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**Re: Discussion Paper Regarding Proposed Change to the Refusal and Review  
Process for Industrial Design Examination Decisions**

Dear Canadian Intellectual Property Office:

Intellectual Property Owners Association (IPO) appreciates the opportunity to respond to the request by the Canadian Intellectual Property Office (CIPO) for feedback on the discussion paper regarding a proposed change to the refusal and review process for industrial design examination decisions.

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property (IP) rights. IPO membership includes over 125 companies and spans over 30 countries. IPO advocates for effective and affordable IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current IP issues; providing information and educational services; and disseminating information to the public on the importance of IP rights.

IPO’s mission is to promote high quality and enforceable intellectual property rights and predictable legal systems for all industries and technologies. Our vision is that this will result in the global acceleration of innovation, creativity, and investment necessary to improve lives. IPO offers the comments below in response to the questions to consider that have been posed by CIPO.

### Responses to Questions to Consider

**Question 1:** Does the proposed change sufficiently address the need for a fair and impartial decision-maker?

**Response:** Given that CIPO has imposed the requirement that the decision-maker cannot have been previously involved in the application that he or she is reviewing, there is no reason to believe that this person will not provide a fair and impartial review. It is, however, unclear: (a) how many of these subject matter experts there will be; (b) what

experience they will have with industrial designs; and (c) how will they be assigned to particular subject matter (for example, will they be assigned based on Locarno class and will there be multiple available experts for each class?).

Without more details about these subject matter experts, it is not presently possible to assess whether there is a risk that it may be difficult, on a particular file, to identify an individual who has not had prior involvement with the application under review. Additionally, depending on the number of subject matter experts who will take part in the new review process, there is a danger that the process may effectively concentrate responsibility for the development of policy in a particular subject area in the hands of a very small group of people (perhaps just a single individual) as opposed to the previous system whereby a broader group at the Patent Appeal Board (PAB) would decide cases.

Question 2: Does the proposed change provide sufficient opportunity to be heard?

Response: Ideally, an applicant should have a right to be heard as was the case with the former PAB review process. Given the information provided by CIPO regarding the small number of cases that have gone to final review in recent years, IPO believes it would not be onerous for CIPO to provide a right to a hearing under the new process.

Question 3: How fast should the decision review process be? Is there an ideal turnaround time?

Response: In the most current statistics published by CIPO, the average time from filing to registration for an industrial design application is 12.7 months. IPO suggests, in order to not unduly delay the time to registration, that a target turnaround time for the new decision review process should be set at no more than four months.

Question 4: Should the subject matter expert review all applications that are to be considered for refusal or should a review remain subject to a formal request?

Response: IPO suggests that, in order to prevent the process from becoming bogged down by applications where the applicant may have lost interest in pursuing review, the right to review under the new process should be triggered by a formal request by the applicant.

Question 5: Should all applications be considered for refusal, even those for which objections are outstanding because the applicant failed or chose not to respond?

Response: IPO recommends that, if an applicant has failed to respond to an objection or has chosen not to so respond, these applications should be removed from the decision-review process.

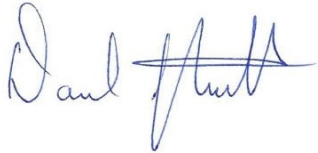
Question 6: Do you have any comments, concerns or feedback with respect to the pilot project?

Response: IPO suggests that an outside end date should be fixed for this pilot project so that it does not become a fixed procedure by default before its effectiveness can be properly reviewed. Accordingly, it is recommended that the TIDB report back at a

particular time in the future with statistics on the new review process (e.g., number of reviews conducted, results, timeframe, etc.) and feedback received from participants. For example, 18 months after the commencement of this pilot project would provide ample time for several requests for review to have been processed and for stakeholder feedback on timing and effectiveness to have been received.

We thank CIPO for its attention to IPO's comments submitted herein, and we welcome further dialogue and opportunity to provide additional comments.

Sincerely,

A handwritten signature in blue ink that reads "Daniel J. Staudt". The signature is written in a cursive style with a horizontal line through the middle of the name.

Daniel J. Staudt  
President