

CANADA

Patent Rules

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Interpretation

Definitions

1 (1) The following definitions apply in these Rules.

Act means the Patent Act.

Administrative Instructions [Repealed]

Administrative Instructions under the PCT means the Administrative Instructions under the Patent Cooperation Treaty, including any modifications made from time to time.

associate patent agent means a patent agent appointed by another patent agent under section 28.

Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977, including any amendments and revisions made from time to time to which Canada is a party.

common representative means an applicant or patentee appointed under section 26, 218, 219 or 220.

description means, except in Form 1 of Schedule 1, the part of a specification other than the claims.

foreign practitioner means an individual whose name is included in the Register of Patent Agents under section 19 of the College of Patent Agents and Trademark Agents Regulations.

international application means an application for a patent filed under the Patent Cooperation Treaty.

international depositary authority has the same meaning as in Article 2(viii) of the Budapest Treaty.

national phase entry date means the date determined under subsection 155(2) or section 210, as applicable.

patent agent [Repealed]

Patent Cooperation Treaty means the Patent Cooperation Treaty, done at Washington on June 19, 1970, including any amendments, modifications and revisions made from time to time to which Canada is a party.

PCT national phase application means an international application in respect of which the applicant

(a) has complied with the requirements of subsection 154(1) and, if applicable, subsection 154(2); or

(b) has, before October 30, 2019, complied with the requirements of subsection 58(1) and, if applicable, subsection 58(2) of the Patent Rules, as they read immediately before that date.

PCT sequence listing standard means Standard ST.26 of the World Intellectual Property Organization, Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings using XML (eXtensible Markup Language), as amended from time to time.

presentation date means the date determined under subsection 103(2) or 202(2), as applicable.

Regulations under the Budapest Treaty means the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, including any amendments made from time to time.

Regulations under the PCT means the Regulations under the Patent Cooperation Treaty, including any amendments made from time to time.

sequence listing has the same meaning as in the PCT sequence listing standard.

Definition of drawing

(2) For the purposes of the Act and these Rules, drawing includes a photograph.

Reference to period

(3) A reference to a period of time in these Rules is, if the period is extended under section 3 or subsection 160(2) of these Rules or subsection 78(1) of the Act, to be read as a reference to the period as extended.

Clarification

2 For greater certainty, for the purposes of these Rules,

(a) an application for the reissue of a patent is not considered to be an application for a patent; and

(b) a patent granted on the basis of a divisional application that results from the division of an original application is not a patent granted on the basis of the original application.

PART 1 Rules of General Application

Extension of Time

Time fixed by Rules

3 (1) Subject to these Rules, the Commissioner is authorized to extend any period of time fixed by these Rules for doing anything - whether that period has expired or not - if the Commissioner considers that the circumstances justify the extension and if, before the end of that period, the extension is applied for and, except in the case of the period of time fixed by subsection 86(9), the fee set out in item 1 of Schedule 2 is paid.

Clarification

(2) For greater certainty, for the purpose of subsection (1), a period of time fixed by the Act that is dependent on a date that is prescribed by these Rules is not considered to be a period of time fixed by these Rules.

Other authorized extensions

(3) The Commissioner is authorized to extend the period of time for the payment of a fee referred to in subsection 44(1), 68(1) or (2), 80(1), 85.1(5), 86(1), (1.1), (6), (10) or (12) or 112(1), paragraph 112(5) (a) or (c) or 154(1) (c), subsection 154(2) or subparagraph 154(3) (a) (iii) or (b) (i) or (ii) after the expiry of that period if the Commissioner considers that the circumstances justify the extension and if

(a) the amount of the small entity fee was paid before the end of that period;

(b) it is later determined that the standard fee should have been paid;

(c) the applicant or patentee files a statement that, to the best of their knowledge, the small entity fee was paid in good faith and the application for the extension is being filed without undue delay after the applicant or patentee became aware that the standard fee should have been paid;

(d) the applicant or patentee pays the difference between the amount of the small entity fee that was paid and the standard fee that was applicable on the day on which the small entity fee was paid; and

(e) the applicant or patentee pays the fee set out in item 1 of Schedule 2.

Extension – erroneous information

(4) The Commissioner is authorized to extend any period of time for the payment of a fee set out in Schedule 2 or 3 after the expiry of that period if the Commissioner considers that the circumstances justify the extension and if

- (a) the Commissioner provided erroneous information in writing concerning the amount of the fee;
- (b) the applicant or patentee paid an insufficient amount as a result of that erroneous information;
- (c) the applicant or patentee identifies the source of the erroneous information that was relied on and files a statement that the application for the extension is being filed without undue delay after the applicant or patentee became aware that the amount paid was insufficient, unless the Commissioner considers that the circumstances do not justify requiring the statement and the application; and
- (d) the applicant or patentee pays the difference between the amount that was paid and the amount of the fee that was payable on the day on which the insufficient payment was made, unless the Commissioner waives payment of the difference under section 139.1.

Time fixed by subsection 18(2) of Act

4 The Commissioner is authorized to extend the period of time fixed by subsection 18(2) of the Act – whether that period has expired or not – if the Commissioner considers that the circumstances justify the extension and if, before the end of that period, the extension is applied for and the fee set out in item 1 of Schedule 2 is paid.

Prescribed days

5 The following days are prescribed for the purposes of subsection 78(1) of the Act:

- (a) Saturday;
- (b) Sunday;
- (c) January 1, or if January 1 falls on a Saturday or a 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 a Sunday, the following Monday;
- (h) July 1, or if July 1 falls on a Saturday or a 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 a Sunday, the following Monday;

(k) the second Monday in October;

(l) November 11, or if November 11 falls on a Saturday or a 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 a Sunday, the following Monday and Tuesday; and

(n) any day on which the Patent Office is closed to the public for all or part of the day during ordinary business hours.

Prescribed Fee

Small entity declaration filed after payment

5.1 Despite any provision of these Rules that sets out a small entity fee and a standard fee in respect of a patent or an application for a patent, if a patentee or applicant pays the standard fee and a small entity declaration is later filed in respect of that patent or application, the applicable fee is the standard fee.

Extension of time for payment of fee

5.2 For greater certainty, if the Commissioner extends the period of time for the payment of a fee under subsection 3(3) or (4), the applicable fee is:

(a) in the case of an extension under subsection 3(3), the standard fee that was payable on the day on which the small entity fee was paid; or

(b) in the case of an extension under subsection 3(4), the fee that was payable on the day on which the insufficient payment was made.

Communications

Written communications to Commissioner

6 Written communications intended for the Commissioner or the Patent Office must be addressed to the "Commissioner of Patents".

Postal address

7 (1) A person who is doing business before the Patent Office must provide the Commissioner with their postal address and a written communication sent by the Commissioner or the Patent Office to that person at that address is, unless the communication is withdrawn, considered to have been sent to that person on the date that it bears.

Email address

(2) If a person who is doing business before the Patent Office provides the Commissioner with their email address and authorizes the sending of communications to that address, a written communication sent by the Commissioner or the Patent Office as an email attachment to that person at that address is, unless the communication is withdrawn, considered to have been sent to that person on the date borne by the communication.

One patent or application for patent per communication

8 (1) A written communication intended for the Commissioner or the Patent Office must not relate to more than one patent or one application for a patent.

Exceptions

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

- (a) a change in a name or an address;
- (b) a transfer;
- (c) a request to register a document;
- (d) a fee to maintain in effect an application for a patent or the rights accorded by a patent;
- (e) an appointment, or revocation of an appointment, of a patent agent; or
- (f) a correction of an error, if the error and correction are the same in each patent or application for a patent.

Minimum content of written communications - applications

9 (1) A written communication in respect of an application for a patent that is intended for the Commissioner or the Patent Office must include the name of the applicant and the application number or, if the application number is not known, information that allows the application to be identified.

Minimum content of written communications - patents

(2) A written communication in respect of a patent that is intended for the Commissioner or the Patent Office must include the name of the patentee and the patent number.

Manner of submitting documents, information or fees

10 (1) Unless they are submitted by electronic means under subsection 8.1(1) of the Act, any documents, information or fees must be submitted to the Commissioner or the Patent Office by physical delivery to the Patent Office or to an establishment that is designated by the Commissioner as being accepted for that purpose.

Date of receipt - physical delivery to Patent Office

(2) Documents, information or fees that are submitted to the Commissioner or the Patent Office by physical delivery to the Patent Office are deemed to have been received by the Commissioner

- (a) if they are delivered when the Office is open to the public, on the day on which they are delivered; 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 submitted to the Commissioner or the Patent Office by physical delivery to a designated establishment are deemed to have been received by the Commissioner

- (a) if they are delivered when the establishment is open to the public,
 - (i) in the case where the Patent Office 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 first day on which the Patent Office 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 Patent Office 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 - submission by electronic means

(4) Documents, information or fees that are submitted by electronic means under subsection 8.1(1) of the Act are deemed to have been received by the Commissioner on the day on which, according to the local time of the place where the Patent Office is located, the Patent Office receives them.

