

CANADA

Trade-marks Regulations

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PART 1 Rules of General Application

Interpretation

1 Definitions

The following definitions apply in these Regulations.

Act means the Trademarks Act.

associate trademark agent means a trademark agent who is appointed by another trademark agent under subsection 22(2) ~~or (3)~~.

International Bureau means the International Bureau of the World Intellectual Property Organization.

International Register means the official collection of data concerning international registrations that is maintained by the International Bureau.

international registration means a registration of a trademark that is on the International Register.

trademark agent means a trademark agent as defined in section 2 of the College of Patent Agents and Trademark Agents Act.

2 Reference to a period

Unless otherwise indicated, a reference to a period in these Regulations is to be read, if the period is extended under section 47 or 47.1 or subsection 66(1) of the Act, as a reference to the period as extended.

General

3 Written communications intended for Registrar

Written communications intended for the Registrar must be addressed to the "Registrar of Trademarks" and include

(a) in the case that the communication is submitted by a trademark agent, the name of that agent and, if all the trademark agents at the same firm are appointed in respect of the business to which the communication relates, the name of that firm; and

(b) in any other case, the name of the person submitting the communication.

4 Limit on written communications

(1) A written communication intended for the Registrar must not relate to more than one application for the registration of a trademark or more than one registered trademark.

Exceptions

(2) Subsection (1) does not apply to a written communication in

respect of

- (a) a change of name or address;
- (b) a payment of a fee for the renewal of a registration;
- (c) a cancellation of a registration;
- (d) a transfer of a registered trademark or of an application for the registration of a trademark;
- (e) a document affecting rights in respect of a registered trademark or of an application for the registration of a trademark;
- (f) an appointment or revocation of an appointment of a trademark agent;
- (g) a correction of an error; and
- (h) the provision of evidence, written representations or requests for a hearing provided in a proceeding under section 11.13, 38 or 45 of the Act.

5 Written communications regarding applications for registration

(1) A written communication intended for the Registrar in respect of an application for the registration of a trademark must include the name of the applicant and, if known, the application number.

Written communications regarding registered trademarks

(2) A written communication intended for the Registrar in respect of a registered trademark must include the name of the registered owner and either the registration number or the number of the application that resulted in the registration.

6 Address

(1) Joint applicants, opponents and objectors must provide a single postal address for correspondence.

Notice of change of address

(2) A person that is doing business before the Office of the Registrar of Trademarks must notify the Registrar of any change of their postal address for correspondence.

7 Form of communication

The Registrar is not required to have regard to any communication that is not submitted in writing, other than a communication made during a hearing held in a proceeding under section 11.13, 38 or 45 of the Act.

8 Intelligibility of documents

A document that is provided to the Registrar must be clear, legible

and capable of being reproduced.

9 Document provided in non-official language Documents

The Registrar is not required to have regard to the whole or any part of a document that is provided in a language other than English or French unless a translation into English or French is also provided.

10 Manner of providing documents, information or fees

(1) Unless provided by an electronic means in accordance with subsection 64(1) of the Act, documents, information or fees must be provided to the Registrar by physical delivery to the Office of the Registrar of Trademarks or to an establishment that is designated by the Registrar as being accepted for that purpose.

Date of receipt – physical delivery to Office

(2) Documents, information or fees that are provided to the Registrar by physical delivery to the Office of the Registrar of Trademarks are deemed to have been received by the Registrar

- (a) if they are delivered when the Office is open to the public, on the day on which they are delivered to the Office; and
- (b) if they are delivered when the Office is closed to the public, on the first day on which the Office is next open to the public.

Date of receipt – physical delivery to designated establishment

(3) Documents, information or fees that are provided to the Registrar by physical delivery to a designated establishment are deemed to have been received by the Registrar

- (a) if they are delivered when the establishment is open to the public,
 - (i) in the case where the Office of the Registrar of Trademarks is open to the public for all or part of the day on which they are delivered, on that day, and
 - (ii) in any other case, on the day on which the Office of the Registrar of Trademarks is next open to the public; and
- (b) if they are delivered when the establishment is closed to the public, on the first day on which the Office of the Registrar of Trademarks is next open to the public that falls on or after the day on which the establishment is next open to the public.

Date of receipt – provision by electronic means

(4) Documents, information or fees that are provided to the Registrar by an electronic means in accordance with subsection 64(1) of the Act are deemed to have been received on the day, according to

the local time of the place where the Office of the Registrar of Trademarks is located, on which the Office receives it.

Exception – certain applications and requests

- (5) Subsections (1) to (3) do not apply in respect of
- (a) an application for international registration referred to in sections 98 to 100;
 - (b) a request for the recording of a change in ownership referred to in sections 101 and 102;
 - (c) a request for division referred to in section 123; and
 - (d) a transformation application referred to in section 147.

Exception – International Bureau

(6) Subsections (1) to (4) do not apply in respect of documents, information or fees that are provided to the Registrar by the International Bureau.

11 Waiver of fees

The Registrar may waive the payment of a fee if the Registrar is satisfied that the circumstances justify it.

12 Refund

On request made no later than three years after the day on which a fee is paid, the Registrar must refund any overpayment of the fee.

13 Affidavit or statutory declaration

(1) A person that provides the Registrar with a copy of an affidavit or statutory declaration in a matter in respect of which an appeal lies under subsection 56(1) of the Act must retain the original for a retention period that ends one year after the day on which the applicable appeal period expires but, if an appeal is taken, ends on the day on which the final judgment is given in the appeal.

Provision of original

(2) On request by the Registrar made before the end of the retention period, the person must provide the original to the Registrar.

14 Extension of time – fee

A person that applies for an extension of time under section 47 of the Act must pay the fee set out in item 1 of the schedule to these Regulations.

15 Prescribed days – extension of time periods

The following days are prescribed for the purpose of subsection

66(1) of the Act:

- (a) Saturday;
- (b) Sunday;
- (c) January 1 or, if January 1 falls on a Saturday or Sunday, the following Monday;
- (d) Good Friday;
- (e) Easter Monday;
- (f) the Monday before May 25;
- (g) June 24 or, if June 24 falls on a Saturday or Sunday, the following Monday;
- (h) July 1 or, if July 1 falls on a Saturday or Sunday, the following Monday;
- (i) the first Monday in August;
- (j) the first Monday in September;
- (j.1) September 30 or, if September 30 falls on a Saturday or Sunday, the following Monday;
- (k) the second Monday in October;
- (l) November 11 or, if November 11 falls on a Saturday or Sunday, the following Monday;
- (m) December 25 and 26 or
 - (i) if December 25 falls on a Friday, that Friday and the following Monday, and
 - (ii) if December 25 falls on a Saturday or Sunday, the following Monday and Tuesday; and
- (n) any day on which the Office of the Registrar of Trademarks is closed to the public for all or part of that day during ordinary business hours.

Trademark Agents

16 [Repealed]

17 [Repealed]

18 [Repealed]

19 [Repealed]

20 [Repealed]

21 [Repealed]

22 Power to appoint trademark agent

(1) An applicant, registered owner or other person, may appoint one trademark agent or all the trademark agents at the same firm to represent them in any business before the Office of the Registrar of Trademarks.

Power to appoint associate trademark agent

(2) A trademark agent, other than an associate trademark agent may, in turn, appoint one trademark agent or all the trademark agents at the same firm as an associate trademark agent to represent the person that appointed them in any business before the Office of the Registrar of Trademarks.

(3) [Repealed]

23 Appointment

Appointment – one trademark agent

(1) The appointment of one trademark agent is effective on the day on which the Registrar receives an appointment notice that includes the name and postal address of the trademark agent.

Appointment – all trademark agents

(2) The appointment of all the trademark agents at the same firm is effective on the day on which the Registrar receives an appointment notice that includes the name and postal address of the firm.

Revocation

(3) The revocation of the appointment of one trademark agent or all the trademark agents at the same firm is effective on the day on which the Registrar receives a notice to that effect.

23.1 Trademark agent – member of firm

If all the trademark agents at the same firm have been appointed, the following rules apply:

(a) a trademark agent who becomes a member of that firm after the appointment is deemed to be appointed on the day on which they become a member of the firm;

(b) a person who is a member of that firm who becomes a trademark agent after the appointment is deemed to be appointed on the day on which they become a trademark agent;

(c) the appointment of a trademark agent who ceases to be a member of that firm is deemed to be revoked on the day on which they cease to be a member of the firm; and

(d) the appointment of a trademark agent whose licence is suspended, revoked or surrendered is deemed to be revoked on the day on which their licence is suspended, revoked, or surrendered.

23.2 Written communication considered sent

If all the trademark agents at the same firm have been appointed, any written communication sent by the Registrar to the firm is considered to have been sent to all of the trademark agents at the firm.

24 Acts done by or in relation to trademark agent

(1) In any business before the Office of the Registrar of Trademarks, any act done by or in relation to a trademark agent, other than an associate trademark agent, has the same effect as an act done by or in relation to the person that appointed them in respect of that business.

Acts done by or in relation to associate trademark agent

(2) In any business before the Office of the Registrar of Trademarks, any act done by or in relation to an associate trademark agent has the same effect as an act done by or in relation to the person that appointed, in respect of that business, the trademark agent who, in turn, appointed the associate trademark agent.

25 Persons authorized to act

(1) Subject to subsection (4), in any business before the Office of the Registrar of Trademarks, a person may be represented by another person only if that other person is a trademark agent.

Cases involving trademark agents

(2) Subject to subsections (3) and (4), in any business before the Office of the Registrar of Trademarks in respect of which a person has appointed a trademark agent

- (a) the person must not represent themselves; and
- (b) no one other than the trademark agent, or an associate trademark agent appointed by that trademark agent, is permitted to represent that person.

Exceptions

(3) A person may represent themselves for the purpose of

- (a) filing an application for the registration of a trademark, an application for international registration referred to in sections 98 to 100 or a transformation application referred to in section 147;
- (b) paying a fee;
- (c) giving notice under section 23;
- (d) renewing the registration of a trademark under section 46 of the Act; or

(e) making a request or providing evidence under section 48 of the Act.

Exceptions

(4) With respect to any business referred to in paragraphs (3) (a) to (e), a person may be represented by another person authorized by them, whether or not that other person is a trademark agent or an individual whose name is included in the Register of Trademark Agents under section 20 of the College of Patent Agents and Trademark Agents Regulations.

Prohibited Marks

26 Fee

Any person or entity that requests the giving of public notice under paragraph 9(1) (n) or (n.1) of the Act must pay the fee set out in item 6 of the schedule to these Regulations.

Application for Registration of Trademark

27 Scope

A separate application must be filed for the registration of each trademark.

28 Language

An application for the registration of a trademark, with the exception of the trademark itself, must be in English or French.

