

Delays in Canadian trademark examination prompt CIPO “pre-assessment” letters

May 17, 2022

In the last few years, the Canadian Intellectual Property Office (CIPO) received higher than anticipated trademark application filings. Currently, examiners are being assigned these applications more than three years after they were filed.

Once assigned, it can take several months before the applications are examined and can go through the rest of the prosecution process. This means that, even if the application passes the examination stage without any objections raised, and passes the opposition period unopposed, applicants may wait more than four years to receive a Certificate of Registration. This historically long wait is longer than what is experienced in most countries.

CIPO has introduced a series of measures to improve timeliness in trademark examination. These efforts include hiring more than 50 new trademark examiners, reducing the number of reports to be issued prior to refusing an application, and encouraging applicants to use terms from its pre-approved list of goods and services. Trademark applications filed using terms from CIPO’s pre-approved list are prioritized in examination over other applications and currently have a reduced wait time of approximately 22 months, compared to more than 39 months for those filed without using pre-approved terms.

In order to promote the use of pre-approved goods and services, in early April CIPO began issuing “Trademark Pre-assessment Letters,” which report on the results of an automated analysis and a pre-assessment of goods, services and Nice classification information contained in all national trademark applications awaiting examination. The automated analysis will, in appropriate cases, confirm that the description of goods and services covered by the application contains acceptable terms with proper classification, or contains acceptable terms without having used the pre-approved list. In either of these cases, no action will be required and the examination of the application will be accelerated.

Alternatively, CIPO’s letter will advise that it has identified:

- Goods or services that are not classed;
- An improper Nice class;

- A description of good or services that includes unacceptable terms; or
- A combination of the above.

Please note that CIPO does not identify the actual deficiency in its letters. By issuing these letters, CIPO hopes to encourage applicants to consider amending their applications to use terms from the pre-approved list of goods and services. However, it may not always be possible to make such amendments. The letter also provides the applicant with the option to voluntarily withdraw the application, if the applicant has lost interest in the trademark.

There is no deadline to take action, and no response to the letters is required.

It is important to note that further examination will be undertaken and that substantive objections may arise. Pre-assessment is not intended to replace examination, but is instead meant to make examination more straightforward, and, if successful, to reduce the overall wait times to examination.

Reach out to the author or any of the key contacts below if you have questions about the CIPO trademark examination process.

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