Communication sent - suspension, revocation or surrender

11 Despite sections 34 and 35, if a patent agent's licence is suspended, revoked or surrendered, any communication respecting a patent or an application for a patent that is sent by the Commissioner or the Patent Office to that patent agent is considered not to have been sent to the patentee or applicant if

(a) it is sent within four months before the date of the suspension, revocation or surrender and no reply is provided before that date;

or

(b) it is sent on the date of the suspension, revocation or surrender.

Acknowledgment by Commissioner

12 A written communication submitted to the Commissioner in respect of a filing under section 34.1 of the Act and a written communication submitted to the Commissioner before the granting of a patent with the stated or apparent intention of protesting against the granting of that patent must be acknowledged, but information must not be given as to the action taken unless the application for the patent is open to public inspection at the Patent Office.

Presentation of Documents to Commissioner or Patent Office

Manner of submission

13 (1) Subject to subsection (2), documents submitted in paper form in connection with a patent and an application for a patent must

(a) be submitted on sheets of white paper that are free of creases and folds and that are 21.6 cm x 27.9 cm (8.5" x 11") or 21 cm x 29.7 cm (A4 format);

(b) be submitted in a manner that permits direct reproduction by the Patent Office; and

(c) be free of interlineations, cancellations or corrections.

Exception

(2) Certified copies of documents and documents concerning transfers referred to in section 49 of the Act may be submitted on sheets of paper that are not larger than 21.6 cm x 35.6 cm (8.5" x 14").

Layout

14 (1) Subject to subsection (2), the contents of each page of a document must be in an upright position.

Exception

(2) If it aids in presentation, figures, tables and chemical or mathematical formulas may appear sideways.

Documents not in English or French

15 (1) All documents or information submitted or made available to the Commissioner or the Patent Office must be in English or French, except for

(a) a document submitted or made available under paragraph 67(2)(b) or 72(3)(a) or subsection 74(1);

(b) the specification and the drawings included in an application for a patent on its filing date that are contained in a document referred to in paragraph 71(d);

(c) a document submitted under paragraph 85(1)(b);

(d) a copy of an international application submitted under paragraph 154(1)(a);

(e) text matter contained in a sequence listing; or

(f) a document or information that is deemed to have been received by the Commissioner under section 156.

Translation - previously filed application for a patent

(2) If, under paragraph 67(2)(b), a copy of a previously filed application for a patent is submitted to the Commissioner or made available in a digital library in a language other than English or French, the applicant must submit to the Commissioner an English or French translation of that application.

Translation – specification and drawings

(3) If all or part of the text matter of the specification or the drawings that are contained in a document referred to in paragraph 71(d) that is submitted for the purposes of subsection 28(1) of the Act are in a language other than English or French, the applicant must submit to the Commissioner an English or French translation of that text matter.

Sequence listing – English and French

(3.1) If a sequence listing contains text matter that is both in English and in French, only the following version of the text matter is taken into account for the purpose of interpreting the scope of protection sought or obtained:

- (a) if the sequence listing contains an indication that either English or French is the original language of that text matter, the version that is in that original language; and
- (b) in any other case, the version that is in the same language as the claims.

Sequence listing – other language

(3.2) Language-dependent free text that is contained in a sequence listing and that is in a language other than English or French is not taken into account for the purpose of interpreting the scope of protection sought or obtained.

Notice requiring translation

(4) If an applicant does not submit a translation required by subsection (2) or (3), the Commissioner must by notice require the applicant to submit the translation to the Commissioner not later than two months after the date of the notice.

Translation replaces original

(5) A translation submitted under subsection (2) or (3), or submitted after the notice referred to in subsection (4) is sent, replaces the text matter that was in a language other than English or French.

Restriction

(6) A translation of all or part of the text matter in a specification or a drawing, submitted under subsection (2) or (3), or submitted after the notice referred to in subsection (4) is sent,

must not contain any matter not reasonably to be inferred from the specification or the drawings contained in the application on its filing date.

Non-application of subsection 3(1)

(7) Subsection 3(1) does not apply in respect of the time referred to in subsection (4).

Confidentiality

Information respecting application for patent

16 Unless otherwise required by law, the Commissioner and the Patent Office must not provide any information in respect of an application for a patent that is not open to public inspection at the Patent Office to any person other than

(a) the applicant or, if there are joint applicants, any of the applicants;

(b) a patent agent appointed in respect of that application; or

(c) a person authorized by

(i) the applicant, if there is a single applicant,

(ii) the common representative, if there are joint applicants, or

(iii) a patent agent appointed in respect of that application.

Prescribed date - withdrawal of request for priority

17 For the purposes of subsection 10(4) of the Act, if a request for priority is withdrawn with respect to a previously regularly filed application for a patent, the prescribed date is the earlier of

(a) the day on which a period of 16 months after the filing date of the previously regularly filed application expires, and

(b) if the request for priority is based on more than one previously regularly filed application, the day on which a period of 16 months after the earliest of the filing dates of those applications expires.

Prescribed date - withdrawn application

18 For the purposes of subsection 10(5) of the Act, the prescribed date is the earlier of

(a) the day that is two months before the expiry date of the confidentiality period referred to in subsection 10(2) of the Act, and

(b) if applicable, the day on which the applicant submits their

approval under subsection 10(2) of the Act for the application for a patent to be open to public inspection before the expiry of the confidentiality period.

19 - 25 [Repealed]

Appointment of Common Representative

Power of joint applicants to appoint common representative

26 (1) If, in respect of an application for a patent, there are joint applicants, one applicant may be appointed by the other applicants as their common representative.

Power of joint patentees to appoint common representative

(2) If, in respect of a patent, there are joint patentees, one patentee may be appointed by the other patentees as their common representative.

Manner of appointment

(3) The appointment of a common representative must be made by one of the following methods:

(a) in respect of a patent or an application for a patent, in a notice to that effect that is signed by the other applicants or patentees and submitted to the Commissioner;

(b) in respect of an application for a patent - other than a divisional application or an international application - that includes a petition on the filing date, in that petition; and

(c) in respect of a PCT national phase application, in a notice to that effect that is submitted to the Commissioner on or before the national phase entry date of that application.

Common representative by default - application for patent

(4) Subject to subsections (6), (9) and (11), in respect of an application for a patent - other than a divisional application - in relation to which there are joint applicants and no common representative is appointed under subsection (3), the following person is deemed to be appointed as the common representative:

(a) in respect of an application for a patent, other than a PCT national phase application,

(i) in the case where the application included a petition on the filing date, the first person named as an applicant in that

petition,

(ii) in the case where, on the filing date, the application did not include a petition but did include a single other document naming the joint applicants, the joint applicant whose name appears first in that document, and

(iii) in any other case, the joint applicant whose name appears first when listed in alphabetical order on the filing date; and

(b) in respect of a PCT national phase application,

(i) if joint applicants are named in the corresponding request under Article 4 of the Patent Cooperation Treaty, if more than one applicant complied with the requirements of subsection 154(1) and, if applicable, subsection 154(2), and if the first person named as an applicant in that request is one of those applicants, the first person named as an applicant in that request, and

(ii) in any other case, the joint applicant who complied with the requirements of subsection 154(1) and, if applicable, subsection 154(2), and whose name appears first when listed in alphabetical order.

Common representative by default - divisional application

(5) Subject to subsections (6), (9) and (11), in respect of a divisional application, in relation to which there are joint applicants and no common representative is appointed under paragraph (3) (a), the following person is deemed to be appointed as the common representative:

(a) if, at the end of the day on the presentation date of the divisional application, the person who was the common representative in respect of the original application was an applicant of the divisional application, that person; and

(b) in any other case, the first person named as an applicant in the petition contained in the divisional application on its presentation date.

Common representative by default - correction or decision

(6) Subject to subsections (9) and (11), in respect of an application for a patent in relation to which there are joint applicants and no common representative is appointed under subsection (3), if a correction has been made with respect to the naming of applicants under section 104 or subsection 154(6) and the correction has changed the identity of the applicants, or if a

decision is made by the Commissioner under subsection 31(2), (3) or (4) of the Act, other than a decision refusing an application under one of those subsections, the joint applicant whose name appears first when listed in alphabetical order after that correction or decision – or if there is more than one correction or decision, or both a correction and a decision, after the most recent of those corrections or decisions – is deemed to be appointed as the common representative.