29 Manner of describing goods or services

The statement of the goods or services referred to in paragraph 30(2) (a) of the Act must describe each of those goods or services in a manner that identifies a specific good or service.

30 Representation or description

The following requirements are prescribed for the purpose of paragraph 30(2) (c) of the Act:

- (a) a representation may contain more than one view of the trademark only if the multiple views are necessary for the trademark to be clearly defined;
- (b) a two-dimensional representation must not exceed 8 cm by 8 cm;
- (c) if the trademark consists in whole or in part of a three-dimensional shape, a representation must be a two-dimensional graphic or photographic representation;
- (d) if colour is claimed as a feature of the trademark or if the

trademark consists exclusively of a single colour or a combination of colours without delineated contours, a visual representation must be in colour;

(e) if colour is not claimed as a feature of the trademark or if the trademark does not consist exclusively of a single colour or a combination of colours without delineated contours, a visual representation must be in black and white;

(f) if the trademark consists in whole or in part of a sound, a representation must include a recording of the sound in a format that is designated by the Registrar as being accepted for that purpose; and

(g) a description must be clear and concise.

31 Contents

The following information and statements are prescribed for the purpose of paragraph 30(2)(d) of the Act:

(a) the applicant's name and postal address;

(b) if the trademark consists in whole or in part of characters other than Latin characters, a transliteration of those other characters into Latin characters following the phonetics of the language of the application;

(c) if the trademark consists in whole or in part of numerals other than Arabic or Roman numerals, a transliteration of those other numerals into Arabic numerals;

(d) a translation into English or French of any words in any other language that are contained in the trademark;

(e) if the trademark consists in whole or in part of a three-dimensional shape, a hologram, a moving image, a mode of packaging goods, a sound, a scent, a taste, a texture or the positioning of a sign, a statement to that effect;

(f) if colour is claimed as a feature of the trademark, a statement to that effect, along with the name of each colour claimed and an indication of the principal parts of the trademark that are in that colour;

(g) if the trademark consists exclusively of a single colour or a combination of colours without delineated contours, a statement to that effect, along with the name of each colour; and

(h) if the trademark is a certification mark, a statement to that effect.

32 Fee

(1) A person that files an application for the registration of a trademark, other than a Protocol application as defined in section 96 or a divisional application, must pay the applicable fee set out in item 7 of the schedule.

Fee for divisional application

(2) A person that files a divisional application that does not stem from a Protocol application as defined in section 96 must pay the applicable fee set out in item 7 of the schedule for

(a) in the case that the corresponding original application is itself a divisional application,

(i) if the filed divisional application stems from a series of divisional applications, the original application from which the series stems, and

(ii) if the filed divisional application does not stem from a series of divisional applications, the original application from which the corresponding original application stems; and

(b) in any other case, the corresponding original application.

Deemed payment of fees

(3) If all or part of the applicable fee set out in item 7 of the schedule is paid in respect of an application, the applicable fee referred to in that item, or part of it, as the case may be, is deemed to have been paid for

(a) when that application is itself a divisional application,

(i) in the case that it stems from a series of divisional applications, the original application from which stems the series and every divisional application that stems from that original application, and

(ii) in the case that it does not stem from a series of divisional applications, its corresponding original application and every divisional application that stems from it; and

(b) when that application is not itself a divisional application, every divisional application that stems from it.

Fees for filing date

(4) For the purpose of paragraph 33(1)(f) of the Act, the prescribed fees are those fees set out in subparagraphs 7(a)(i) and (b)(i) of the schedule to these Regulations.

Request for Priority

33 Time of filing

(1) For the purpose of paragraph 34(1)(b) of the Act, a request for

priority must be filed within six months after the filing date of the application on which the request is based.

Time and manner of withdrawal

(2) For the purpose of subsection 34(4) of the Act, a request for priority may be withdrawn by filing a request to that effect before the application is advertised under subsection 37(1) of the Act.

Default in Prosecution of Application

34 Time for remedying default

For the purpose of section 36 of the Act, the time within which a default in the prosecution of an application may be remedied is two months after the date of the notice of the default.

Amendment of Application for Registration of a Trademark

35 Before registration

(1) An application for the registration of a trademark may be amended before the trademark is registered.

Exceptions

- (2) Despite subsection (1), the application must not be amended
- (a) to change the identity of the applicant, unless the change results from the recording of a transfer of the application by the Registrar or, in the case of an application other than a Protocol application as defined in section 96, to correct an error in the applicant's identification;
 - (b) to change the representation or description of the trademark, unless the application has not been advertised under subsection 37(1) of the Act and the trademark remains substantially the same;
 - (c) to broaden the scope of the statement of the goods or services contained in the application beyond the scope of
 - (i) that statement on the filing date of the application, determined without taking into account section 34 of the Act or subsection 106(2) of these Regulations,
 - (ii) the narrower of that statement as advertised under subsection 37(1) of the Act and that statement as amended after that advertisement, and
 - (iii) in the case of a Protocol application as defined in section 96, the list of goods or services, in respect of Canada, contained – at the time of the amendment, if it were made – in the international registration on which the application is based;
 - (d) to add an indication that it is a divisional application;
 - (e) to add or delete a statement referred to in paragraph 31(b) of

the Act or paragraph 31(e), (f) or (g) of these Regulations, unless the application has not been advertised under subsection 37(1) of the Act and the trademark remains substantially the same; or (f) after the application is advertised under subsection 37(1) of the Act, to add or delete a statement referred to in paragraph 31(h) of these Regulations.

Exceptions to exceptions

(3) Despite subsection (2), an amendment referred to in that subsection may be made in accordance with section 107, 111, 114 or 117.

Transfer of Application for Registration of a Trademark

36 Fee

A person that requests the recording under subsection 48(3) of the Act of the transfer of an application for the registration of a trademark must pay the fee set out in item 8 of the schedule to these Regulations.

37 Required information

The Registrar must not record the transfer of an application for the registration of a trademark under subsection 48(3) of the Act unless the Registrar has been provided with the transferee's name and postal address.

38 Effect of transfer – separate applications

If the transfer to a person of an application for the registration of a trademark is, under subsection 48(3) of the Act or section 146 of these Regulations, recorded in respect of at least one but not all of the goods or services specified in the initial application,

- (a) that person is deemed to be the applicant in respect of a separate application;
- (b) the separate application is deemed to have the same filing date as that initial application; and
- (c) any action taken, before the day on which the transfer is recorded, in relation to the initial application is deemed to have been taken in relation to that separate application.

Divisional Application

39 Manner of identifying corresponding original application

For the purpose of subsection 39(2) of the Act, the corresponding original application must be identified in a divisional application

by means of its application number, if known.

40 Steps deemed taken

Any action taken in respect of the corresponding original application, on or before the day on which the divisional application is filed, is deemed to be an action taken in respect of the divisional application, except

- (a) an amendment of the statement of the goods or services contained in the original application; and
- (b) the payment of the applicable fee set out in item 7 of the schedule to these Regulations.

Advertisement

41 Manner

For the purpose of subsection 37(1) of the Act, an application is advertised by publishing on the website of the Canadian Intellectual Property Office

- (a) the application number;
- (b) the name and postal address of the applicant and of the applicant's trademark agent, if any;
- (c) any representation or description of the trademark contained in the application;
- (d) if the trademark is in standard characters, a note to that effect;
- (e) if the trademark is a certification mark, a note to that effect;
- (f) the filing date of the application;
- (g) if the applicant filed a request for priority in accordance with paragraph 34(1)(b) of the Act, the filing date and country or office of filing of the application on which the request for priority is based;
- (h) the statement of the goods or services in association with which the trademark is used or proposed to be used, grouped according to the classes of the Nice Classification, each group being preceded by the number of the class of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the Nice Classification;
- (i) any disclaimer made under section 35 of the Act; and
- (j) if the Registrar has restricted the registration to a defined territorial area in Canada under subsection 32(2) of the Act, a note to that effect.

Opposition Proceeding Under Section 38 of Act

42 Fee

For the purpose of subsection 38(1) of the Act, the fee to be paid for filing a statement of opposition is that set out in item 9 of the schedule to these Regulations.

43 Correspondence

A person that corresponds with the Registrar in respect of an opposition proceeding must clearly indicate that the correspondence relates to that proceeding.

44 Forwarding copies of documents

A party to an opposition proceeding that, on a given day, after the Registrar has forwarded a copy of the statement of opposition to the applicant under subsection 38(5) of the Act, provides to the Registrar a document, other than a document that they are otherwise required to serve, that relates to that proceeding must, on that day, forward a copy of it to the other party.

45 Service on representative of applicant

Unless they have appointed a trademark agent, an applicant may in their counter statement under subsection 38(7) of the Act set out, or may file with the Registrar and serve on the opponent a separate notice setting out, the name and address in Canada of a person on whom or a firm on which service of any document in respect of the opposition may be made with the same effect as if it had been served on the applicant.

46 Manner of service

(1) Service of a document in respect of an opposition proceeding must be effected

- (a) by personal service in Canada;
- (b) by registered mail to an address in Canada;
- (c) by courier to an address in Canada;
- (d) by the sending of a notice to the other party advising that the document to be served has been filed with or provided to the Registrar, if the party seeking to effect service does not have the information necessary to serve the other party in accordance with any of paragraphs (a) to (c); or
- (e) in any manner that is agreed to by the parties.

Service on trademark agent

(2) If a party to be served appoints a trademark agent in respect of an opposition proceeding,

(a) that agent is deemed to replace any person or firm set out in a statement of opposition, counter statement or notice as a person on whom or a firm on which service of any document in respect of the opposition may be made with the same effect as if it had been served on the party directly; and

(b) service must be effected on that agent unless the parties agree otherwise.

Effective date of service

(3) Subject to subsections (4) to (7) and (10), service is effective on the day on which the document is delivered.

Exception – service by registered mail

(4) Service by registered mail is effective on the day on which the document is mailed.

Exception – service by courier

(5) Service by courier is effective on the day on which the document is provided to the courier.

Exception – service by electronic means

(6) Service by an electronic means is effective on the day on which the document is transmitted.

Exception – service by sending of notice

(7) Service by the sending of a notice under paragraph (1) (d) is effective on the day on which the notice is sent.

Notice of manner and date of service

(8) The party effecting service must notify the Registrar of the manner of service and the effective date of service.

Proof of service

(9) A party that serves a document must, on request of the Registrar, provide proof of service within one month after the date of the request. If proof of service is not provided within that month, the document is deemed not to have been served.

Validity of irregular service

(10) Service of a document other than in accordance with subsection (1) is nonetheless valid if the Registrar determines that the document has been provided to the party being served and informs the parties of that determination. The service is effective on the day on which the document was provided to the party being served.

47 Counter statement – timing

For the purpose of subsection 38(7) of the Act, the time is two months.

