thomson LLP v Hilton Worldwide Holding LLP*, 2020 FCA 134 at paras 45 and 47 [*Hilton*]; *Clorox Company of Canada, Ltd v Chloretec SEC*, 2020 FCA 76 at para 21 [*Clorox*]).

[16] Based upon the direction in *Rothbury*, *Hilton* and *Clorox* and the wording of section 22, I accept that the Court has jurisdiction to rectify an entry in the Register of Industrial Designs that is made "without sufficient cause" if there is material new evidence that is "sufficiently substantial and significant" and "of probative value" (*Clorox* at para 21; *Hilton* at para 53). Meaning that is the "expired" notation was made "without sufficient cause" and there is material new evidence to support a "without sufficient cause" finding, then section 22 gives the Court jurisdiction to rectify the Register.

[17] Being satisfied that the Court has jurisdiction to consider the evidence filed by the parties, I will now consider the materiality of that evidence.

B. *Does the evidence support granting the relief sought under section 22 of the ID Act?*

[18] In support of this action, Poseidon relies upon the following Affidavit evidence:

- Affidavit of Adam F. Cox sworn March 10, 2023, and supplementary Affidavit of June 11, 2024. Mr. Cox is a partner at Faegre Driker the Plaintiff's US legal counsel.
- Affidavit of Sara E. Fargo sworn March 10, 2023, and supplementary Affidavit of June 11, 2024. Ms. Fargo was the supervisor of Ms. Palumbo at Faegre Driker.
- Affidavit of Steven Booth sworn on March 19, 2024. Mr. Booth is employed as the Patents Records and Systems Manager with Marks & Clerk Canada.
- Affidavit of Jeff Emch sworn March 20, 2023. Mr. Emch is the Chief Engineer, Product Development & Applications with Poseidon.

[19] As noted in the Agreed Statement of Facts, at all relevant times, Poseidon was represented by the law firm Faegre Drinker. In August 2020, Faegre Drinker was transitioning to use CPA Global Limited (CPA) for the management of maintenance fee payments and tracking deadlines. Mary Kate Palumbo was employed by Faegre Drinker as a Patent Docketing Specialist and was responsible for the Poseidon filings.

(a) The actions of Ms. Palumbo & CPA

[20] In his Affidavit, Adam Cox, partner with Faegre Drinker, states as follows:

4. As the five-year maintenance fee payment date was approaching on October 22, 2020, Mary Kate Palumbo, then employed as a Patent Docketing Specialist by Faegre Drinker (and no longer in our employ), emailed the Applicant on October 6, 2022, to confirm that the maintenance fees for the Designs should

be paid. Ms. Palumbo emailed a follow-up request for instructions on October 15, 2020. Subsequently, on October 15, 2020, Jeff Emch of the Applicant responded and confirmed the fees should be paid. Attached hereto as Exhibit “B” are copies of the relevant email exchanges between Ms. Palumbo and the Applicant.

[21] There is no direct evidence from Mary Kate Palumbo, the former Faegre Drinker employee, however, it is not disputed that the instructions from Poseidon were to pay the maintenance fees for the industrial designs. This is confirmed in the Affidavit of Jeff Emch of Poseidon when he states, “...on October 15, 2020, I confirmed by reply to Ms. Palumbo that the fees should be paid.”

[22] The Affidavit of Sara Fargo states that upon receiving instructions from Poseidon, on October 19, 2020, Ms. Palumbo instructed CPA to pay the maintenance fees, and she entered a “complete” notation in Faegre Drinker’s internal docketing system. After this, on October 21, 2020, as noted in the Affidavit of Adam Cox, CPA forwarded an invoice to Faegre Drinker on the Poseidon matters, noting a “rejected fee charge.” Apparently, Ms. Palumbo did not take notice of this and did not record the “rejected fee charge,” instead, she recorded it as an “annuity fee invoice” which made it appear that the fees had been paid. This is explained in the Affidavit of Sara Fargo which states as follows:

14. In February 2021, Ms. Palumbo processed CPA Global’s October 21, 2020, invoice relating to the Designs. When she entered the invoice for payment, she described the payment as an “annuity fee invoice” instead of a “rejected fee invoice,” which reflected what was stated on the invoice itself. This meant Ms. Palumbo did not note the non-payment of the Designs’ maintenance fees in Faegre Drinker’s database that tracks the status of all industrial designs, among other things, and so it appeared the fees had been paid and no further action was required.