Common representative by default - patent

(7) Subject to subsections (9) and (11), in respect of a patent – other than a reissued patent – in relation to which there are joint patentees and no common representative is appointed under paragraph (3)(a), the person who, immediately before the patent was granted, was the common representative in respect of the application on the basis of which the patent was granted, is deemed to be appointed as the common representative in respect of the patent.

Common representative by default - reissued patent

(8) Subject to subsections (9) and (11), in respect of a reissued patent, in relation to which there are joint patentees and no common representative is appointed under paragraph (3)(a), the person who was the common representative in respect of the original patent immediately before the patent was reissued is deemed to be appointed as the common representative in respect of the reissued patent.

Common representative by default - transfer of rights of single applicant or patentee

(9) Subject to subsection (11), in the case where, under section 49 of the Act, the Commissioner, on or after the applicable date referred to in subsection (10), recorded the transfer of all or part of the rights of an applicant in an application for a patent or all or part of the rights of a patentee in a patent, as set out in the records of the Patent Office immediately before the transfer is recorded, that applicant was the only applicant of the application immediately before the transfer was recorded, or that patentee was the only patentee of the patent immediately before the transfer was recorded, no other person has been a single applicant of that application or a single patentee of that patent since that transfer was recorded and no common representative has been appointed under subsection (3) in respect of that application or that patent, the

following person is deemed to be appointed as the common representative in respect of that patent or application:

(a) if, immediately after the transfer is recorded, the person who transferred those rights is still an applicant of the application or a patentee of the patent, that person; and

(b) if, immediately after the transfer is recorded, the person who transferred those rights is no longer an applicant of the application or a patentee of the patent, the transferee whose name appears first in the request to record the transfer.

Applicable date

(10) For the purposes of subsection (9), the applicable date is

(a) in respect of an application for a patent, other than a PCT national phase application or a divisional application, the filing date of the application;

(b) in respect of a PCT national phase application, the national phase entry date;

(c) in respect of a divisional application, the presentation date of the application;

(d) despite paragraphs (a) to (c), in respect of an application in relation to which one or more corrections or decisions referred to in subsection (6) have been made, the date of that correction or decision or, if there is more than one correction or decision, or both a correction and a decision, the date of the most recent of those corrections or decisions;

(e) in respect of a patent, other than a reissued patent, the date on which the patent was granted; and

(f) in respect of a reissued patent, the date on which the patent was reissued.

Common representative by default - transfer of rights of common representative

(11) If, under section 49 of the Act, the Commissioner records the transfer of all of the rights of a common representative in a patent or an application for a patent, as set out in the records of the Patent Office immediately before the transfer is recorded, and, immediately after the transfer is recorded, there is still more than one applicant for the patent or more than one patentee for the patent but no other common representative is appointed under paragraph (3)(a), the following person is deemed to be appointed as the common representative in respect of that patent or application:

- (a) if the rights of the common representative are transferred to a single person, that person; and
- (b) if the rights of the common representative are transferred to more than one person, the transferee whose name appears first in the request to record the transfer.

Revocation of appointment

(12) An appointment of a common representative, including a deemed appointment, is revoked by the subsequent appointment of another common representative under paragraph (3)(a) or subsection (11).

Appointment of Patent Agents

Power to appoint patent agent

27 (1) An applicant for a patent, a patentee or other person may appoint either one patent agent or all the patent agents at the same firm to represent them before the Patent Office in respect of a patent or an application for a patent.

Mandatory appointment of patent agent

(2) An applicant for a patent must appoint one patent agent or all the patent agents at the same firm to represent them before the Patent Office in respect of their application for a patent if

- (a) the application is filed by a person other than the inventor;
- (b) there is more than one inventor and the application is not filed jointly by all of the inventors; or
- (c) a transfer, in whole or in part, of the application has been recorded by the Commissioner under section 49 of the Act.

Manner of appointment by applicant or patentee

(3) The appointment of one patent agent or all the patent agents at the same firm by an applicant for a patent or a patentee must be made by one of the following methods:

(a) in respect of a patent or an application for a patent, in a notice to that effect that is submitted to the Commissioner and signed by

(i) if there is a single applicant or patentee, the applicant or patentee,

(ii) if there is a single applicant or patentee and a document authorizing a foreign practitioner to appoint a patent agent is signed by the applicant or patentee and submitted at the same time

to the Commissioner, that foreign practitioner,
(iii) if there are joint applicants or patentees, the common representative, or
(iv) if there are joint applicants or patentees and a document authorizing a foreign practitioner to appoint a patent agent is signed by the common representative and submitted at the same time to the Commissioner, that foreign practitioner;
(b) in respect of an application for a patent - other than a divisional application or an international application - that includes a petition on the filing date, in that petition;
(c) in respect of a PCT national phase application, in a notice to that effect submitted to the Commissioner on or before the national phase entry date of that application; and
(d) in respect of a divisional application, in the petition included in the application on its presentation date.

Manner of appointment by another person

(4) The appointment, other than as an associate patent agent, of one patent agent or all the patent agents at the same firm, by a person other than an applicant for a patent or a patentee to represent them before the Patent Office in respect of a patent or an application for a patent must be made in a notice to that effect submitted to the Commissioner and signed by
(a) that person; or
(b) if a document signed by that person authorizing a foreign practitioner to appoint a patent agent is submitted at the same time to the Commissioner, that foreign practitioner

Consent to appointment

(5) If a person, other than a patent agent, submits to the Commissioner a document appointing, other than as an associate patent agent, one patent agent or all the patent agents at the same firm, the appointment is not effective until evidence of consent to that appointment by that one patent agent or by any of the patent agents at that firm is submitted to the Commissioner.

Patent agent by default - patent

(6) The patent agent or all the patent agents at the same firm appointed in respect of an application for a patent under subsection 27(3) or (4) are deemed, unless the appointment document indicates otherwise, to have also been appointed in respect of any patent

granted on the basis of the application.

Revocation - appointment by applicant or patentee

(7) The appointment, including a deemed appointment, of one patent agent or all the patent agents at the same firm in respect of a patent or an application for a patent by an applicant for a patent or a patentee is revoked if

(a) a notice to that effect is submitted to the Commissioner and signed by that one patent agent or any of the patent agents at that firm or by

(i) if there is a single applicant or patentee, the applicant or patentee,

(ii) if there is a single applicant or patentee and a document authorizing a foreign practitioner to revoke the appointment is signed by the applicant or patentee and is submitted at the same time to the Commissioner, that foreign practitioner,

(iii) if there are joint applicants or patentees, the common representative, or

(iv) if there are joint applicants or patentees and a document signed by the common representative authorizing a foreign practitioner to revoke the appointment is submitted at the same time to the Commissioner, that foreign practitioner; or

(b) the licence of that one patent agent, or each of the patent agents at that firm, is suspended, revoked or surrendered.

Revocation - appointment by another person

(8) The appointment, including a deemed appointment, of a patent agent, other than an associate patent agent, of one patent agent or all the patent agents at the same firm, in respect of a patent or an application for a patent by a person other than an applicant for a patent or a patentee is revoked if

(a) a notice to that effect, signed by that person, by that one patent agent or by any of the patent agents at that firm, is submitted to the Commissioner;

(b) a document signed by that person authorizing a foreign practitioner to revoke the appointment is submitted to the Commissioner at the same time as a notice revoking the appointment signed by that foreign practitioner; or

(c) the licence of that one patent agent, or each of the patent agents at that firm, is suspended, revoked or surrendered.

Power to appoint associate patent agent

28 (1) A patent agent appointed by an applicant for a patent, a patentee or other person to represent them before the Patent Office in respect of a patent or an application for a patent may appoint one patent agent or all the patent agents at the same firm as an associate patent agent in respect of that patent or application.

(2) [Repealed]

Manner of appointment

(3) The appointment of one patent agent or all the patent agents at the same firm as an associate patent agent must be made by one of the following methods:

(a) in respect of a patent or an application for a patent, in a notice to that effect that is signed by the patent agent appointing the associate patent agent and submitted to the Commissioner;

(b) in respect of an application for a patent - other than a divisional application or an international application - that includes a petition on the filing date, in that petition if the petition is submitted by a patent agent;

(c) in respect of a PCT national phase application, in a notice to that effect submitted to the Commissioner by a patent agent on or before the national phase entry date of that application; and

(d) in respect of a divisional application, in the petition included in the application on its presentation date if the petition is submitted by a patent agent.

Associate patent agent by default - patents

(4) Any associate patent agent appointed in respect of an application for a patent under subsection (3) is deemed, unless the appointment document indicates otherwise, to have also been appointed in respect of any patent granted on the basis of the application.