48 Amendment

(1) No amendment to a statement of opposition or counter statement may be made except with leave of the Registrar on terms that the Registrar considers to be appropriate.

Interests of justice

(2) The Registrar must grant leave under subsection (1) if it is in the interests of justice to do so.

49 Manner of submitting evidence

Evidence in respect of an opposition proceeding, other than evidence referred to in subsection 56(3) of these Regulations, is to be submitted to the Registrar by way of affidavit or statutory declaration. However, if the evidence consists of a document or extract from a document that is in the official custody of the Registrar, it may be submitted by way of a certified copy referred to in section 54 of the Act.

50 Timing of opponent's evidence

(1) The opponent may submit evidence referred to in subsection 38(8) of the Act to the Registrar within a period of four months after the day on which the applicant's service on the opponent of a copy of the counter statement is effective.

Timing of service

(2) For the purpose of subsection 38(9) of the Act, the time within which the opponent must serve that evidence on the applicant is during that four-month period.

Opponent's statement

(3) If the opponent does not wish to submit evidence referred to in subsection 38(8) of the Act, they may submit a statement to that effect to the Registrar within the four month period referred to in subsection (1) of this section and, if so, they must serve it on the applicant within that period.

51 Circumstances – deemed withdrawal of opposition

For the purpose of subsection 38(10) of the Act, the circumstances under which the opponent's not submitting and serving evidence referred to in subsection 38(8) of the Act or a statement that the

opponent does not wish to submit evidence results in their opposition being deemed to have been withdrawn are that neither that evidence nor that statement has been submitted and served by the opponent by the end of the four-month period referred to in section 50 of these Regulations.

52 Timing of applicant's evidence

(1) The applicant may submit evidence referred to in subsection 38(8) of the Act to the Registrar within a period of four months after the day on which the opponent's service under section 50 of these Regulations is effective.

Timing of service

(2) For the purpose of subsection 38(9) of the Act, the time within which the applicant must serve that evidence on the opponent is during that four-month period.

Statement of applicant

(3) If the applicant does not wish to submit evidence referred to in subsection 38(8) of the Act, they may submit a statement to that effect to the Registrar within the four month period referred to in subsection (1) of this section and, if so, they must serve it on the opponent within that period.

53 Circumstances – deemed abandonment of application

For the purpose of subsection 38(11) of the Act, the circumstances under which the applicant's not submitting and serving evidence referred to in subsection 38(8) of the Act or a statement that the applicant does not wish to submit evidence results in their application being deemed to have been abandoned are that neither that evidence nor that statement has been submitted and served by the applicant by the end of the four-month period referred to in section 52 of these Regulations.

54 Reply evidence – timing

Within one month after the day on which the service on the opponent under section 52 is effective, the opponent may submit to the Registrar reply evidence and, if so, they must serve it on the applicant within that one month period.

55 Additional evidence

(1) A party may submit additional evidence with leave of the Registrar on terms that the Registrar considers to be appropriate.

Interests of justice

(2) The Registrar must grant leave under subsection (1) if it is in the interests of justice to do so.

56 Ordering of cross-examination

(1) On the application of a party made before the Registrar gives notice in accordance with subsection 57(1), the Registrar must order the cross-examination under oath or solemn affirmation, within the period specified by the Registrar, of any affiant or declarant on an affidavit or statutory declaration that has been submitted to the Registrar as evidence in the opposition proceeding.

Conduct of cross-examination

(2) The cross-examination is to be conducted as agreed to by the parties or, in the absence of an agreement, as specified by the Registrar.

Transcript and undertakings

(3) Within the period specified by the Registrar for conducting the cross-examination,

(a) the party that conducted the cross-examination must submit to the Registrar and serve on the other party the transcript of the cross-examination and the exhibits to the cross-examination; and

(b) the party that was cross-examined must submit to the Registrar and serve on the other party any information, document or material that they undertook to provide in the course of the cross-examination.

Inadmissibility in absence of cross-examination

(4) An affidavit or statutory declaration is not to be part of the evidence if the affiant or declarant declines or fails to attend for cross-examination.

57 Written representations

(1) After all evidence has been filed, the Registrar must give the parties notice that they may submit written representations to the Registrar.

Timing of opponent's written representations

(2) The opponent may submit written representations to the Registrar within a period of two months after the date of that notice.

Timing of service

(3) For the purpose of subsection 38(9) of the Act, the time within which the opponent must serve their written representations on the applicant is during that two month period.

Statement of opponent

(4) If the opponent does not wish to submit written representations, they may submit a statement to that effect to the Registrar within the two-month period referred to in subsection (2) and, if so, they must serve it on the applicant within that period.

Timing of applicant's written representations

(5) The applicant may submit written representations to the Registrar within the following period:

(a) if service referred to in subsection (3) or (4), as the case may be, is effective within the two-month period referred to in subsection (2), two months after the day on which that service is effective; and

(b) in any other case, two months after the end of the two-month period referred to in subsection (2).

Timing of service

(6) For the purpose of subsection 38(9) of the Act, the time within which the applicant must serve their written representations on the opponent is during the two month period determined under subsection (5) of this section for their submission of written representations.

Statement of applicant

(7) If the applicant does not wish to submit written representations, they may submit a statement to that effect to the Registrar within the two-month period determined under subsection (5) for their submission of written representations and, if so, they must serve it on the opponent within that period.

58 Request for hearing

(1) Within one month after the day on which the applicant's service on the opponent of written representations or of a statement that the applicant does not wish to make written representations is effective – or, if no such service is effective within the two-month period determined under subsection 57(5) for their submission of written representations, within one month after the end of that two-month period – a party that wishes to make representations to the Registrar at a hearing must file with the Registrar a request that indicates

(a) whether they intend to make representations in English or French and whether they will require simultaneous interpretation if the other party makes representations in the other official language; and

(b) whether they wish to make representations in person, by

telephone, by video conference or by another means of communication offered by the Registrar, and that sets out any information necessary to permit the use of the chosen means of communication.

When representations may be made

(2) A party may make representations at the hearing only if they file a request in accordance with subsection (1).

Changes

(3) If a party, at least one month before the date of the hearing, notifies the Registrar of changes to be made in respect of any of the information provided under subsection (1), the Registrar must modify the administrative arrangements for the hearing accordingly.

Register

59 Particulars

For the purpose of paragraph 26(2)(f) of the Act, the following are other particulars that are required to be entered on the register:

- (a) the registration number;
 - (b) the name and postal address of the registered owner on the date of registration;
 - (c) any representation or description of the trademark that is contained in the application for the registration of the trademark;
 - (d) if the trademark is in standard characters, a note to that effect;
 - (e) if the trademark is a certification mark, a note to that effect;
- and
- (f) if the Registrar has restricted the registration to a defined territorial area in Canada under subsection 32(2) of the Act, a note to that effect.

60 Fee for extending statement of goods or services

For the purpose of subsection 41(1) of the Act, the fee to be paid by a registered owner that makes an application to extend the statement of goods or services in respect of which a trademark is registered is that set out in item 10 of the schedule to these Regulations.

61 Merger of registrations

The Registrar may merge registrations under paragraph 41(1)(f) of the Act only if the trademarks to which the registrations apply are the same and have the same registered owner.

62 Fee for the giving of notice

For the purpose of subsection 44(1) of the Act, the fee to be paid by a person that requests that a notice be given under that subsection is that set out in item 11 of the schedule to these Regulations.

63 Requested statement of goods or services – timing

For the purpose of subsection 44.1(1) of the Act, the time within which a registered owner must furnish the Registrar with a statement of goods and services grouped in the manner described in subsection 30(3) of the Act is six months after the date of the notice that was given to them.

Transfer of Registered Trademark

64 Fee

A person that requests the registration of the transfer of a registered trademark under subsection 48(4) of the Act must pay the fee set out in item 12 of the schedule to these Regulations.

65 Required information

The Registrar must not register the transfer of a registered trademark under subsection 48(4) of the Act unless the Registrar has been provided with the transferee's name and postal address.

66 Effect of transfer – separate registrations

If the transfer to a person of a registered trademark is, under subsection 48(4) of the Act or section 146 of these Regulations, registered in respect of at least one but not all of the goods or services that are specified in the initial registration, that person is deemed to be the registered owner of a separate registration that is deemed to have the same registration date as that initial registration.

Proceeding Under Section 45 of Act

67 Fee

For the purpose of subsection 45(1) of the Act, the fee to be paid by a person that requests that a notice be given under that subsection is that set out in item 13 of the schedule to these Regulations.

68 Correspondence

A person that corresponds with the Registrar in respect of a proceeding under section 45 of the Act must clearly indicate that the correspondence relates to that proceeding.

69 Forwarding copies of documents

A party to a proceeding under section 45 of the Act that, on a given day after the Registrar has given notice under subsection 45(1) of the Act, provides to the Registrar a document, other than a document that they are otherwise required to serve, that relates to that proceeding must, on that day, forward a copy of it to any other party.

70 Service on representative of party

A party to a proceeding under section 45 of the Act may file with the Registrar and serve on any other party to the proceeding a notice setting out the name and address in Canada of a person on whom or a firm on which service of any document in respect of the proceeding may be made with the same effect as if it had been served on them.

71 Manner of service

(1) Service of a document in respect of a proceeding under section 45 of the Act must be effected

- (a) by personal service in Canada;
- (b) by registered mail to an address in Canada;
- (c) by courier to an address in Canada;
- (d) by the sending of a notice to the other party advising that the document to be served has been filed with or submitted to the Registrar, if the party seeking to effect service does not have the information necessary to serve the other party in accordance with any of paragraphs (a) to (c); or
- (e) in any manner that is agreed to by the parties.

Service on trademark agent

(2) Despite section 70, if a party to be served appoints a trademark agent in respect of a proceeding under section 45 of the Act, service must be effected on that agent unless the parties agree otherwise.

Effective date of service

(3) Subject to subsections (4) to (7) and (10), service is effective on the day on which the document is delivered.

Exception – service by registered mail

(4) Service by registered mail is effective on the day on which the document is mailed.

Exception – service by courier

(5) Service by courier is effective on the day on which the document is provided to the courier.

Exception – service by electronic means

(6) Service by an electronic means is effective on the day on which the document is transmitted.

Exception – service by sending of notice

(7) Service by the sending of a notice under paragraph (1)(d) is effective on the day on which the notice is sent.

Notice of manner and date of service

(8) The party effecting service must notify the Registrar of the manner of service and the effective date of service.

Proof of service

(9) A party that serves a document must, on request of the Registrar, provide proof of service within one month after the date of the request. If proof of service is not provided within that month, the document is deemed not to have been served.

Validity of irregular service

(10) Service of a document other than in accordance with subsection (1) is nonetheless valid if the Registrar determines that the document has been provided to the party being served and informs the parties of that determination. The service is effective on the day on which the document was provided to the party being served.

