

---

**From:** Montague, Andrew <amontague@suncor.com>  
**Sent:** March 29, 2021 12:35 PM  
**To:** CIPO TMB PL / OPIC DMC PL (IC)  
**Subject:** Feedback on Proposed Changes to Final Action Practice for Industrial Design Applications

Dear Sir/Madam:

In response to your discussion paper titled "Proposed change to the refusal and review process for industrial design examination decisions", here is some feedback:

- **Q: Does the proposed change sufficiently address the need for a fair and impartial decision-maker?**  
A: The current PAB system relies on senior staff within CIPO and as a result the proposed system is equivalent in this regard. It would be good, however, to ensure that the subject matter expert within the policy and legislation group of the Trademarks and Industrial Designs Branch has prior experience in examination.
- **Q: Does the proposed change provide sufficient opportunity to be heard?**  
A: There is a loss of opportunity to be heard in the proposed change, since the current model provides the Applicant an opportunity to make further submissions before the PAB. To maintain this right, there should be an opportunity for the Applicant to make one last written (or better yet, oral) submission to the subject matter expert, explaining why it is that the case should be allowed.
- **Q: How fast should the decision review process be? Is there an ideal turnaround time?**  
A: Ideally, the review process should be on the same turnaround as an Examiner's Report. It may be reasonable to give up to 30% more time over that standard, to review the file history. But long periods of pendency for final actions should be avoided.
- **Q: 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?**  
A: Any application that has not yet been abandoned should be reviewed. A formal request should only be required if the applicant intends to make final submissions (see question #2 above).
- **Q: Should all applications be considered for refusal, even those for which objections are outstanding because the applicant failed or chose not to respond?**  
A: Abandoned applications should not be considered. But all other applications considered for refusal should go to final review.
- **Q: Do you have any comments, concerns or feedback with respect to the pilot project?**  
A: *As long as* the new system provides a applicants with an equivalent process, I agree it does make sense to move refusals out of the purview of the PAB.

Best Regards,

**Andrew Montague**  
Legal Counsel – Intellectual Property  
Tel: 403-296-5159  
[amontague@suncor.com](mailto:amontague@suncor.com)



---

-----  
If you wish to no longer receive electronic messages from this sender, please respond and advise accordingly in your return email.

This email and its contents are private and confidential, for the sole use of the addressees. If you are not an intended recipient, copying, forwarding or other distribution of this email or its contents by any means is prohibited. If you believe that you received this email in error please notify the original sender and delete this communication and any copies immediately.

Petro-Canada is a Suncor Energy business.

150 – 6th Avenue S.W., Calgary, Alberta, Canada, T2P 3E3 (Corporate Head Office) / [www.suncor.com](http://www.suncor.com)

-----  
Si vous ne voulez plus recevoir de messages électroniques de cet expéditeur, veuillez l'en aviser en répondant à ce courriel.

Ce courriel et son contenu sont privés et confidentiels, et sont destinés à l'usage exclusif des destinataires. Si vous n'êtes pas le destinataire prévu, toute reproduction, transfert ou autre forme de diffusion de ce courriel ou de son contenu par quelque moyen que ce soit est interdit. Si vous croyez avoir reçu ce courriel par erreur, veuillez en aviser l'expéditeur original et supprimer cette communication et toutes ses copies immédiatement.

Petro-Canada est une entreprise de Suncor Énergie.

150 – 6th Avenue S.W., Calgary, Alberta, Canada, T2P 3E3 (siège social) / [www.suncor.com](http://www.suncor.com)