Revocation of appointment - one associate patent agent acting alone

(5) The appointment, including a deemed appointment, of one patent agent as an associate patent agent in respect of a patent or an application for a patent is revoked if

(a) in the case where the associate patent agent was appointed by one patent agent who was appointed under subsection 27(3) or (4),

(i) a notice of revocation signed by the associate patent agent or the patent agent is submitted to the Commissioner,

- (ii) the associate patent agent's licence is suspended, revoked or surrendered, or
- (iii) the appointment of the patent agent is revoked; and
- (b) in the case where the associate patent agent was appointed by one of the patent agents at the same firm who were appointed under subsection 27(3) or (4),
 - (i) a notice of revocation signed by the associate patent agent or by one of the patent agents at the firm is submitted to the Commissioner,
 - (ii) the associate patent agent's licence is suspended, revoked or surrendered, or
 - (iii) the appointment of all the patent agents at the firm is revoked.

Revocation of appointment – associate patent agent

- (5.1)** The appointment, including a deemed appointment, as an associate patent agent, of all the patent agents at the same firm in respect of a patent or an application for a patent is revoked if
- (a) in the case where they were appointed by one patent agent who was appointed under subsection 27(3) or (4),
 - (i) a notice of revocation signed by one of the patent agents at the firm acting as an associate patent agent or by the patent agent who appointed them is submitted to the Commissioner,
 - (ii) the licence of each of the patent agents acting as an associate patent agent is suspended, revoked or surrendered, or
 - (iii) the appointment of the patent agent is revoked; and
 - (b) in the case where they were appointed by one of the patent agents at the same firm who were appointed under subsection 27(3) or (4),
 - (i) a notice of revocation signed by one of the patent agents at the firm acting as an associate patent agent, or by one of the patent agents at the firm that appointed them, is submitted to the Commissioner,
 - (ii) the licence of each of the patent agents acting as an associate patent agent is suspended, revoked or surrendered, or
 - (iii) the appointment under subsection 27(3) or (4) of all the patent agents at the firm is revoked.

Power to appoint associate patent agent

28 (1) A patent agent appointed by an applicant for a patent, a patentee or other person to represent them in any business before the

Patent Office in respect of a patent or an application for a patent may appoint one patent agent or all the patent agents at the same firm as an associate patent agent in respect of that patent or application.

(2) [Repealed]

Manner of appointment

(3) The appointment of one patent agent or all the patent agents at the same firm as an associate patent agent must be made by one of the following methods:

(a) in respect of a patent or an application for a patent, in a notice to that effect that is signed by the patent agent appointing the associate patent agent and submitted to the Commissioner;

(b) in respect of an application for a patent - other than a divisional application or an international application - that includes a petition on the filing date, in that petition if the petition is submitted by a patent agent;

(c) in respect of a PCT national phase application, in a notice to that effect submitted to the Commissioner by a patent agent on or before the national phase entry date of that application; and

(d) in respect of a divisional application, in the petition included in the application on its presentation date if the petition is submitted by a patent agent.

Associate patent agent by default - patents

(4) Any associate patent agent appointed in respect of an application for a patent under subsection (3) is deemed, unless the appointment document indicates otherwise, to have also been appointed in respect of any patent granted on the basis of the application.

Revocation of appointment of associate patent agent

(5) The appointment, including a deemed appointment, of one patent agent as an associate patent agent in respect of a patent or an application for a patent is revoked if

(a) in the case where the associate patent agent was appointed by one patent agent who was appointed under subsection 27(3) or (4),

(i) a notice of revocation signed by the associate patent agent or the patent agent is submitted to the Commissioner,

(ii) the associate patent agent's licence is suspended, revoked or surrendered, or

(iii) the appointment of the patent agent is revoked; and

(b) in the case where the associate patent agent was appointed by one

of the patent agents at the same firm who were appointed under subsection 27(3) or (4),

(i) a notice of revocation signed by the associate patent agent or by one of the patent agents at the firm is submitted to the Commissioner,

(ii) the associate patent agent's licence is suspended, revoked or surrendered, or

(iii) the appointment of all the patent agents at the firm is revoked.

Patent agent – member of firm

28.1 If all the patent agents at the same firm have been appointed under section 27 or 28, the following rules apply:

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

(b) a person who is a member of the firm who becomes a patent agent after the appointment is deemed to have been appointed beginning on the day on which they become a patent agent;

(c) the appointment of a patent agent who ceases to be a member of the 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 patent 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.

Appointment document – one patent agent

29 (1) A document appointing one patent agent must include the name and postal address of that patent agent.

Appointment document – all the patent agents

(2) A document appointing all the patent agents at the same firm must include the name and postal address of the firm. An appointment document that includes only the name and postal address of the firm is sufficient to appoint all the patent agents at that firm.

Written communications

29.1 If all the patent agents at the same firm have been appointed or are deemed to have been appointed under section 27 or 28, any written communication sent by the Commissioner or the Patent Office to the firm is considered to have been sent to all of the patent agents at the firm.

Patent agent by default - transfer

30 The patent agent or all the patent agents at the same firm who were appointed, other than as an associate patent agent, to represent an applicant or patentee before the Patent Office are, unless otherwise indicated in a request to record a transfer under subsection 49(2) or (3) of the Act, deemed to have been appointed by the transferee in respect of the patent or the application that is the subject of the recording.

Notice requiring appointment of patent agent

31 If an applicant for a patent is required under subsection 27(2) to appoint a patent agent but no patent agent is appointed, the Commissioner must by notice to the applicant require that, not later than three months after the date of the notice, the applicant appoint a patent agent.

Successor patent agent

32 (1) A patent agent who, in respect of a patent or application for a patent, demonstrates to the Commissioner that they are the successor to a patent agent or all the patent agents at the same firm who were appointed under section 27 or 28 and who have since withdrawn from practice is deemed to be appointed under section 27 or 28, as the case may be, in respect of that patent or application.

Successor patent agents

(2) All the patent agents at the same firm who, in respect of a patent or application for a patent, demonstrate to the Commissioner that they are the successors to a patent agent or all the patent agents at the same firm who were appointed under section 27 or 28 and who have since withdrawn from practice are deemed to be appointed under section 27 or 28, as the case may be, in respect of that patent or application.

Representation

Effect of act by common representative

33 Subject to sections 36 and 37, in any business before the Patent Office, an act done in respect of a patent or an application for a patent, by or in relation to a common representative, has the effect of an act done by or in relation to all of the applicants or patentees.

Effect of act by patent agent

34 Subject to sections 36 and 37, in any business before the Patent Office, an act done in respect of a patent or an application for a patent, by or in relation to a patent agent, other than an associate patent agent, who is appointed in respect of that application or patent, has the same effect as an act done by or in relation to the applicant for a patent, a patentee or other person who appointed the patent agent.

Effect of act by associate patent agent

35 Subject to sections 36 and 37, in any business before the Patent Office, an act done in respect of a patent or an application for a patent, by or in relation to an associate patent agent appointed in respect of that application or patent, has the same effect as an act done by or in relation to the applicant for a patent, a patentee or other person who appointed the patent agent who appointed the associate patent agent.

Prosecuting or maintaining in effect application for patent

36 (1) Subject to subsections (2) to (5), only the following persons are authorized to act in any business before the Patent Office for the purpose of prosecuting or maintaining in effect an application for a patent:

- (a) if, in respect of the application, a patent agent is appointed or if there is a requirement under subsection 27(2) to appoint a patent agent, a patent agent who is; and
- (b) in any other case,
 - (i) if there is a single applicant, the applicant, and
 - (ii) if there are joint applicants, the common representative.

Exceptions

(2) For the purposes of filing an application for a patent, paying a fee under subsection 27(2) or section 27.1 of the Act, paying the additional fee for late payment referred to in subsection 154(4) of these Rules or complying with the requirements of subsection 154(1), (2) or (3) of these Rules,

- (a) if there is a single applicant, they must represent themselves or be represented by a patent agent who has been appointed in respect of that business; and
- (b) if there are joint patentees, the patentees must be represented by the common representative or by a patent agent who has been appointed in respect of that business.

Exceptions

(3) For the purpose of submitting a request to record a transfer under subsection 49(2) of the Act,

(a) if there is a single applicant, they must represent themselves or be represented by a person authorized by the applicant; and

(b) if there are joint applicants,

(i) in the case where the transfer is a transfer of the right or interest of a single joint applicant, the joint applicants must be represented by that joint applicant or by the common representative, or by a person authorized by that joint applicant or by the common representative, and

(ii) in any other case, the joint applicants must be represented by the common representative or by a person authorized by the common representative.

Exceptions

(4) For the purposes of submitting a request to record a name change under section 125,

(a) if there is a single applicant, they must represent themselves or be represented by a person authorized by the applicant; and

(b) if there are joint applicants, they must be represented by the common representative or by a person authorized by the common representative.