Attached hereto as Exhibit “B” is a redacted copy of CPA Global’s invoice dated October 21, 2020, addressed to Faegre Drinker. Unrelated client information has been redacted from the Exhibit to protect the confidential information of other Faegre Drinker clients.

[23] In addition to the CPA invoice indicating a “rejected fee charge,” the CPA Weekly Letters Report of October 29, 2020, states:

When attempting to make payment for this case, we were informed that according to the Patent Office records this application has been abandoned or withdrawn or has been deemed to be withdrawn or rejected as a result of failure to meet an official deadline.

Please confirm you agree that we can remove this case from our records by email to supplier@cpaglobal.com. If you disagree, please inform us immediately so that we can take this matter up again with the Patent Office.

[24] Further reports from CPA to Faegre Drinker on October 29, 2020, March 21, 2021, and April 20, 2021, all noted that no maintenance fees had been paid for the Poseidon registrations. However, it was not until June 15, 2021, that Mr. Cox first learned the maintenance fees had not been paid. By this time, the renewal date of October 22, 2020, and the 6-month grace period of April 22, 2021, had passed.

[25] The explanation for Ms. Palumbo’s error on the entry on Faegre Drinker’s internal docketing system, and her failure to notice the information contained in the CPA invoice and reports, was due to her significant workload at the time.

(b) Options to pay maintenance fees

[26] While this evidence confirms that the maintenance fees for Poseidon's industrial designs were not made, Poseidon argues that its agent, CPA, tried to make the maintenance fee payment, but they were prevented from doing so by CIPO's systems. To put this argument into context it is helpful to understand the options available to pay the maintenance fees to CIPO. They included: (i) physical delivery of paper correspondence with payment instructions by mail, courier, or in-person; (ii) on-line payments; and (iii) payment directions by facsimile. I will address these below.

(i) *Physical delivery*

[27] There is no evidence that anyone on behalf of Poseidon attempted to make payment by physical delivery of paper correspondence by mail, courier or in person. Poseidon alleges that payment in this manner was impossible as CIPO offices were closed because of COVID. This is disputed by the Defendant. In any event, in the absence of any evidence that this method of payment of the maintenance fees was attempted, I need not consider this further.

(ii) *On-line payments*

[28] With respect to this form of payment, in the Agreed Statement of Facts the on-line system is described as follows:

16. CIPO operates an on-line service specifically to industrial designs maintenance fee payments that enables users to pay industrial design maintenance fees on-line (Design e-Maintenance Service).

17. The Design e-Maintenance Service cannot be used to submit a payment by facsimile or physical delivery.

18. To pay maintenance fees using the Design e-Maintenance Service, users must sign into a user account, search for the desired industrial design using the “Registration number search” function and follow the prompts to complete the on-line payment.

19. If a user searches in the “Registration number search” function of the Design e-Maintenance Service for an industrial design registration that is already maintained or does not have a status of registered (including where the maintenance period has expired), the search result will display the notification: “The application/registration cannot be maintained.”

20. The Design e-Maintenance Service displays the same notification for both a design already maintained or a design that does not have a status of registered.

21. If the maintenance fee was not paid for an industrial design registration and the six-month grace period has not yet expired, the Design e-Maintenance Service will not display the notification: “The application/registration cannot be maintained” and it will allow the user to continue to submit the payment of the maintenance fees and applicable late fees.

22. The Design e-Maintenance Service does not maintain records of user searches of specific registered industrial design numbers under the “Registration number search” function in that service.

23. CIPO does not retain records of login information with respect to the Design e-Maintenance Service.

24. The Design e-Maintenance Service’s software is periodically updated to maintain or enhance functionality.

[29] Regarding the attempt by Poseidon’s agent to pay the maintenance fees on-line, Adam Cox in his Affidavit states as follows:

7. On October 20, 2020, two days before the maintenance fee payment deadline, CPA Global attempted to make the fee payment on-line via the Canadian Intellectual Property Office’s (“CIPO”) on-line maintenance fee payment system. An error notice was

generated for each of the Designs, which stated the “application/registration cannot be maintained.” Attached hereto as Exhibit “C” are copies of CPA Global’s instructions to CIPO to effect the applicable maintenance fee payments for the Designs (with irrelevant information redacted), plus the error notices, all of which were provided to us by CPA Global in or about June 2021.