72 Evidence – timing

For the purpose of subsection 45(2.1) of the Act, the time within which the registered owner of the trademark must serve their evidence on the person at whose request the notice was given is the three-month period referred to in subsection 45(1) of the Act.

73 Written representations

(1) After the registered owner has furnished an affidavit or statutory declaration to the Registrar in response to a notice given under subsection 45(1) of the Act, the Registrar must give the parties notice that they may submit written representations to the Registrar.

Timing if notice given at Registrar's initiative

(2) For the purpose of subsection 45(2) of the Act, if the notice

referred to in subsection 45(1) of the Act was given on the Registrar's own initiative, the time within which the registered owner may submit written representations to the Registrar is two months after the date of the notice given under subsection (1) of this section.

Statement of registered owner

(3) If the registered owner does not wish to submit written representations in respect of a notice referred to in subsection 45(1) of the Act that was given on the Registrar's own initiative, they may submit a statement to that effect to the Registrar within the two-month period referred to in subsection (2) of this section.

Timing if notice given on request

(4) For the purpose of subsections 45(2) and (2.1) of the Act, if the notice referred to in subsection 45(1) of the Act was given at the request of a person, the time within which that person may submit written representations to the Registrar and must serve those representations on the registered owner is two months after the date of the notice given under subsection (1) of this section.

Statement of person requesting notice

(5) If that person does not wish to submit written representations, they may submit a statement to that effect to the Registrar within the two-month period referred to in subsection (4) and, if so, they must serve it on the registered owner within that period.

Timing of registered owner's written representations

(6) For the purpose of subsections 45(2) and (2.1) of the Act, if the notice referred to in subsection 45(1) of the Act was given at the request of a person, the time within which the registered owner may submit written representations to the Registrar and must serve those representations on that person is

- (a) in the case that a service referred to in subsection (4) or (5) of this section, as the case may be, is effective within the two-month period referred to in that subsection (4), two months after the day on which that service is effective; and
- (b) in any other case, two months after the end of the two-month period referred to in that subsection (4).

Statement of registered owner

(7) If the registered owner does not wish to submit written representations in respect of a notice referred to in subsection (6), they may submit a statement to that effect to the Registrar within the two-month period determined under subsection (6) for their submission of written representations and, if so, they must

serve it on the person requesting the notice within that period.

74 Request for hearing

(1) Every party that wishes to make representations to the Registrar at a hearing must file with the Registrar a request that indicates

(a) whether the party intends to make representations in English or French and whether they will require simultaneous interpretation if another party makes representations in the other official language; and

(b) whether the party wishes to make representations in person, by telephone, by video conference or by another means of communication offered by the Registrar and that sets out any information necessary to permit the use of the chosen means of communication.

Period

(2) The request must be filed within the following period:

(a) if the notice referred to in subsection 45(1) of the Act was given on the Registrar's own initiative, one month after the day on which the registered owner submits to the Registrar written representations or a statement that they do not wish to make written representations or, if no such submission is made within the two-month period referred to in subsection 73(2) of these Regulations, one month after the end of that two-month period; and

(b) if the notice referred to in subsection 45(1) of the Act was given at the request of a person, one month after the day on which the registered owner's service of written representations or of a statement that they do not wish to make written representations is effective or, if no such service is effective within the two month period determined under 73(6) of these Regulations for their submission of written representations, one month after the end of that two-month period.

When representations may be made

(3) A party may make representations at the hearing only if they file a request in accordance with this section.

Changes

(4) If a party, at least one month before the date of the hearing, notifies the Registrar of changes to be made in respect of any of the information provided under subsection (1), the Registrar must modify the administrative arrangements for the hearing accordingly.

Renewal of Registration

75 Fee

For the purpose of section 46 of the Act, the renewal fee to be paid is that set out in item 14 of the schedule to these Regulations.

76 Period

For the purpose of section 46 of the Act, the period within which the renewal fee is to be paid

(a) begins on the day that is six months before the end of the initial period or the renewal period, as the case may be, and

(b) ends at the later of

(i) the end of the six-month period that begins after the end of that initial or renewal period, and

(ii) if a notice is sent under subsection 46(2) of the Act, the end of the two-month period that begins after the date of that notice.

77 Deemed date – merged registrations

For the purpose of a renewal under section 46 of the Act, the deemed day of registration in respect of a registration of a trademark that results from the merger of registrations under paragraph 41(1)(f) of the Act is the day that is 10 years before the earliest day, after the day of the merger, on which the initial period or the renewal period, as the case may be, in respect of any of the registrations being merged would have expired, had the merger not occurred.

Objection Proceeding Under Section 11.13 of Act

78 Fee

For the purpose of subsection 11.13(1) of the Act, the fee to be paid for filing a statement of objection is that set out in item 15 of the schedule to these Regulations.

79 Correspondence

A person that corresponds with the Registrar in respect of an objection proceeding must clearly indicate that the correspondence relates to that proceeding.

80 Forwarding copies of documents

A party to an objection proceeding that, on a given day after a statement of objection has been filed with the Registrar under subsection 11.13(1) of the Act, provides to the Registrar a document, other than a document that they are otherwise required to

serve on another party, that relates to that proceeding must, on that day, forward a copy of it to the other party.

81 Manner of service

(1) Service of a document in respect of an objection proceeding must be effected

- (a) by personal service in Canada;
- (b) by registered mail to an address in Canada;
- (c) by courier to an address in Canada;
- (d) by the sending of a notice to the other party advising that the document to be served has been filed with or submitted to the Registrar, if the party seeking to effect service does not have the information necessary to serve the other party in accordance with any of paragraphs (a) to (c); or
- (e) in any manner that is agreed to by the parties.

Service on trademark agent

(2) If a party to be served appoints a trademark agent in respect of an objection proceeding,

- (a) that agent is deemed, in respect of any party that has been served with notice of the appointment, to replace any person or firm set out in a statement by the Minister or a statement of objection as a person on whom or a firm on which service of any document may be made with the same effect as if it had been served on the party directly; and
- (b) service must be effected on that agent unless the parties agree otherwise.

Effective date of service

(3) Subject to subsections (4) to (7) and (10), service is effective on the day on which the document is delivered.

Exception – service by registered mail

(4) Service by registered mail is effective on the day on which the document is mailed.

Exception – service by courier

(5) Service by courier is effective on the day on which the document is provided to the courier.

Exception – service by electronic means

(6) Service by an electronic means is effective on the day on which the document is transmitted.

Exception – service by sending of notice

(7) Service by the sending of a notice under paragraph (1)(d) is effective on the day on which the notice is sent.

Notice of manner and date of service

(8) The party effecting service must notify the Registrar of the manner of service and the effective date of service.

Proof of service

(9) A party that serves a document must, on request of the Registrar, provide proof of service within one month after the date of the request. If proof of service is not provided within that month, the document is deemed not to have been served.

Validity of irregular service

(10) Service of a document other than in accordance with subsection (1) is nonetheless valid if the Registrar determines that the document has been provided to the party being served and informs the parties of that determination.

The service is effective on the day on which the document was provided to the party being served.

82 Amendment

(1) No amendment to a statement of objection or counter statement may be made except with leave of the Registrar on terms that the Registrar considers to be appropriate.

Interests of justice

(2) The Registrar must grant leave under subsection (1) if it is in the interests of justice to do so.

83 Manner of submitting evidence

Evidence in respect of an objection proceeding, other than evidence referred to in subsection 91(3) of these Regulations, is to be submitted to the Registrar by way of affidavit or statutory declaration. However, if the evidence consists of a document or extract from a document that is in the official custody of the Registrar, it may be submitted by way of a certified copy referred to in section 54 of the Act.

84 Timing of objector's evidence

(1) The objector may submit evidence referred to in subsection 11.13(5) of the Act to the Registrar within a period of four months after the day on which the responsible authority's service on the objector of a copy of the counter statement is effective.

Timing of service

(2) For the purpose of subsection 11.13(5.1) of the Act, the time within which the objector must serve that evidence on the

responsible authority is during that four month period.

Objector's statement

(3) If the objector does not wish to submit evidence, they may submit a statement to that effect to the Registrar within the four-month period referred to in subsection (1) and, if so, they must serve it on the responsible authority within that period.

85 Circumstances – deemed withdrawal of objection

For the purpose of subsection 11.13(6) of the Act, the circumstances under which the objector's not submitting and serving evidence or a statement referred to in that subsection results in their objection being deemed to have been withdrawn are that neither that evidence nor that statement has been submitted and served by the objector by the end of the four-month period referred to in section 84 of these Regulations.

86 Timing of responsible authority's evidence

(1) The responsible authority may submit evidence referred to in subsection 11.13(5) of the Act to the Registrar within a period of four months after the day on which the objector's service under section 84 of these Regulations is effective.

Timing of service

(2) For the purpose of subsection 11.13(5.1) of the Act, the time within which the responsible authority must serve that evidence on the objector is during that four month period.

Statement of responsible authority

(3) If the responsible authority does not wish to submit evidence, they may submit a statement to that effect to the Registrar within the four-month period referred to in subsection (1) and, if so, they must serve it on the objector within that period.

87 Non-application of subsection 11.13(5) of Act – circumstances

For the purpose of paragraph 11.13(5) (a) of the Act, the circumstances under which the responsible authority's not submitting evidence or a statement that they do not wish to submit evidence results in the loss of the opportunity to submit evidence and to make representations to the Registrar are that neither that evidence nor that statement has been submitted and served by the responsible authority by the end of the four-month period referred to in section 86 of these Regulations.

88 Circumstances – indication or translation not entered on list

For the purpose of subsection 11.13(6.1) of the Act, the circumstances under which the responsible authority's not submitting and serving evidence or a statement that they do not wish to submit evidence results in the indication or the translation not being entered on the list are that neither that evidence nor that statement has been submitted and served by the responsible authority by the end of the four-month period referred to in section 86 of these Regulations.

89 Reply evidence – timing

Within one month after the day on which the service on the objector under section 86 is effective, the objector may submit to the Registrar reply evidence and, if so, they must serve it on the responsible authority within that one-month period.

90 Additional evidence

(1) A party may submit additional evidence with leave of the Registrar on terms that the Registrar considers to be appropriate.

Interests of justice

(2) The Registrar must grant leave under subsection (1) if it is in the interests of justice to do so.

91 Ordering of cross-examination

(1) On the application of a party made before the Registrar gives notice in accordance with subsection 92(1), the Registrar must order the cross-examination under oath or solemn affirmation, within the period specified by the Registrar, of any affiant or declarant on an affidavit or statutory declaration that has been submitted to the Registrar as evidence in the objection proceeding.

Conduct of cross-examination

(2) The cross-examination is to be conducted as agreed to by the parties or, in the absence of an agreement, as specified by the Registrar.