Exceptions

(5) For the purposes of section 27.01 or 28.01 of the Act, for the purpose of paying a fee in respect of an application for a patent - other than a fee under subsection 27(2) or section 27.1 of the Act or a fee referred to in subsection 154(1), (2), (3) or (4) of these Rules - or for the purpose of taking any of the actions required by subparagraphs 73(3)(a)(i) to (iv) of the Act to reinstate an application for a patent deemed to be abandoned under paragraph 73(1)(c) of the Act,

(a) if there is a single applicant, they may represent themselves; and

(b) if there are joint applicants, they may be represented by the common representative.

Procedure relating to patent

37 (1) Subject to subsection (2), in any business before the Patent Office for the purpose of a procedure relating to a patent,

- (a) if there is a single patentee, they must represent themselves or be represented by any person authorized by them; and
- (b) if there are joint patentees,
 - (i) for the purpose of paying a fee under section 46 of the Act, the patentees must be represented by one of the patentees or by a person authorized by one of the patentees,
 - (ii) for the purpose of submitting a request to record a transfer under subsection 49(3) of the Act,
 - (A) in the case where the transfer is a transfer of the right or interest of a single joint patentee, the joint patentees must be represented by that joint patentee or by the common representative, or by a person authorized by that joint patentee or by the common representative, and
 - (B) in any other case, the joint patentees must be represented by the common representative or a person authorized by the common representative, and
 - (iii) for any other purpose, the patentees must be represented by the common representative or by a person authorized by the common representative.

Reissue, disclaimer or participation in re-examination

- (2) In any business before the Patent Office for the purpose of reissuing a patent under section 47 of the Act, making a disclaimer under section 48 of the Act, filing a reply under subsection 48.2(5) of the Act or participating in a re-examination proceeding under section 48.3 of the Act,
- (a) if there is a single patentee, they must represent themselves or be represented by a patent agent who has been appointed in respect of that business; and
 - (b) if there are joint patentees, the patentees must be represented by the common representative or by a patent agent who has been appointed in respect of that business.

Clarification

- 38 For greater certainty, sections 33 to 37 do not apply to the act of signing
- (a) a small entity declaration;
 - (b) a notice of appointment of a common representative or a patent agent;
 - (c) a notice of revocation of an appointment of a patent agent; or
 - (d) a document authorizing a foreign practitioner to appoint or

revoke the appointment of a patent agent, have an interview with an examiner or sign a small entity declaration.

Interview with officer or employee

39 Only the following persons may have an interview with an officer or employee of the Patent Office regarding an application for a patent:

(a) if, in respect of that application, a patent agent residing in Canada is appointed or there is a requirement under subsection 27(2) to appoint a patent agent,

(i) the patent agent who is appointed, and

(ii) with the permission of the patent agent who is appointed,

(A) if there is a single applicant, the applicant,

(B) if there is a single applicant and a document authorizing a foreign practitioner to have an interview with an examiner is signed by the applicant, that foreign practitioner,

(C) if there are joint applicants, the common representative, or

(D) if there are joint applicants and a document authorizing a foreign practitioner to have an interview with an examiner is signed by the common representative, that foreign practitioner;
and

(b) in any other case,

(i) the applicant, if there is a single applicant, and

(ii) the common representative, if there are joint applicants.

Notice of disregarded communication

40 (1) If, in any business for the purpose of prosecuting or maintaining in effect an application for a patent or for the purpose of a procedure relating to a patent, a joint applicant or joint patentee who is not the common representative of the joint applicants or joint patentees sends a written communication to the Commissioner in respect of any business for which the common representative is entitled to represent the applicants or the patentees, the Commissioner must by notice inform that joint applicant or joint patentee that the Commissioner will not have regard to that communication unless, not later than three months after the date of the notice, that joint applicant or joint patentee is appointed in accordance with paragraph 26(3) (a) to represent the applicants or patentees as the common representative and requests that the Commissioner have regard to the communication.

Exception

(2) Subsection (1) does not apply to a communication in respect of any business under subsection 36(2), (3) or (4) or to a communication in respect of any business for the purpose of a procedure relating to a patent, other than a communication in respect of business referred to in subsection 37(2).

Communication deemed received

(3) If, not later than three months after the date of the notice referred to in subsection (1), the joint applicant or joint patentee who sent a written communication to the Commissioner is appointed under paragraph 26(3)(a) to represent the applicants or patentees as their common representative and requests that the Commissioner have regard to the communication, the communication is deemed to have been received from the common representative on the date on which it was originally received from the joint applicant or joint patentee.

Notice of disregarded communication

41 (1) If a patent agent who is not appointed to represent an applicant or patentee in respect of a patent or an application for a patent communicates in writing with the Commissioner on behalf of that applicant or patentee for the purpose of prosecuting or maintaining in effect that application or for the purpose of a procedure relating to that patent and the communication identifies that patent agent, the Commissioner must by notice inform the patent agent that the Commissioner will not have regard to that communication unless, not later than three months after the date of the notice, the patent agent is appointed to represent that applicant or patentee in respect of that application or patent and requests that the Commissioner have regard to the communication.

Exception

(2) Subsection (1) does not apply to a communication in respect of any business under subsection 36(2), (3) or (4) or to a communication in respect of any business for the purpose of a procedure relating to a patent, other than a communication in respect of any business referred to in subsection 37(2).

Communication deemed received

(3) If, not later than three months after the date of the notice referred to in subsection (1), the patent agent is appointed to

represent that applicant or patentee in respect of that patent or application for a patent and requests that the Commissioner have regard to the communication, the communication is deemed to have been received from the applicant or patentee on the date on which the communication was originally received from the patent agent.

Named patent agent

41.1 (1) In any business before the Patent Office in respect of which a patent agent acts under subsection 36(1) or (5), or represents a patentee under subsection 37(2), written communications on behalf of the applicant or patentee must be submitted to the Commissioner or the Patent Office by a named patent agent.

Notice

(2) If the patent agent is not named, the Commissioner must by notice inform the sender that the Commissioner will not have regard to the communication unless, not later than three months after the date of the notice, the patent agent who submitted the communication provides their name to the Commissioner and requests that the Commissioner have regard to the communication.

Date communication received

(3) If the name of the patent agent and the request referred to in subsection (2) are provided to the Commissioner within the time limit set out in that subsection, the original communication is considered to have been received on the day on which it was actually received by the Commissioner or the Patent Office.

Government-owned Patents

Notice to applicant

42 If the Governor in Council orders, under subsection 20(17) of the Act, that an invention described in an application for a patent must be treated for the purposes of section 20 of the Act as if it had been assigned or agreed to be assigned to the Minister of National Defence, the Commissioner must, as soon as the Commissioner is informed of the order, notify the applicant.

Inspection of defence-related application for patent

43 The Commissioner must permit a public servant who is authorized in writing by the Minister of National Defence, or an officer of the

Canadian Forces who is authorized in writing by the Minister of National Defence, to inspect a pending application for a patent that relates to an instrument or munition of war to do so and to obtain a copy of the application.

Presentation of Application for a Patent

General

Application fee

44 (1) For the purposes of subsection 27(2) of the Act, the prescribed application fee is

(a) the small entity fee set out in item 6 of Schedule 2, if the small entity status condition set out in subsection (2) is met and a small entity declaration is filed in respect of the application for a patent in accordance with subsection (3),

(i) on or before the filing date of the application or, in the case of a divisional application, on or before the presentation date of the divisional application, or

(ii) if a notice is required to be given under subsection 27(7) of the Act, before the notice is given or, if the notice has been given, not later than three months after the date of the notice; and

(b) in any other case, the standard fee set out in that item.

Small entity status condition

(2) The small entity status condition is that

(a) in respect of an application for a patent - other than a PCT national phase application or a divisional application - the applicant of the application on the filing date is, on that date, an entity that has fewer than 100 employees or less or is a university, other than

(i) an entity that is controlled directly or indirectly by an entity, other than a university, that has 100 employees or more, or

(ii) an entity that has transferred or licensed, or has an obligation other than a contingent obligation to transfer or license, any right or interest in a claimed invention to an entity, other than a university, that has 100 employees or more;

(b) in respect of an international application, the applicant of the application on the national phase entry date is, on that date, an entity that has fewer than 100 employees or less or is a university, other than an entity referred to in subparagraph (a) (i) or (ii); and

(c) in respect of a divisional application, the applicable requirements of this subsection are met in respect of the original application.