[30] I note that there is no direct evidence from CPA on the factual assertions made by Mr. Cox in the above paragraph. The Defendant argues that the Cox Affidavit attesting to the steps taken by CPA is hearsay evidence and should be disregarded. Poseidon argues that even if it is hearsay evidence, it is nonetheless reliable and necessary because the CPA employee is no longer employed and no employees of CPA’s successor, Clarivate, have any knowledge of this matter.

[31] Referenced in paragraph 7 of the Cox Affidavit and attached as Exhibit “C” are undated screenshots (one for each registration number) titled “Government of Canada” and “Industrial designs.” Both documents contain the notation “Invalid registration number(s)” with the Reason listed as “The application cannot be maintained.” Poseidon argues that this error message displayed on these screenshots indicates that CIPO’s on-line system failed.

[32] I do not accept that the information captured on these screenshots is evidence of a failure of CIPO’s on-line system. At best these screenshots show that someone at sometime searched the registry for the Poseidon’s industrial designs. However, without a date on the screenshots and without the sign-in identification, this is not reliable evidence demonstrating an attempt to make an on-line payment on October 20, 2020.

[33] Further, the software version noted at the bottom of the screenshot pages indicates version number 4.2.2. In her Affidavit, Jennifer Murray a Project Manager IT Systems at the Trademarks and Industrial Designs Branch of CIPO notes, at paragraph 16, that the version of the Design e-Maintenance system in place on October 20, 2020, was version 4.1.3 and not version 4.2.2. She further notes, at paragraph 17, that no outages of the design e-maintenance system were recorded on October 20, 2020.

[34] An explanation for this error message could be the following, as noted in the Agreed Statement of Facts:

19. If a user searches in the “Registration number search” function of the Design e-Maintenance Service for an industrial design registration that is already maintained or does not have a status of registered (including where the maintenance period has expired), the search result will display the notification: “The application/registration cannot be maintained.”

20. The Design e-Maintenance Service displays the same notification for both a design already maintained or a design that does not have a status of registered.

[35] Considering this, I agree with the Defendant that the most likely explanation for the information displayed on the screenshots is that the searches were undertaken after the industrial designs had expired.

[36] I conclude there is no material evidence that an on-line payment was attempted on behalf of Poseidon on October 20, 2020.

(iii) *Payment directions by facsimile*

[37] Paragraph 7, Exhibit “C” of the Cox Affidavit also attaches copies of two facsimile letters, with the fax number redacted, purporting to be written instructions from CPA addressed to the Commissioner of Patents dated 20/10/2020 stating: “Please debit our Deposit account no. [redacted] for the fees due on the following patents and send us confirmation of payment.” The letters reference “patent numbers,” the “year renewal date” and the “amount.” Although the letters incorrectly refer to patents, they do note the correct industrial design numbers and the correct amounts for maintenance fees. During cross-examination on the process followed when facsimiles are received, Daniel Charette, the Team Lead Incoming Correspondence Unit of CIPO, confirmed that if members of his team had received the letters, they would have recognized that the letters were for the payments of industrial designs because of the payment amounts referenced, despite the letters referencing “patents.”

[38] The Defendant objects to the Court considering these documents as they argue it is hearsay evidence. This was largely conceded by Mr. Cox during cross-examination when he acknowledged that he is not able to give evidence that CPA either sent or attempted to send these facsimile letters to CIPO. In any event, Poseidon urges the Court to accept this evidence as an exception to the hearsay rule on the grounds that the evidence is necessary and reliable because the responsible CPA employee is no longer employed and no employees of CPA’s successor, Clarivate, have any knowledge of this matter. That may be true, however, that explanation does not explain the absence of any other documentation from CPA confirming that the fax communications were successfully transmitted, such as a fax confirmation sheet. Presumably if

those documents or records exist, they could have been produced regardless of the change in employees.

[39] Poseidon argues that it was CIPO who failed to properly process the payment directions sent by facsimile. They argue that because of measures implemented because of COVID and the move away from a paper-based system to an electronic system and employees working from home, the facsimile letters were not properly processed by CIPO. In his cross-examination, Mr. Charette acknowledged that errors sometimes occurred, and that the records of incoming faxes for that period are no longer available. However, before I can entertain the possibility that CIPO made an error in processing the facsimiles, I would first need to be satisfied that there is convincing evidence that the facsimile letters were in fact successfully transmitted by CPA in the first place.