Transcript and undertakings

(3) Within the period specified by the Registrar for conducting the cross-examination,

(a) the party that conducted the cross-examination must submit to the Registrar and serve on the other party the transcript of the cross-examination and exhibits to the cross-examination; and

(b) the party that was cross-examined must submit to the Registrar

and serve on the other party any information, document or material that they undertook to provide in the course of the cross-examination.

Inadmissibility in absence of cross-examination

(4) An affidavit or statutory declaration is not to be part of the evidence if an affiant or declarant declines or fails to attend for cross-examination.

92 Written representations

(1) After all evidence has been filed, the Registrar must give the parties notice that they may submit written representations to the Registrar.

Timing of objector's written representations

(2) The objector may submit written representations to the Registrar within a period of two months after the date of that notice.

Timing of service

(3) For the purpose of subsection 11.13(5.1) of the Act, the time within which the objector must serve their written representations on the responsible authority is during that two-month period.

Statement of objector

(4) If the objector does not wish to submit written representations, they may submit a statement to that effect to the Registrar within the two-month period referred to in subsection (2) and, if so, they must serve it on the responsible authority within that period.

Timing of responsible authority's written representations

(5) The responsible authority may submit written representations to the Registrar within the following period:

(a) if service referred to in subsection (3) or (4), as the case may be, is effective within the two-month period referred to in that subsection, two months after the day on which that service is effective; and

(b) in any other case, two months after the end of the two-month period referred to in subsection (2).

Timing of service

(6) For the purpose of subsection 11.13(5.1) of the Act, the time within which the responsible authority must serve their written representations on the objector is during the two-month period determined under subsection (5) of this section for their submission of written representations.

Statement of responsible authority

(7) If the responsible authority does not wish to submit written

representations, they may submit a statement to that effect to the Registrar within the two-month period determined under subsection (5) for their submission of written representations and, if so, they must serve it on the objector within that period.

93 Request for hearing

(1) Within one month after the day on which the responsible authority's service on the objector of written representations or of a statement that the responsible authority does not wish to make written representations is effective – or, if no such service is effective within the two-month period determined under subsection 92(5) for their submission of written representations, within one month after the end of that two-month period – a party that wishes to make representations to the Registrar at a hearing must file with the Registrar a request that indicates

(a) whether they intend to make representations in English or French and whether they will require simultaneous interpretation if the other party makes representations in the other official language; and

(b) whether they wish to make representations in person, by telephone, by video conference or by another means of communication offered by the Registrar, and that sets out any information necessary to permit the use of the chosen means of communication.

When representations may be made

(2) A party may make representations at the hearing only if they file a request in accordance with subsection (1).

Changes

(3) If a party, at least one month before the date of the hearing, notifies the Registrar of changes to be made in respect of any of the information provided under subsection (1), the Registrar must modify the administrative arrangements for the hearing accordingly.

94 Copies of Documents

(1) A person that requests a certified copy of a document that is in the Registrar's possession must pay the fee set out in item 16 or 17 of the schedule, as applicable.

Exception

(2) Subsection (1) does not apply in respect of a certified copy that is transmitted under section 60 of the Act or rule 318 of the Federal Courts Rules, including as modified by rule 350 of those Rules.

95 Fee for non-certified copies

A person that requests a non-certified copy of a document that is in the Registrar's possession must pay the fee set out in item 18 or 19 of the schedule, as applicable.

PART 2 Implementation of Madrid Protocol

General

96 Interpretation

The following definitions apply in this Part.

basic application means an application for the registration of a trademark that has been filed under subsection 30(1) of the Act and that constitutes the basis for an application for international registration, but does not include a Protocol application.

basic registration means a registration of a trademark that is on the register and that constitutes the basis for an application for international registration, but does not include a Protocol registration.

Common Regulations means the Common Regulations under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Relating to that Agreement, as modified from time to time.

contracting party means any state or intergovernmental organization that is a party to the Protocol.

date of international registration means the date borne by an international registration under Rule 15 of the Common Regulations.

date of notification of territorial extension means the day on which the International Bureau notifies the Registrar of a request made under Article 3ter(1) or (2) of the Protocol.

holder means the person in whose name an international registration is recorded in the International Register.

opposition period means the two-month period referred to in subsection 38(1) of the Act.

Protocol means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989, including any amendments, modifications and revisions made from time to time to which Canada is a party.

Protocol application means an application referred to in subsection 103(1) or (2) or a divisional application referred to in subsection 124(1).

Protocol registration means the registration of a trademark under subsection 132(1).

97 Non-application of section 66 of Act

(1) Section 66 of the Act does not apply in respect of periods fixed by this Part, except

(a) the two-month period fixed by subsections 117(2) and (3) of

these Regulations;

(b) the maximum four-month extension fixed by section 125 of these Regulations; and

(c) the three-month period fixed by section 147 of these Regulations.

Application of Rule 4(4) of Common Regulations

(2) Rule 4(4) of the Common Regulations applies to all periods fixed by this Part other than those referred to in paragraphs (1) (a) to (c) of this section.

Application for International Registration (Office of Registrar as Office of Origin)

Qualification

98 Conditions

A person may file with the Registrar an application for international registration of a trademark for presentation to the International Bureau if they meet the following conditions:

(a) the person is a national of or is domiciled in Canada or has a real and effective industrial or commercial establishment in Canada; and

(b) the person is the applicant in respect of a basic application for the trademark or, if there is a basic registration in respect of the trademark, the registered owner of the trademark.

Contents and Form

99 Contents

(1) Every application for international registration filed with the Registrar must include the following information:

(a) the applicant's name and postal address;

(b) the number and filing date of the basic application or the number and date of registration of the basic registration;

(c) a statement that

(i) the applicant is a national of Canada,

(ii) the applicant is domiciled in Canada, accompanied by the address of the applicant's domicile in Canada if the address filed under paragraph (a) is not in Canada, or

(iii) the applicant has a real and effective industrial or commercial establishment in Canada, accompanied by the address of the applicant's industrial or commercial establishment in Canada if

- the address filed under paragraph (a) is not in Canada;
- (d) if colour is claimed as a feature of the trademark in the basic application or basic registration, the same claim;
 - (e) a reproduction of the trademark, which must be in colour if the trademark is in colour in the basic application or basic registration or if colour is claimed as a feature of the trademark in the basic application or the basic registration;
 - (f) if the trademark in the basic application or basic registration is a certification mark, it consists in whole or in part of a three-dimensional shape or a sound or it consists exclusively of a single colour or a combination of colours without delineated contours, an indication to that effect;
 - (g) a list of the goods or services for which international registration is sought that must
 - (i) include only goods or services that are within the scope of the basic application or basic registration, and
 - (ii) group the goods or services according to the classes of the Nice Classification, each group being preceded by the number of the class of the Nice Classification to which that group of goods or services belongs and presented in the order of the classes of the Nice Classification; and

Language

(2) The application, with the exception of the trademark itself, must be in English or French.

Manner of filing

- (3) The application must be filed by
- (a) using the online service that is designated by the Registrar as being accepted for that purpose; or
 - (b) completing the form issued by the International Bureau and providing it to the Registrar by an electronic means specified by the Registrar.

Functions of Registrar

100 Office of origin

On receipt of an application for international registration that is filed in accordance with section 99 by a person that meets the conditions set out in section 98, the Registrar must, in respect of that application, act as the Office of origin in accordance with the Protocol and the Common Regulations, including by

- (a) certifying that the information included in the application for international registration corresponds to the information included

in the basic application or basic registration;

(b) presenting the application for international registration to the International Bureau; and

(c) in the case that the application for international registration results in an international registration, notifying the International Bureau to the following effect:

(i) if, in respect of all or any of the goods or services listed in the international registration, the basic application is withdrawn, abandoned or refused or the basic registration is cancelled or expunged before the end of five years after its date of international registration, and

(ii) if a proceeding that began before the end of that five-year period leads, in respect of all or any of the goods or services listed in the international registration, to the withdrawal, abandonment or refusal of the basic application or to the cancellation or expungement of the basic registration after that period.

Change in Ownership of International Registration

101 Request for recording

(1) A transferee of an international registration may file with the Registrar a request for the recording of a change in ownership of the international registration for presentation to the International Bureau if they meet the following requirements:

(a) the transferee is a national of or is domiciled in Canada or has a real and effective industrial or commercial establishment in Canada; and

(b) the transferee has been unable to obtain, on a request for the recording of a change in ownership of the international registration, the signature of the holder of the international registration or of the holder's representative recorded in accordance with Rule 3(4) (a) of the Common Regulations.

Manner of filing

(2) The request must be in English or French and be filed by

(a) using the online service that is designated by the Registrar as being accepted for that purpose; or

(b) completing the form issued by the International Bureau and providing it to the Registrar by an electronic means specified by the Registrar.

Accompanying documents

(3) The request must be accompanied by

- (a) evidence of the transfer; and
- (b) a statement to the effect that the transferee made efforts to obtain the signature of the holder of the international registration or that of their representative recorded in accordance with Rule 3(4) (a) of the Common Regulations and that their efforts were not successful.

102 Transmission to International Bureau

The Registrar must transmit to the International Bureau a request for the recording of a change in ownership that is filed in accordance with section 101 if the Registrar considers the evidence of the transfer to be satisfactory.

Territorial Extension to Canada

Protocol Application

103 Request under Article 3ter(1) of the Protocol

(1) On the registration of a trademark in the International Register on the basis of an application that contains a request made under Article 3ter(1) of the Protocol for the extension to Canada of the protection of a trademark resulting from its international registration, an application is deemed to have been filed under subsection 30(1) of the Act by the holder of the international registration for the registration of the trademark and in respect of the same goods or services that are listed in that request.

Request under Article 3ter(2) of the Protocol

(2) On the recording in the International Register of a request made under Article 3ter(2) of the Protocol for the extension to Canada of the protection of a trademark resulting from its international registration, an application is deemed to have been filed under subsection 30(1) of the Act by the holder of the international registration for the registration of the trademark and in respect of the same goods or services that are listed in that request.

Deemed application for certification mark

(3) An application referred to in subsection (1) or (2) is deemed to be an application for the registration of a certification mark if the international registration relates to a collective mark, a certification mark or a guarantee mark.

Non-Registrable Trademarks

104 Goods or services outside scope of international

A trademark that is the subject of a Protocol application is not registrable if the goods or services specified in the Protocol application are not within the scope of the international registration.

Filing Date

105 Non-application of sections 33 and 34 of Act

(1) Sections 33 and 34 of the Act do not apply in respect of a Protocol application.

References to subsection 34(1) of the Act

(2) In respect of the filing date of a Protocol application, the reference in subsections 12(3) and 32(1) and paragraphs 38(2)(e) and (f) of the Act to "subsection 34(1)" is to be read as "subsection 106(2) of the Trademark Regulations".