Small entity declaration

(3) A small entity declaration must

(a) be filed with the Commissioner in the petition or in a document other than the abstract, the specification or the drawings, that identifies the application for a patent to which the declaration relates;

(b) contain a statement to the effect that the applicant believes that the small entity status condition set out in subsection (2) is met in respect of that application for a patent;

(c) be signed by a patent agent appointed in respect of that application or

(i) if there is a single applicant, the applicant,

(ii) if there is a single applicant and a document authorizing a foreign practitioner to sign a small entity declaration is signed by the applicant and submitted to the Commissioner at the same time as the declaration, that foreign practitioner,

(iii) if there are joint applicants, any one of the applicants, or

(iv) if there are joint applicants and a document authorizing a foreign practitioner to sign a small entity declaration is signed by any one of the applicants and submitted to the Commissioner at the same time as the declaration, that foreign practitioner; and

(d) indicate the name of the applicant and, if applicable, the name of the patent agent or the foreign practitioner signing the declaration.

Non-application of subsection 3(1)

(4) Subsection 3(1) does not apply in respect of the times referred to in subsection (1).

Late fee

45 For the purposes of subsection 27(7) of the Act, the prescribed late fee is the fee set out in item 7 of Schedule 2.

Text in English or French

46 The text matter in the abstract, the description, the drawings and the claims, other than any text matter contained in a sequence listing, must be entirely in English or entirely in French.

Page margins - description, claims and abstract

47 (1) The minimum margins of pages that contain the description,

the claims or the abstract must be as follows:

top margin, 2 cm
left margin, 2.5 cm
right margin, 2 cm
bottom margin, 2 cm

Page margins - drawings

(2) The minimum margins of pages containing the drawings must be as follows:

top margin, 2.5 cm
left margin, 2.5 cm
right margin, 1.5 cm
bottom margin, 1 cm

Blank margins

(3) Subject to subsections (4) and (5), the margins of the pages referred to in subsections (1) and (2) must be completely blank.

File reference

(4) The top margin of the pages referred to in subsections (1) and (2) may contain in either corner an indication of the applicant's file reference.

Line numbering

(5) The lines of each page of the description and of the claims may be numbered in the left margin.

Line spacing

48 (1) All text matter in the description and the claims must be at least 1 1/2 line spaced, except for sequence listings, tables and chemical and mathematical formulas.

Font size

(2) All text matter in the description and the claims must be in characters the capital letters of which are not less than 0.21 cm in height.

New page

49 The petition, the abstract, the description, the drawings and the claims must each begin on a new page.

Page numbering

50 (1) The pages of the specification must be numbered consecutively.

Position of page numbers

(2) The page numbers must be centered at the top or bottom of each page, but must not be placed in the margin.

No drawings

51 (1) The petition, the abstract, the description and the claims must not contain drawings.

Formulas

(2) The abstract, the description and the claims may contain chemical or mathematical formulas.

Identification of trademarks

52 A trademark mentioned in an abstract, a specification or a drawing must be identified as such.

Petition**Title and content**

53 A petition must bear the title "Petition" or "Request" and must contain

- (a) a request for the grant of a patent;
- (b) the title of the invention; and
- (c) the name and postal address of the applicant.

Inventors and Entitlement

Information on inventors

54 (1) The application must indicate the name and postal address of each inventor of the subject-matter of the invention for which an exclusive privilege or property is claimed.

Statement

(2) The application must contain

(a) a statement to the effect that the applicant is or, if there are joint applicants, the applicants are entitled to apply for a patent;

(b) a statement to the effect that the applicant is the sole inventor of the subject-matter of the invention for which an exclusive privilege or property is claimed or, if there are joint applicants, the applicants are all inventors and the sole inventors of that subject-matter; or

(c) in respect of a PCT national phase application, a declaration as to the applicant's or, if there are joint applicants, the applicants' entitlement on the filing date to apply for and be granted a patent in accordance with Rule 4.17(ii) of the Regulations under the PCT.

Translation

(2.1) If all or part of a declaration referred to in paragraph

(2)(c) is in a language other than English or French, the applicant must submit to the Commissioner an English or French translation of the declaration or part in question.

Manner of presentation

(3) The statement and information required by this section must be included in the petition or submitted in a document other than the abstract, the specification or the drawings.

Abstract

Inclusion of abstract

55 (1) An application for a patent must contain an abstract that has a concise summary of the disclosure that appears in the description, claims and drawings and, if applicable, must include the chemical formula that, among all the formulas included in the application, best characterizes the invention.

Technical field

(2) The abstract must specify the technical field to which the invention relates.

Drafting

(3) The abstract must be drafted in a manner that allows an understanding of the technical problem, the gist of the solution of that problem by means of the invention and the principal use or uses of the invention.

Scanning tool

(4) The abstract must be drafted in a manner that can efficiently serve as a scanning tool for the purposes of searching in the particular art.

Word limit

(5) The abstract must not contain more than 150 words.

Reference to drawings

(6) In the abstract, a feature may be followed by a reference character placed between parentheses, if that feature is illustrated in the drawings of the application for a patent.

Amendment or replacement of abstract

(7) If the Commissioner considers that an abstract does not comply with subsections (1) to (6), the Commissioner is authorized to amend or replace the abstract.

Abstract not relevant

(8) An abstract must not be taken into account for the purpose of interpreting the scope of protection sought or obtained.

Description

Contents, manner and order

56 (1) The description must include the following information, set out in the following manner and order:

(a) the title of the invention must be stated in a short and precise manner and must not include a trademark, coined word or personal name;

(b) the technical field to which the invention relates must be specified;

(c) the background art that, as far as is known to the applicant, is important for the understanding, searching and examination of the invention must be described;

(d) a description of the invention must be set out in terms that permit the technical problem and its solution to be understood, even if that problem is not expressly stated;

(e) the figures in the drawings, if any, must be concisely described;

(f) at least one mode contemplated by the inventor for carrying out the invention must be set out using examples, if appropriate, and with reference to the drawings, if any; and

(g) a sequence listing, if required by subsection 58(1), must be included.

Exception

(2) The description may be presented in a different manner or order if, because of the nature of the invention, a different manner or order would result in a better understanding or more economical presentation of the invention.

No incorporation by reference

57 (1) The description must not incorporate any document by reference.

No reference to certain documents

(2) The description must not refer to a document that does not form part of the application for a patent unless the document is available to the public.

Identification of documents

(3) Every document referred to in the description must be fully identified.

Sequence Listings

PCT sequence listing standard

58 (1) If a specification discloses a nucleotide sequence or amino acid sequence that must, in accordance with the PCT sequence listing standard, be included in a sequence listing and that is not identified as forming a part of the prior art, the description must contain the sequence listing in electronic form and both the electronic form and the content of the sequence listing must comply with the PCT sequence listing standard.

One copy per application

(2) An application for a patent must not contain more than one copy of a particular sequence listing regardless of its form of presentation.

Statement - application originally filed without sequence listing

(3) If an application for a patent originally filed without a sequence listing is amended to include one, the applicant must file a statement that the listing does not go beyond the disclosure in the application as filed.

Sequence identification number

(4) If a sequence included in a sequence listing is referred to in the claims, the drawings or the part of the description other than sequence listings, the reference must include the sequence identification number, as defined in the PCT sequence listing standard, preceded by "SEQ ID NO:".

Definitions

(5) The following definitions apply in this section.

amino acid sequence has the same meaning as in the PCT sequence listing standard.

nucleotide sequence has the same meaning as in the PCT sequence listing standard.

Drawings

Requirements

59 (1) Subject to subsection (2), the drawings must be in black, sufficiently dense and dark, well-defined lines to permit legible

reproduction and must not be photographs.

Exception

(2) If an invention does not admit of illustration by means of drawings complying with subsection (1) but does admit of illustration by means of photographs, the drawings that must be furnished for the purposes of subsection 27(5.1) or (5.2) of the Act may be photographs.

No colourings

(3) Except in the case of photographs, the drawings must be without colourings.

Cross-sections

(4) Except in the case of photographs, cross-sections in the drawings must be indicated by hatching that does not impede the reading of the reference characters and lead lines.

Numbers, letters and lead lines

(5) All numbers, letters and lead lines in the drawings must be simple and clear.

Proportionality

(6) Elements of the same figure must be in proportion to each other unless a difference in proportion is necessary for the clarity of the figure.

Font size

(7) Numbers and letters in the drawings must be at least 0.32 cm in height.

Multiple figures

(8) A single page of the drawings may contain several figures.

Figure spread out on multiple pages

(9) If a figure is spread out over two or more pages, each part of the figure must be so arranged that the entire figure can be assembled without concealing any part of the figure.

Numbering of figures

(10) If there is more than one figure, the figures must be numbered

consecutively.

Reference characters

(11) A reference character not mentioned in the description must not appear in a drawing and vice versa.

Consistent use of reference characters

(12) A reference character used for a particular feature must be the same throughout the abstract, the specification and the drawings.

No unnecessary text

(13) The drawings must not contain text matter except to the extent necessary to understand the drawings.

Claims

Form

60 The claims must be clear and concise and must be fully supported by the description independently of any document referred to in the description.