[40] Poseidon's argument that CIPO processes or systems failed might have merit if there was evidence from CPA, as the sender, that the facsimile letters were successfully transmitted to CIPO. In the absence of any such evidence, I do not agree that the error rests with CIPO. Ultimately the onus was on Poseidon, or its agents, to ensure that their instructions to "debit" their account to pay the maintenance fees were successfully communicated to CIPO.

[41] Furthermore, the facsimile letters appear to suggest the Poseidon's agents confused industrial design renewals with patent renewals. This may be explained by the fact, as noted by Mr. Emch during cross Examination, that in the United States industrial designs are referred to as design patents. I further note that the CPA reports generated for Faegre Drinker refer to the

patent office and the registrations are referred to as patents. Relatedly, in the Murray Affidavit at paragraph 35, she notes that CIPO's patent maintenance system was searched for patent registration numbers 155752 and 162804 (which are Poseidon's industrial design registration numbers) by "CPAPAYMENTS" on October 20, 2020, July 19, 2021, and August 10, 2021. Again, suggesting confusion on the proper description of Poseidon's industrial designs.

[42] I find that the facsimile letters attached as Exhibit "C" to the Cox Affidavit are not reliable or material evidence demonstrating an attempt to pay the maintenance fees by the deadline.

[43] Overall, there is no material new evidence to support that finding that the Court should exercise jurisdiction under section 22 to rectify the Register.

C. *Does the Court have jurisdiction to retroactively grant registration?*

[44] Poseidon seeks equitable relief in the form of a retroactive Order to extend the time for the payment of fees to maintain their registrations. The Defendant argues that the Court does not have jurisdiction to grant this relief as the deadline is prescribed by legislation and there are no statutory provisions that give the Court authority to grant this relief.

[45] Section 10(3) of the *ID Act*, states that when the applicable fees are not paid within the time provided for by the Regulations, the industrial designs shall be deemed to have expired at the end of that time.

[46] Although involving the Patent Act, the court in *Hoffman-La Roche AG v. Canada* 2005

FCA 399 notes:

[7] The Federal Court rightly concluded that the reissued patent expired entirely from the operation of the Act and that it, as well as the Commissioner, had no authority to extend the time for paying the maintenance fee as this would amount to substituting their own deadline for that enacted by Parliament: see the decision, at paragraph 43.

[8] There is no doubt that the consequences of a failure to pay the maintenance fees are serious. However, the Act is clear in this respect and the courts, bound as they are to apply the law, cannot resuscitate a patent that the Act clearly says had expired. Neither the Commissioner nor the Federal Court can amend section 46 of the Act so as to relieve the appellant of its omission to comply with it.

[47] Likewise, here, the Court cannot resuscitate Poseidon's industrial designs that, by the operation of the statutory provisions, are expired. The Court simply does not have the jurisdiction to grant the retroactive relief sought.

IV. Conclusion

[48] This action is dismissed.

[49] The parties agreed that the successful party would be entitled to costs in the sum of \$10,000.00. As the successful party, the Defendant is entitled to those costs.

JUDGMENT IN T-233-23

THIS COURT'S JUDGMENT is that:

1. This action is dismissed.
2. The Defendant shall have costs in the amount of \$10,000.00.

"Ann Marie McDonald"

Judge

APPENDIX

Applicable Statutory Provisions

The applicable provisions from the pre-2018 version of the *ID Act* are:

<p>Duration of exclusive right</p> <p>10 (1) Subject to subsection (3), the term limited for the duration of an exclusive right for an industrial design is ten years beginning on the date of registration of the design.</p>	<p>Durée du droit</p> <p>10 (1) Sous réserve du paragraphe (3), la durée du droit exclusif à la propriété d'un dessin industriel est limitée à dix ans à compter de la date de l'enregistrement du dessin.</p>
<p>Maintenance fees</p> <p>(2) The proprietor of a design shall, to maintain the exclusive right accorded by the registration of the design, pay to the Commissioner of Patents such fees, in respect of such periods, as may be prescribed.</p>	<p>Taxes périodiques</p> <p>(2) Le propriétaire d'un dessin industriel est tenu de payer au commissaire aux brevets, afin de maintenir le droit exclusif conféré par l'enregistrement du dessin, les droits réglementaires ou calculés de la manière prévue par règlement pour chaque période réglementaire.</p>
<p>Expiration of term</p> <p>(3) Where the fees payable under subsection (2) are not paid within the time provided for by the regulations, the term limited for the duration of the exclusive right shall be deemed to have expired at the end of that time.</p>	<p>Péremption</p> <p>(3) En cas de non-paiement dans le délai réglementaire des droits réglementaires, le droit exclusif est périmé.</p>
<p>Federal Court may rectify entries</p> <p>22 (1) The Federal Court may, on the information of</p>	<p>Correction des inscriptions par la Cour fédérale</p> <p>22 (1) La Cour fédérale peut, sur l'information du procureur</p>

the Attorney General or at the suit of any person aggrieved by any omission without sufficient cause to make any entry in the Register of Industrial Designs, or by any entry made without sufficient cause in the Register, make such order for making, expunging or varying any entry in the Register as the Court thinks fit, or the Court may refuse the application.

général, ou à l'instance de toute personne lésée, soit par l'omission, sans cause suffisante, d'une inscription sur le registre des dessins industriels, soit par quelque inscription faite sans cause suffisante sur ce registre, ordonner que l'inscription soit faite, rayée ou modifiée, ainsi qu'elle le juge à propos ou peut rejeter la demande.

The applicable provisions from the currently in-force *ID Act* are:

Registered designs

32 Any matter arising on or after the coming-into-force date, in respect of a design registered before that date or a design registered on or after that date on the basis of an application whose filing date, determined under this Act as it read immediately before the coming-into-force date, is before the coming-into-force date, shall be dealt with and disposed of in accordance with

(a) the provisions of this Act, as they read immediately before the coming-into-force date, other than sections 3, 13 and 20; and

Dessins enregistrés

32 Toute question soulevée à compter de la date d'entrée en vigueur relativement à un dessin enregistré avant cette date ou à compter de celle-ci au titre d'une demande dont la date de dépôt, fixée sous le régime de la présente loi dans sa version antérieure à la date d'entrée en vigueur, est antérieure à celle-ci est régie, à la fois :

a) par les dispositions de la présente loi, dans leur version antérieure à cette date, à l'exception des articles 3, 13 et 20;

(b) sections 3, 3.1, 13, 21 and 24.1.

b) par les articles 3, 3.1, 13, 21 et 24.1.

Regulations

33 For greater certainty, a regulation made under section 25 applies to an application referred to in section 30 and to a design referred to in section 32, unless the regulation provides otherwise.

Règlements

33 Il est entendu que tout règlement pris en vertu de l'article 25 s'applique à la demande visée à l'article 30 et au dessin visé à l'article 32, sauf indication contraire prévue par ce règlement.

The applicable provisions of the previous version of the *Industrial Design Regulations*, SOR/99-460 are:

Maintenance of Exclusive Right

18 (1) The registered proprietor must, before the expiry of the five-year period beginning on the date of the registration of the design, pay the fee set out in column 2 of item 2 of Schedule 2 to maintain an exclusive right conferred by the registration of the design.

(2) If the registered proprietor does not comply with subsection (1), the registered proprietor may, on request to the Commissioner, maintain the exclusive right conferred by the registration of the design if the registered proprietor

Maintien du droit exclusif

18 (1) Le propriétaire inscrit doit, avant l'expiration de la période de cinq ans commençant à la date d'enregistrement du dessin, payer les droits prévus à la colonne 2 de l'article 2 de l'annexe 2 pour le maintien du droit exclusif conféré par l'enregistrement du dessin.

(2) Le propriétaire inscrit qui ne satisfait pas aux exigences du paragraphe (1) peut demander au commissaire de maintenir le droit exclusif conféré par l'enregistrement du dessin s'il :

(a) makes the request within six months after the expiry of the five-year period beginning on the date of the registration of the design; and

(b) pays the fees set out in column 2 of items 2 and 3 of Schedule 2.

a) le fait dans les six mois suivant l'expiration de la période de cinq ans commençant à la date d'enregistrement du dessin;

b) paye les droits prévus à la colonne 2 des articles 2 et 3 de l'annexe 2.

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