106 Date of international registration

(1) The filing date of a Protocol application is

- (a) if the Protocol application results from a request made under Article 3ter(1) of the Protocol, the date of international registration of the corresponding international registration; and
- (b) if the Protocol application results from a request made under Article 3ter(2) of the Protocol, the date borne by the subsequent designation under Rule 24(6) of the Common Regulations.

Exception – priority

(2) Despite subsection (1), in the case that, before the filing date of a Protocol application as determined under that subsection, the applicant of the Protocol application or the applicant's predecessor in title had applied, in or for any country of the Union other than Canada, for the registration of the same or substantially the same trademark in association with the same kind of goods or services, the filing date of the application in or for the other country is deemed to be the filing date of the Protocol application and the applicant is entitled to priority in Canada accordingly despite any intervening use in Canada or making known in Canada or any intervening application or registration, if

- (a) the international registration on which the Protocol application is based contains a declaration claiming the priority of the application in or for the other country, along with an indication of the name of the country or office where the filing was made and of

the filing date;

(b) the filing date of the Protocol application as determined under subsection (1) is within a period of six months after the date on which the earliest application was filed in or for any country of the Union for the registration of the same or substantially the same trademark in association with the same kind of goods or services; and

(c) the applicant of the Protocol application, at the filing date of the Protocol application as determined under subsection (1), is a citizen or national of or is domiciled in a country of the Union or has a real and effective industrial or commercial establishment in a country of the Union.

Amendment or Withdrawal of Protocol Application

107 Recording resulting in deletion

(1) If the International Bureau notifies the Registrar of the recording in the International Register under Rule 27(1) (a) of the Common Regulations of a limitation of the list of goods or services, in respect of Canada, of an international registration on which a Protocol application is based,

(a) in the case that the recording results in a deletion of all goods or services from that list without giving rise to a resulting new list, the Protocol application is deemed to be withdrawn;

(b) subject to paragraph (a), in the case that the recording results in a deletion of all goods or services from that list of a particular class of the Nice Classification without giving rise to a resulting new list for that particular class of the Nice Classification, the Protocol application is deemed to be amended accordingly; and

(c) in the case that the recording results in a deletion of one or more of the goods or services from a list of a particular class of the Nice Classification and gives rise to a resulting new list for that particular class of the Nice Classification, the Registrar must determine, with respect to each good or service in that resulting new list for that particular class, whether the following requirements are met:

(i) the good or service is within the scope of the Protocol application on its filing date, determined without taking into account subsection 106(2), and on the date of the recording in the International Register,

(ii) the good or service is within the scope of the Protocol

application as advertised, if the date of the recording in the International Register is on or after the day on which the application is advertised under subsection 37(1) of the Act, (iii) the good or service is within the scope of the Protocol application as amended, if the Protocol application is amended on or after the day on which the application is advertised under subsection 37(1) of the Act and if the date of the recording in the International Register is on or after the day of the amendment, and (iv) the good or service is described in ordinary commercial terms and in a manner that identifies a specific good or service.

Recording resulting in new list

(2) In the case that the recording results in a deletion of one or more of the goods or services from a list of a particular class of the Nice Classification and gives rise to a resulting new list for that particular class of the Nice Classification,

(a) if the Registrar determines that the requirements set out in paragraph (1)(c) are not met for any good or service in that resulting list for that particular class, the Registrar must, in accordance with Rule 27(5) of the Common Regulations, send to the International Bureau a declaration to the effect that the limitation has no effect in Canada in respect of all of the goods and services in that class; and

(b) if the Registrar determines that the requirements set out in paragraph (1)(c) are met for all of the goods or services in that resulting list for that particular class, the Protocol application is deemed to be amended accordingly.

108 Complete renunciation

If, in respect of an international registration on which a Protocol application is based, the International Bureau notifies the Registrar of the recording in the International Register of a renunciation in respect of Canada for all of the goods or services that are listed in the international registration, the Protocol application is deemed to be withdrawn.

109 Complete cancellation

If, in respect of an international registration on which a Protocol application is based, the International Bureau notifies the Registrar of the recording in the International Register of a cancellation of the international registration for all of the goods or services that are listed in the international registration, the

Protocol application is deemed to be withdrawn.

110 Partial cancellation

If, in respect of an international registration on which a Protocol application is based, the International Bureau notifies the Registrar of the recording in the International Register of a cancellation of the international registration for at least one but not all of the goods or services that are listed in the international registration, the Protocol application is deemed to be amended or withdrawn accordingly.

111 Change of name or address

If, in respect of an international registration on which a Protocol application is based, the International Bureau notifies the Registrar of the recording in the International Register of a change of name or address of the holder, the Protocol application is deemed to be amended accordingly.

112 Effective date of amendment or withdrawal

An amendment or withdrawal of a Protocol application under any of sections 107 to 111 is deemed to have taken effect on the date of the limitation, renunciation, cancellation or change, as the case may be, as recorded in the International Register.

113 Non-renewal of international registration

If the international registration on which a Protocol application is based is not renewed in respect of Canada and the International Bureau so notifies the Registrar, the Protocol application is deemed to have been withdrawn at the expiry of the international registration in respect of Canada.

Effect of Correction of International Registration on Protocol Application

114 Deemed amendment to application

If the International Bureau notifies the Registrar of a correction of an international registration affecting a Protocol application, the Protocol application is deemed to be amended accordingly.

115 Amendment to non-advertised application

If a Protocol application has not been advertised under subsection 37(1) of the Act before the date of notification of a correction of

an international registration on which the Protocol application is based and if the Registrar determines that the deemed amendment to the Protocol application is substantive in respect of at least one of the goods or services specified in the amended Protocol application and is not limited to narrowing the scope of the statement of goods or services, then a reference in sections 120 and 129, paragraph 132(1)(c) and subparagraph 132(1)(d)(i) of these Regulations to "date of notification of territorial extension" is to be read as "day on which the International Bureau sent to the Registrar the notification of a correction of an international registration on which the Protocol application is based" in respect of that Protocol application.

116 Amendment to advertised application – all goods or services

If a Protocol application has been advertised under subsection 37(1) of the Act before the date of notification of a correction of an international registration on which the Protocol application is based and if the Registrar determines that the deemed amendment to the Protocol application is substantive in respect of all of the goods or services specified in the amended Protocol application and is not limited to narrowing the scope of the statement of goods or services,

(a) the application is deemed to never have been advertised; and
(b) a reference in sections 120 and 129, paragraph 132(1)(c) and subparagraph 132(1)(d)(i) of these Regulations to "date of notification of territorial extension" is to be read as "day on which the International Bureau sent to the Registrar the notification of a correction of an international registration on which the Protocol application is based" in respect of that Protocol application.

117 Amendment to advertised application – some goods or services

(1) If a Protocol application has been advertised under subsection 37(1) of the Act before the date of notification of a correction of an international registration on which the Protocol application is based and if the Registrar determines that the deemed amendment to the Protocol application is substantive in respect of at least one but not all of the goods or services specified in the amended Protocol application and is not limited to narrowing the scope of the statement of goods or services, then the Registrar must, by notice, invite the applicant to elect one of the following options:

(a) that the Protocol application be amended to delete those goods or services; or

(b) that the Protocol application be deemed to never have been advertised.

Deletion of goods or services

(2) If the applicant elects the option referred to in paragraph (1) (a) or does not make an election within two months after the date of the notice, the Protocol application is deemed to be amended to delete those goods or services.

Deemed non-advertisement of application

(3) If the applicant selects the option referred to in paragraph (1) (b) within two months after the date of the notice (a) the Protocol application is deemed never to have been advertised; and (b) a reference in sections 120 and 129, paragraph 132(1) (c) and subparagraph 132(1) (d) (i) to "date of notification of territorial extension" is to be read as "day on which the International Bureau sent to the Registrar the notification of a correction of an international registration on which the Protocol application is based" in respect of that Protocol application.

118 Effective date of amendment

An amendment to a Protocol application under section 114 or subsection 117(2) is deemed to have taken effect on the later of the filing date of the Protocol application and the day on which the error was made that gave rise to the correction of the international registration.

Abandonment

119 Statement of confirmation of total provisional refusal

If the Registrar treats a Protocol application as abandoned under section 36 of the Act, the Registrar must send a statement of confirmation of total provisional refusal to the International Bureau.

Examination

120 Notification of provisional refusal

The Registrar must not refuse a Protocol application under subsection 37(1) of the Act without first sending to the International Bureau, before the end of 18 months after the date of notification of territorial extension, a notification of provisional refusal stating the Registrar's objections.

121 Statement of confirmation of total provisional refusal

If the Registrar refuses a Protocol application under subsection 37(1) of the Act, the Registrar must send a statement of confirmation of total provisional refusal to the International Bureau.

Divisional Application

122 Non-application of subsections 39(1), (2) and (5) of Act

Subsections 39(1), (2) and (5) of the Act do not apply in respect of a Protocol application.

123 Filing of request for division

(1) The applicant in respect of a Protocol application may limit the original Protocol application to one or more of the goods or services that were within its scope and file with the Registrar for presentation to the International Bureau a request for the division, in respect of Canada, of the international registration on which the original Protocol application is based for any other goods or services that were within the scope of

(a) the original Protocol application on its filing date, determined without taking into account subsection 106(2);

(b) the original Protocol application on the day on which the request is filed, if the request is filed on or after the day on which the Protocol application is advertised under subsection 37(1) of the Act; and

(c) the international registration in respect of Canada on the day on which the request is filed.

Manner of filing

(2) The request must be in English or French and be filed by

(a) using the online service that is designated by the Registrar as being accepted for that purpose; or

(b) completing the form issued by the International Bureau and providing it to the Registrar by an electronic means specified by the Registrar.

Contents

(3) The request must indicate

(a) the number of the international registration on which the original Protocol application is based;

(b) the name of the holder of that international registration;

(c) the name of the goods or services to be set apart, grouped

according to the classes of the Nice Classification; and
(d) the amount of the fee being paid to the International Bureau and the method of payment, or instructions to debit the required amount to an account opened with the International Bureau, and the name of the person effecting the payment or giving the instructions.

Sending of request to International Bureau

(4) The Registrar must send to the International Bureau any request that is filed in accordance with subsections (1) to (3).

124 Deemed divisional application

(1) If, following receipt of a request under section 123, the International Bureau notifies the Registrar of the creation of a divisional international registration in respect of Canada, the applicant is deemed to have filed a divisional application for the registration of the same trademark as in the divisional international registration and in respect of the same goods or services that are listed in the divisional international registration in respect of Canada.

Division of divisional application

(2) The divisional application may itself be divided under subsection (1) and section 123, in which case those provisions apply as if that divisional application were an original Protocol application.