Numbering of claims

61 If there is more than one claim, the claims must be numbered consecutively in Arabic numerals beginning with the number "1".

No references to description or drawings

62 (1) Subject to subsections (2) to (4), the claims must not, except when necessary, rely, in respect of the features of the invention, on references to the description or the drawings and, in particular, they must not rely on such references as "as described in Part ... of the description" or "as illustrated in figure ... of the drawings".

Reference characters

(2) If the application for a patent contains drawings, the features mentioned in the claims may be followed by the reference characters, placed between parentheses, that appear in the drawings and relate to those features.

(3) [Repealed]

Deposit of biological material

(4) If the description refers to a deposit of biological material, the claims may refer to that deposit.

Dependent claim

63 (1) Subject to subsection (2), a claim that includes all the features of one or more other claims (referred to in this section as a "dependent claim") must refer by number to the other claim or claims and must state the additional features claimed.

Reference to preceding claim

(2) A dependent claim may only refer to a preceding claim or claims.

Reference to claims in the alternative only

(3) A dependent claim that refers to more than one claim must refer to those claims in the alternative only.

Limitations

(4) A dependent claim is considered to include all the limitations contained in the claim to which it refers or, if the dependent claim refers to more than one claim, any particular alternative of the dependent claim is considered to include all the limitations contained in the particular claim in respect of which it is considered.

Non-compliant Application for a Patent**Prescribed date - requirements not met**

64 For the purposes of subsection 27(6) of the Act, the prescribed date is the last day of a period of three months after the date of the notice referred to in that subsection.

Notice

65 If, after the filing date, an application for a patent does not comply with the Act or these Rules, the Commissioner may by notice require the applicant to modify the application in order to meet those requirements not later than three months after the date of the notice.

Prescribed date - application fee not paid

66 (1) For the purposes of subsection 27(7) of the Act, the

prescribed date is the last day of a period of three months after the date of the notice referred to in that subsection.

Application considered withdrawn

(2) If an applicant fails to comply with a notice given under subsection 27(7) of the Act, the application for a patent is considered to be withdrawn.

Reference to Previously Filed Application for a Patent

Prescribed period

67 (1) For the purpose of section 27.01 of the Act, the prescribed period begins on the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act and ends at the earlier of

(a) the end of a period of two months after that date or, if a notice is sent under subsection 28(2) of the Act, the earlier of

(i) the end of a period of two months after the date of the notice, and

(ii) the end of a period of six months after the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act, and

(b) the filing date.

Prescribed requirements

(2) The prescribed requirements for the purposes of section 27.01 of the Act are the following:

(a) the statement referred to in subsection 27.01(1) of the Act must indicate the name of the country or office of filing of the previously filed application for a patent and

(i) if the number of the previously filed application for a patent is known to the applicant or to a patent agent appointed in respect of the application, the statement must indicate the number of the previously filed application, and

(ii) if the number of the previously filed application for a patent is not known to the applicant or to a patent agent appointed in respect of the application, the statement must indicate

(A) the provisional number for the previously filed application given by that office,

(B) the date on which the previously filed application was sent

to that office, and the statement must be accompanied by a copy of the request portion of the application, or

(C) the reference number given to the previously filed application by the applicant and indicated in it, the name and postal address of the applicant, the title of the invention and the date on which the previously filed application was sent to that office; and

(b) if the previously filed application for a patent was not filed in Canada, the applicant must, not later than two months after the date of the submission of that statement, either

(i) submit to the Commissioner a copy of the previously filed application for a patent, or

(ii) make a copy of the previously filed application available to the Commissioner in a digital library that is specified by the Commissioner as being accepted for that purpose and inform the Commissioner that it is so available.

Non-application of subsection 3(1)

(3) Subsection 3(1) does not apply in respect of the times referred to in subsection (1) or (2).

Maintenance Fees - Application for a Patent

Prescribed fee

68 (1) Subject to subsection (2), for the purposes of subsection 27.1(1) of the Act, the prescribed fee to maintain an application for a patent in effect is, for an anniversary date set out item 8 of Schedule 2, other than such an anniversary date that, in the case of a PCT national phase application, falls before the national phase entry date of that application,

(a) the small entity fee set out in that item for that anniversary date, if the small entity status condition set out in subsection 44(2) is met and a small entity declaration is filed in respect of the application in accordance with subsection 44(3)

(i) on or before that anniversary date, or

(ii) if a notice is required to be sent under paragraph 27.1(2) (b) of the Act, before the notice is sent or, if the notice is sent, before the later of the end of a period of six months after that anniversary date and the end of a period of two months after the date of the notice; and

(b) in any other case, the standard fee set out in that item for that anniversary date.

Exception

(2) For the purposes of subsection 27.1(1) of the Act, the prescribed fee to maintain a divisional application in effect is, for the period beginning on its filing date and ending on its presentation date, the total of

(a) the small entity fees set out in item 8 of Schedule 2 for the anniversary dates falling in that period, if the small entity status condition set out in subsection 44(2) is met and a small entity declaration is filed in respect of the application in accordance with subsection 44(3)

(i) on or before the presentation date, or

(ii) if a notice is required to be sent under paragraph 27.1(2) (b) of the Act, before the notice is sent or, if the notice is sent, before the later of the end of a period of six months after the presentation date and the end of a period of two months after the date of the notice, and

(b) in any other case, the standard fees set out in that item for the anniversary dates falling in that period.

Non-application of subsection 3(1)

(3) Subsection 3(1) does not apply in respect of the times referred to in subsection (1) or (2).

Dates

69 For the purposes of subsection 27.1(1) and paragraph 73(1) (c) of the Act, the prescribed dates are

(a) for a fee referred to in subsection 68(1) of these Rules, the anniversary date for which it is paid; and

(b) for the fee referred to in subsection 68(2) of these Rules, the presentation date of the divisional application.

Late fee

70 For the purposes of subsection 27.1(2) of the Act, the prescribed late fee is the fee set out in item 9 of Schedule 2.

Filing Date

Prescribed documents and information

71 The documents and information prescribed for the purposes of subsection 28(1) of the Act are

- (a) an explicit or implicit indication that the granting of a Canadian patent is being sought;
- (b) information allowing the identity of the applicant to be established;
- (c) information allowing the Commissioner to contact the applicant; and
- (d) a document, in any language, that on its face appears to be a description.

Addition to Specification or Addition of Drawing

Notice of missing parts of application

72 (1) If, within two months after the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act, the Commissioner finds that a part of the description appears to be missing from the application for a patent, or that the application refers to a drawing that appears to be missing from the application, the Commissioner must by notice inform the applicant accordingly.

Prescribed period for addition

(2) For the purposes of subsection 28.01(1) of the Act, the additions referred to in that subsection may be made not later than two months after the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act or, if the Commissioner notifies the applicant under subsection (1), before the earlier of

- (a) the end of a period of two months after the date of the notice, and
- (b) the end of a period of six months after the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act.

Prescribed Requirements

(3) For the purposes of paragraph 28.01(2)(d) of the Act, the prescribed requirements are that the applicant, within the period

prescribed by subsection (2),

(a) if the previously regularly filed application for a patent was not filed in Canada, must either

(i) submit to the Commissioner a copy of that application, or

(ii) make a copy of that application available to the Commissioner in a digital library that is specified by the Commissioner as being accepted for that purpose and inform the Commissioner that it is so available;

(b) if that previously regularly filed application for a patent is partly or entirely in a language other than English or French, must submit to the Commissioner a translation in English or French of any part of the application that is in a language other than English or French; and

(c) must submit to the Commissioner an indication as to where, in that previously regularly filed application for a patent or in the translation referred to in paragraph (b), the addition is included.

Prescribed period for withdrawal

(4) For the purposes of subsection 28.01(2) of the Act, the addition may be withdrawn not later than two months after the earliest date on which the Commissioner receives any document or information under subsection 28(1) of the Act or, if the Commissioner notifies the applicant under subsection (1), not later than two months after the date of the notice.

Non-application of subsection 3(1)

(5) Subsection 3(1) does not apply in respect of the times referred to in this section.

Exceptions

(6) Subsection 28.01(1) of the Act does not apply to a divisional application filed under subsection 36(2) or (2.1) of the Act or to an application for a patent in respect of which a statement is submitted under section 27.01 of the Act.

Prohibited addition

(7) An applicant must not, under subsection 28.01(1) of the Act, add to the claims included in their application for a patent.