Opposition

125 Limitation of extension

In respect of a Protocol application, the Registrar is not permitted, on application made to the Registrar, to extend, under section 47 of the Act, the two-month period referred to in subsection 38(1) of the Act by more than four months.

126 Filing of statement of opposition

A statement of opposition under section 38 of the Act in respect of a Protocol application must be in English or French and be filed by using the online service that is designated by the Registrar as being accepted for that purpose.

127 Notification of provisional refusal

If, in respect of a Protocol application, a statement of opposition is filed, the Registrar must send to the International Bureau a notification of provisional refusal.

128 No new ground of opposition

If the Registrar sends to the International Bureau a notification of provisional refusal based on an opposition, the statement of opposition may not be amended to add a new ground of opposition.

129 Notice of opposition period

If, in respect of a Protocol application, it is likely that the opposition period will extend beyond the end of 18 months after the date of notification of territorial extension, the Registrar must so inform the International Bureau.

130 Statement of confirmation of total provisional refusal

The Registrar must send a statement of confirmation of total provisional refusal in respect of a Protocol application to the International Bureau if

- (a) the Protocol application is deemed to have been abandoned under subsection 38(11) of the Act; or
- (b) the Registrar refuses the Protocol application under subsection 38(12) of the Act with respect to all of the goods or services specified in it and either the period for filing an appeal has ended and no appeal has been filed or, if an appeal has been taken, the final judgment has been decided in favour of the opponent.

Registration of Trademarks

131 Non-application of section 40 of Act

Section 40 of the Act does not apply in respect of a Protocol application.

132 Obligations of Registrar

(1) In respect of a trademark that is the subject of a Protocol application, the Registrar must register the trademark in the name of the applicant, issue a certificate of its registration and send a statement to the International Bureau that protection is granted to the trademark if

- (a) the Protocol application has not been opposed and the opposition period has ended;
- (b) the Protocol application has been opposed and the opposition has been decided in favour of the applicant and either the period for filing an appeal has ended and no appeal has been filed or, if an appeal has been taken, the final judgment has been decided in favour of the applicant;

(c) 18 months have passed after the date of notification of territorial extension and, within that 18-month period, the Registrar did not inform the International Bureau that it was likely that the opposition period would extend beyond that 18-month period and

(i) did not send to the International Bureau a notification of provisional refusal, or

(ii) did send to the International Bureau a notification of provisional refusal, but not one based on an opposition, and is not satisfied that any of paragraphs 37(1) (a) to (d) of the Act apply; or

(d) the Protocol application has been opposed, the following periods have ended, the Registrar informed the International Bureau, in the period referred to in subparagraph (i), that it was likely that the opposition period would extend beyond that period and the Registrar did not send to the International Bureau, before the end of the period referred to in subparagraph (ii), a notification of provisional refusal based on an opposition:

(i) the 18-month period after the date of notification of territorial extension, and

(ii) the period that ends at the earlier of the end of the seven-month period after the day on which the opposition period began and the end of the one month period after the day on which the opposition period ended.

Non-advertisement

(2) Despite subsection 37(1) of the Act, the Registrar must not cause the Protocol application to be advertised if the trademark was registered under subsection (1) of this section without the Protocol application having been advertised.

Amendment of Register

133 Non-application of statutory provisions

Paragraphs 41(1) (a) to (c) and (f), subsections 41(2) and (4) and section 44.1 of the Act do not apply in respect of a Protocol registration.

134 Filing of request for merger

(1) The holder of a divisional international registration in respect of Canada may file with the Registrar for presentation to the International Bureau a request to merge the divisional international

registration with the international registration from which it was divided if there is at least one Protocol registration based on each of those international registrations and

(a) all of the Protocol registrations stem from the same original Protocol application;

(b) they relate to the same trademark; and

(c) their registered owner is the holder of the international registrations.

Manner of filing

(2) The request must be in English or French and be filed by

(a) using the online service that is designated by the Registrar as being accepted for that purpose; or

(b) completing the form issued by the International Bureau and providing it to the Registrar by an electronic means specified by the Registrar.

Contents

(3) The request must indicate the number of each of the international registrations to be merged and the name of the holder of those international registrations.

Sending of request to International Bureau

(4) The Registrar must send to the International Bureau any request that is filed in accordance with subsections (1) to (3).

Merger of Protocol registrations

(5) If, following receipt of the request, the International Bureau notifies the Registrar of the merger of a divisional international registration in respect of Canada into the international registration from which it was divided, the Registrar must amend the register to merge the Protocol registrations that are based on those international registrations and that stem from the same original Protocol application.

135 Recording resulting in deletion

(1) If the International Bureau notifies the Registrar of the recording in the International Register under Rule 27(1)(a) of the Common Regulations of a limitation of the list of goods or services, in respect of Canada, of an international registration on which a Protocol registration is based,

(a) in the case that the recording results in a deletion of all goods or services from that list without giving rise to a resulting new list, the Registrar must cancel the Protocol registration; and

(b) subject to paragraph (a), in the case that the recording results

in a deletion of all goods or services from that list of a particular class of the Nice Classification without giving rise to a resulting new list for that particular class of the Nice Classification, the Registrar must amend the register accordingly; and

(c) in the case that the recording results in a deletion of one or more of the goods or services from a list of a particular class of the Nice Classification and gives rise to a resulting new list for that particular class of the Nice Classification, the Registrar must determine, with respect to each good or service in that resulting new list for that particular class, whether the following requirements are met:

(i) the good or service is within the scope of the Protocol registration on the date of the recording in the International Register, and

(ii) the good or service is described in ordinary commercial terms and in a manner that identifies a specific good or service.

Recording resulting in new list

(2) In the case that the recording results in a deletion of one or more of the goods or services from a list of a particular class of the Nice Classification and gives rise to a resulting new list for that particular class of the Nice Classification,

(a) if the Registrar determines that the requirements set out in paragraph (1)(c) are not met for any good or service in that resulting list for that particular class, the Registrar must, in accordance with Rule 27(5) of the Common Regulations, send to the International Bureau a declaration to the effect that the limitation has no effect in Canada in respect of all of the goods and services in that class; and

(b) if the Registrar determines that the requirements set out in paragraph 1(c) are met for all of the goods or services in that resulting list for that particular class, the Registrar must amend the register accordingly.

136 Complete renunciation

If, in respect of an international registration on which a Protocol registration is based, the International Bureau notifies the Registrar of the recording in the International Register of a renunciation in respect of Canada for all of the goods or services that are listed in the international registration, the Registrar must cancel the Protocol registration.

137 Complete cancellation

If, in respect of an international registration on which a Protocol registration is based, the International Bureau notifies the Registrar of the recording in the International Register of a cancellation of the international registration for all of the goods or services that are listed in the international registration, the Registrar must cancel the Protocol registration.

138 Partial cancellation

If, in respect of an international registration on which a Protocol registration is based, the International Bureau notifies the Registrar of the recording in the International Register of a cancellation of the international registration for at least one but not all of the goods or services that are listed in the international registration, the Registrar must cancel the Protocol registration or amend the register accordingly.

139 Change of name or address

If, in respect of an international registration on which a Protocol registration is based, the International Bureau notifies the Registrar of the recording in the International Register of a change of name or address of the holder, the Registrar must amend the register accordingly.

140 Correction of international registration

(1) If the International Bureau notifies the Registrar of a correction of an international registration affecting a Protocol registration and

(a) if the Registrar considers that protection can still be granted to the international registration as corrected, the Registrar must amend the register accordingly; or

(b) if the Registrar considers that protection cannot, or can no longer, be granted to the international registration as corrected, the Registrar must so declare and state their grounds in a notification of provisional refusal sent to the International Bureau within 18 months after the date on which the notification of the correction was sent.

Period to respond

(2) The Registrar must by notice invite the registered owner to respond to a declaration made under paragraph (1)(b) within the period specified in the notice.

Protection granted

(3) If – after considering any response received within the specified period or, if there is none, at the end of that period – the Registrar considers that protection can be granted to the international registration as corrected, the Registrar must so notify the International Bureau and amend the register accordingly.

Protection not granted

(4) If – after considering any response received within the specified period or, if there is none, at the end of that period – the Registrar still considers that protection cannot, or can no longer, be granted to the international registration as corrected, the Registrar must so notify the International Bureau and amend the register or cancel the Protocol registration accordingly.

141 Effective date of cancellation or amendment

A cancellation of a Protocol registration or an amendment of the register under any of sections 135 to 140 is deemed to take effect on the date of the limitation, renunciation, cancellation, change or correction, as the case may be, as recorded in the International Register.

142 Failure to consider request for extension of time

(1) The Registrar may remove a Protocol registration from the register if the Registrar registered the trademark without considering a previously filed request for an extension of time to file a statement of opposition, unless the time limit under Article 5(2) of the Protocol to make a notification of provisional refusal based on an opposition has ended.

Notification

(2) If the Registrar removes a Protocol registration from the register under subsection (1), the Registrar must so notify the International Bureau.

*Renewal***143 Non-application of section 46 of Act**

Section 46 of the Act does not apply in respect of a Protocol registration.

144 Period of registration

(1) Subject to the Act and any other provision of these Regulations, a Protocol registration is on the register for the period that

begins on the day of the registration and that ends at the moment of its cancellation or expungement.

Expungement

(2) If the international registration on which a Protocol registration is based is not renewed in respect of Canada and the International Bureau so notifies the Registrar, the Registrar must expunge the Protocol registration.

The Protocol registration is deemed to have been expunged at the expiry of the international registration in respect of Canada.

Transfer

145 Non-application of subsections 48(3) to (5) of Act

Subsections 48(3) to (5) of the Act do not apply in respect of a Protocol application or a Protocol registration.

146 Recording or registration

If the International Bureau notifies the Registrar of the recording in the International Register of a change in ownership in respect of Canada of an international registration on which a Protocol application or a Protocol registration is based, the Registrar must record the transfer of the Protocol application or register the transfer of the Protocol registration accordingly.

Transformation

147 Application

(1) If an international registration on which a Protocol application or Protocol registration is based is cancelled under Article 6(4) of the Protocol for all or any of the goods or services listed in the international registration, the person that was the holder of the international registration on the date of cancellation recorded in the International Register, or their successor in title, may, within three months after that date, file with the Registrar an application (referred to in these Regulations as a “transformation application”) to revive the former Protocol application as an application for the registration of the trademark or the former Protocol registration as a registration of the trademark.

Single application or registration

(2) The transformation application may only be filed in respect of a single Protocol application or Protocol registration.

List of goods or services – scope

(3) The statement of the goods or services in the transformation

application may only include goods or services that are within the scope of

- (a) goods or services that were cancelled from the international registration in respect of Canada; and
- (b) goods or services in the Protocol application or Protocol registration on the date of cancellation recorded in the International Register.

Contents of application

(4) The transformation application must include the following:

- (a) a statement to the effect that the application is for transformation of an international registration;
- (b) a statement of the goods or services in respect of which the registration of the trademark is sought;
- (c) the international registration number of the cancelled international registration; and
- (d) information that permits the Registrar to identify the Protocol application or Protocol registration that was based on the cancelled international registration.

Manner of filing

(5) The transformation application must be in English or French and be filed by an electronic means specified by the Registrar.

No extension

(6) The applicant may not apply under section 47 of the Act for an extension of the three-month period referred to in subsection (1) of this section.

148 Consequences – trademark subject of cancelled Protocol application

If a transformation application is filed in accordance with section 147 for the revival of a Protocol application,

- (a) an application is deemed to have been filed under subsection 30(1) of the Act by the person that, on the date of cancellation recorded in the International Register, was the holder of the same trademark as in the cancelled international registration and in respect of the goods or services specified in the transformation application;
- (b) the deemed application is deemed to include any document or information contained in the Protocol application, other than the statement of goods or services;
- (c) the deemed application is deemed to have the same filing date as the Protocol application; and

(d) any steps taken in relation to the Protocol application before the day on which the International Bureau notifies the Registrar of the recording of the cancellation of the international registration are deemed to have been taken in relation to the deemed application.

149 Consequences – trademark subject of cancelled Protocol registration

If a transformation application is filed in accordance with section 147 for the revival of a Protocol registration,

(a) the Registrar must, in respect of the goods or services specified in the transformation application, register the trademark in the name of the applicant and issue a certificate of its registration;

(b) the registration of the trademark is deemed to have resulted from the Protocol application that resulted in the Protocol registration;

(c) the day of registration of the trademark is deemed to be the day of registration of the Protocol registration;

(d) despite subsection 46(1) of the Act and subject to any other provision of the Act, the registration of the trademark is or is deemed to be on the register for

(i) an initial period that begins on the day of registration of the trademark and ends when the international registration's term of protection would have expired had the international registration not been cancelled, and

(ii) subsequent renewal periods of 10 years if the fee set out in item 14 of the schedule to these Regulations is paid

(A) for the first renewal period, within the period referred to in section 76 or within six months after the day on which the trademark is registered under paragraph (a), determined without taking into account paragraph (c), whichever ends later, and

(B) for each subsequent renewal period, within the period referred to in section 76; and

(e) any steps taken in relation to the Protocol registration before the day on which the International Bureau notifies the Registrar of the recording of the cancellation of the international registration are deemed to have been taken in relation to the registration made under paragraph (a).

Denunciation

150 Application of Article 15(5) of Protocol

Article 15(5) of the Protocol applies to a holder of an international registration on which a Protocol application or a Protocol registration is based if that holder is no longer entitled to file international applications under Article 2(1) of the Protocol because of the denunciation of the Protocol by a contracting party.

PART 3 Transitional Provisions, Repeal and Coming into Force

Transitional Provisions

151 Definitions

The following definitions apply in this Part.

coming-into-force day means the day on which these Regulations come into force under subsection 162(1).

former Regulations means the Trade-marks Regulations as they read immediately before the coming into force day.

152 Filing date already determined

If, before the coming-into-force day, the date of filing of an application for the registration of a trademark has been determined in accordance with section 25 of the former Regulations, the filing date of the application is that date of filing.

153 Filing date – coming into force

If, in respect of an application for the registration of a trademark, all of the items set out in subsection 33(1) of the Act have been received by the Registrar before the coming-into-force day but not all of the items set out in section 25 of the former Regulations have been delivered to the Registrar before that day, the filing date of the application is, subject to section 34 of the Act as it read immediately before the day on which section 339 of the Economic Action Plan 2014 Act, No. 1 comes into force:

- (a) the coming-into-force day, in the case that the difference between the fee set out in item 7 of the schedule to these Regulations and the fee referred to in section 1 of the schedule to the former Regulations has been paid before the coming-into-force day; and
- (b) the date on which that difference is paid, in the case that that difference has not been paid before the coming-into-force day.

154 Exception to subsections 32(1) and (2)

(1) If the filing date, determined without taking into account section 34 of the Act, of an application for the registration of a trademark, other than a Protocol application as defined in section 96 of these Regulations, precedes the coming-into-force day and the trademark has not yet been registered on that day, subsections 32(1) and (2) of these Regulations do not apply and the person that filed the application must pay the fee set out in item 15 of the schedule

to the former Regulations in addition to the fee, set out in item 1 of that schedule, that they have already paid.

Deemed payment of fees

(2) If the fee set out in item 15 of the schedule to the former Regulations is paid in respect of an application referred to in subsection (1), the fee referred to in that item is deemed to have been paid for

- (a) when that application is itself a divisional application,
 - (i) in the case that it stems from a series of divisional applications, the original application from which stems the series and every divisional application that stems from that original application, and
 - (ii) in the case that it does not stem from a series of divisional applications, its corresponding original application and every divisional application that stems from it; and
- (b) when that application is not itself a divisional application, every divisional application that stems from it.

155 Exception to subsection 32(4)

If, before the coming-into-force day, in respect of an application for the registration of a trademark, the items set out in paragraphs 33(1)(a) to (e) of the Act have been received by the Registrar, the fee for the purpose of paragraph 33(1)(f) of the Act, referred to in section 69.1 of the Act, in respect of that application is, despite subsection 32(4) of these Regulations, the fee set out in item 1 of the schedule to the former Regulations.

156 Exception to section 34

Despite section 34, if the date of a notice of a default in the prosecution of an application precedes the coming into- force day, the time within which the default may be remedied is that specified in the notice.

157 Exception to paragraph 35(2)(e)

Despite paragraph 35(2)(e) of these Regulations, an application for registration referred to in section 69.1 of the Act may, if the trademark remains substantially the same, be amended to add a statement referred to in paragraph 31(b) of the Act or paragraph 31(e), (f) or (g) of these Regulations.

158 Exception to section 75

Despite section 75 of these Regulations, for the purpose of section 46 of the Act, the renewal fee for a registration in respect of which the day of the last renewal – or, if the registration has never been renewed, the day of the registration – is more than 15 years before the coming- into-force day is the fee set out in item 7 of the schedule to the former Regulations.

159 Exception to section 76 – first renewal

Despite section 76 of these Regulations and subject to section 160 of these Regulations, for the purpose of subsections 46(2) to (5) of the Act, in respect of the first renewal, on or after the coming- into-force day, of a registration that is on the register on the day before the coming- into-force day, the period within which the renewal fee must be paid

(a) begins on the later of the day of registration and the day of last renewal, and

(b) ends on the later of

(i) the end of the period of 15 years and six months that begins after the later day described in paragraph (a), and

(ii) if a notice is sent under subsection 46(2) of the Act, the end of the two-month period that begins after the date of that notice.

160 Exception to section 76 – goods or services not grouped

Despite section 76 of these Regulations, if the goods or services in respect of which a trademark is registered are not, at the end of the period established by section 76 or 159 of these Regulations, as the case may be, grouped on the register in accordance with paragraph 26(2)(e.1) of the Act, the period within which the fees set out in subparagraphs 14(a)(ii) and (b)(ii) of the schedule to these Regulations must be paid ends on the expiry of the two month period that begins after the day on which the Registrar sends to the registered owner a notice stating that the register has been amended to so group the goods or services and that the registration will be expunged in the event that the fees are not paid within the prescribed period, in the case where that two-month period ends later than that period established by section 76 or 159 of these Regulations.

Repeal**161 The Trade-marks Regulations are repealed.****Coming into Force****162 S.C. 2015, c. 36**

(1) Subject to subsection (2), these Regulations come into force on the day on which section 67 of the Economic Action Plan 2015 Act, No. 1, 2015 comes into force.

February 1, 2019

(2) If section 67 of the Economic Action Plan 2015 Act, No. 1 comes into force before February 1, 2019, sections 123, 124 and 134 come into force on February 1, 2019.

[Note: Regulations in force June 17, 2019, see SI/2018-100.]

SCHEDULE

(Sections 14, 26, 32 and 36, paragraph 40(2)d), sections 42, 60, 62, 64, 67, 75 and 78, subsection 94(1), section 95, subparagraph 149(d)(ii), paragraph 153(a) and section 160)

TARIFF OF FEES

Item	Description	Fee (\$)
1.	Application for an extension of time under section 47 of the Act, for each act for which the extension is sought	125
2.	[Repealed]	
3.	[Repealed]	
4.	[Repealed]	
5.	[Repealed]	
6.	Request for the giving of public notice under paragraph 9(1)(n) or (n.1) of the Act, for each badge, crest, emblem, mark or armorial bearing	500

7.	Application for the registration of a trademark	
	(a) if the application and fee are submitted online through the Canadian Intellectual Property Office website	
	(i) for the first class of goods or services to which the application relates	330
	(ii) for each additional class of goods or services to which the application relates as of the filing date	100
	(b) in any other case	
	(i) for the first class of goods or services to which the application relates	430
	(ii) for each additional class of goods or services to which the application relates as of the filing date	100
8.	Request for the recording of the transfer of one or more applications for the registration of a trademark under subsection 48(3) of the Act, for each application	100
9.	Statement of opposition under subsection 38(1) of the Act	750
10.	Application to amend the register under subsection 41(1) of the Act to extend the statement of goods or services in respect of which a trademark is registered	
	(a) for the first class of goods or services to which the application relates	430
	(b) for each additional class of goods or services to which the application relates as of the filing date	100
11.	Request for the giving of one or more notices under subsection 44(1) of the Act, for each notice requested	400
12.	Request for the registration of the transfer of one or more registered trademarks under subsection 48(4) of the Act, for each trademark	100
13.	Request for the giving of one or more notices under subsection 45(1) of the Act, for each notice requested	400

14.	Renewal of the registration of a trademark under section 46 of the Act	
	(a) if the renewal is requested and the fee submitted online through the Canadian Intellectual Property Office website	
	(i) for the first class of goods or services to which the request for renewal relates	400
	(ii) for each additional class of goods or services to which the request for renewal relates	125
	(b) in any other case	
	(i) for the first class of goods or services to which the request for renewal relates	500
	(ii) for each additional class of goods or services to which the request for renewal relates	125
15.	Statement of objection under subsection 11.13(1) of the Act	1,000
16.	Certified copy in paper form	
	(a) for each certification	35
	(b) for each page	1
17.	Certified copy in electronic form	
	(a) for each certification	35
	(b) for each trademark to which the request relates	10
18.	Non-certified copy in paper form, for each page	
	(a) if the requesting person makes the copy using equipment of the Office of the Registrar of Trademarks	0.5
	(b) if the office makes the copy	1
19.	Non-certified copy in electronic form	
	(a) for each request	10
	(b) for each trademark to which the request relates	10
	(c) if the copy is requested on a physical medium, for each physical medium provided other than the first	10