Request for Priority

Requirements

73 (1) For the purposes of subsection 28.4(2) of the Act, the request for priority must be made in the petition of the pending application for a patent, or in a document other than the abstract, the specification or the drawings included in that application, before the earlier of

(a) the later of

(i) the end of a period of 16 months after the earliest of the filing dates of the previously regularly filed applications for a patent on which the request is based, and

(ii) the end of a period of four months after the filing date of the pending application, and

(b) if applicable, the day on which the applicant submits their approval, under subsection 10(2) of the Act, for the application for a patent to be open to public inspection before the expiry of the confidentiality period, unless that approval is withdrawn in time to permit the Commissioner to stop technical preparations to open the application to public inspection.

Time to submit information

(2) The information required under subsection 28.4(2) of the Act must be submitted to the Commissioner within the time prescribed by subsection (1).

PCT national phase application

(2.1) For greater certainty, in respect of an international application that has become a PCT national phase application, a priority claim made in accordance with the requirements of the Patent Cooperation Treaty before the application's national phase entry date is considered to be a request for priority made in accordance with subsection (1), and the applicant is considered to have submitted the information required under subsection 28.4(2) of the Act in accordance with subsection (2).

Requirement

(3) A request for priority in respect of a pending application for a patent may be based on a previously regularly filed application only if the filing date of the pending application is, or under subsection 28.4(6) of the Act is deemed to be, within 12 months

after the filing date of the previously regularly filed application.

Correction - error in filing

(4) An error in a filing date submitted under subsection 28.4(2) of the Act may be corrected on request submitted before the earlier of

- (a) the end of the time prescribed by subsection (1), as determined using the corrected filing date, and
- (b) the end of the time prescribed by subsection (1), as determined using the uncorrected filing date.

Correction - name or number

(5) An error in the name of a country or office of filing or in the number of an application for a patent submitted under subsection 28.4(2) of the Act may be corrected on request submitted on or before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, on or before the day on which the final fee is paid again.

Withdrawal of request for priority

(6) If a request for priority in respect of a previously regularly filed application for a patent is withdrawn before the end of a period of 16 months after the filing date of that application, the time prescribed by subsection (1) must be determined as if the request for priority had never been made on the basis of that application.

Non-application of subsection 3(1)

(7) Subsection 3(1) does not apply in respect of the time prescribed by subsection (1).

Requirements

74 (1) If an applicant for a patent has requested priority in respect of a pending application for a patent on the basis of one or more previously regularly filed applications for a patent - other than an application for a patent previously regularly filed in Canada - the applicant must, not later than the day referred to in subsection (2), with respect to each previously regularly filed application,

- (a) submit to the Commissioner a copy of the previously regularly filed application certified by the patent office with which it was filed and a certificate from that office showing the filing date; or

(b) make a copy of the previously regularly filed application available to the Commissioner in a digital library that is specified by the Commissioner as being accepted for that purpose and inform the Commissioner that it is so available.

Date

(2) For the purposes of subsection (1), the day is the latest of

- (a) the last day of a period of 16 months after the earliest of the filing dates of the previously regularly filed applications for a patent on which the request for priority is based,
- (b) the last day of a period of four months after the filing date of the pending application for a patent, and
- (c) if the pending application for a patent is a PCT national phase application, the national phase entry date of that application.

Withdrawal of request for priority

(3) If a request for priority is withdrawn with respect to a previously regularly filed application for a patent before the end of a period of 16 months after the filing date of that application, the time prescribed by subsection (1) must be determined as if the request for priority had never been made on the basis of that application.

Notice

(4) If the applicant does not comply with the requirements of paragraph (1)(a) or (b) within the time prescribed by subsection (1), the Commissioner must by notice require the applicant to comply with the requirements of paragraph (1)(a) or (b) not later than two months after the date of the notice.

Applicant considered to comply

(5) If the applicant complies with the requirements of paragraph (1)(a) or (b) after the time prescribed by subsection (1) but before a notice is sent under subsection (4) or, if a notice is sent, not later than two months after the date of the notice, the applicant is considered to have complied with subsection (1).

Request for priority considered withdrawn

(6) If the applicant fails to comply with the requirements of paragraph (1)(a) or (b) in respect of a previously regularly filed application for a patent not later than two months after the date of

the notice referred to in subsection (4), the request for priority is considered to have been withdrawn at the end of that time in respect of that previously regularly filed application unless

- (a) before the end of the time prescribed by subsection (1), a request is made to the patent office where the previously regularly filed application was filed to provide the copy and certificate referred to in paragraph (1) (a); and
- (b) not later than two months after the date of the notice referred to in subsection (4), the applicant submits to the Commissioner a request that the Commissioner restore the right of priority on the basis of that previously regularly filed application and a statement indicating the patent office to which the request referred to in paragraph (a) was made and the date of that request.

Applicant considered to comply

(7) If the conditions set out in paragraphs (6) (a) and (b) are met in respect of a previously regularly filed application for a patent, the applicant is considered to have complied with subsection (1) in respect of that application.

Submission of copy and certificate

(8) If the conditions set out in paragraphs (6) (a) and (b) are met in respect of a previously regularly filed application for a patent and if the patent office where that application was filed provides the copy and certificate referred to in paragraph (1) (a), the applicant or the patentee, as applicable, must submit the copy and certificate to the Commissioner not later than three months after the day on which they were provided.

Request for priority considered withdrawn

(9) If the applicant or patentee fails to comply with subsection (8) in respect of a previously regularly filed application for a patent, the request for priority is considered to have been withdrawn at the end of the time referred to in that subsection in respect of that application.

Divisional application

(10) The applicant of a divisional application is considered to have complied with subsection (1) in respect of a previously regularly filed application for a patent if, on or before the presentation

date of the divisional application, the applicant of the original application is considered to have complied with subsection (1) in respect of that previously regularly filed application.

Request for priority

(11) A request for priority in respect of a divisional application is considered to have been withdrawn in respect of a previously regularly filed application for a patent if, in respect of the original application, a request for priority is, on or before the presentation date of the divisional application, considered to have been withdrawn under subsection (6) or (9) in respect of that previously regularly filed application.

Exception

(12) Subsections (1) to (11) do not apply in respect of a previously regularly filed application on the basis of which an applicant requests priority, if the pending application for a patent is a PCT national phase application or a divisional application resulting from the division of a PCT national phase application and if the requirements of Rule 17.1(a), (b) or (b-bis) of the Regulations under the PCT are complied with in respect of that previously regularly filed application.

Withdrawal of request for priority

75 (1) For the purposes of subsection 28.4(3) of the Act, a request for priority may be withdrawn by filing a request to that effect with the Commissioner.

Effective date

(2) The effective date of the withdrawal of a request for priority is the date on which the request is received by the Commissioner.

Notice to submit translation

76 (1) If a previously regularly filed application for a patent in respect of which a request for priority in respect of a pending application for a patent is based is partly or entirely in a language other than English or French and if, for the purposes of examining the pending application, an examiner takes into account the previously regularly filed application, the examiner may by notice require the applicant of the pending application to submit to the Commissioner an English or French translation of the whole or a

specified part of the previously regularly filed application not later than four months after the date of the notice.

Translation not accurate

(2) If the examiner has reasonable grounds to believe that a translation submitted under subsection (1) is not accurate, the examiner may by notice require the applicant of the pending application for a patent to submit to the Commissioner not later than four months after the date of the notice either

- (a) a statement by the translator that, to the best of the translator's knowledge, the translation is accurate; or
- (b) a new English or French translation, as applicable, together with a statement by the translator that, to the best of the translator's knowledge, the new translation is accurate.

Request for priority considered withdrawn

(3) If the applicant of the pending application for a patent does not comply with a notice under subsection (1) or (2) in respect of a previously regularly filed application for a patent, the request for priority is considered to have been withdrawn at the end of the time referred to in subsection (1) or (2), as applicable, in respect of that previously regularly filed application.

Restoration of Right of Priority

Prescribed time

77 (1) For the purposes of paragraph 28.4(6)(b) of the Act,

(a) in respect of a pending application, or a co-pending application, that is not a PCT national phase application, the applicant must meet the conditions set out in subparagraphs 28.4(6)(b)(i) to (iii) of the Act not later than two months after the filing date of the pending application or the co-pending application, as the case may be; and

(b) in respect of a pending application, or a co-pending application, that is a PCT national phase application,

- (i) the applicant must meet the conditions referred to in subparagraphs 28.4(6)(b)(i) and (ii) of the Act not later than one month after the national phase entry date of that application, and
- (ii) the applicant must meet the condition referred to in subparagraph 28.4(6)(b)(iii) of the Act before the earlier of
 - (A) the end of the time prescribed by subsection 73(1), and
 - (B) the end of one month after the national phase entry date of

that application.

Prescribed Requirements

(2) For the purposes of subparagraph 28.4(6) (b) (iii) of the Act, the prescribed requirements are that the applicant

- (a) must make a request for priority in the petition or in a document other than the abstract, the specification or the drawings; and
- (b) must submit to the Commissioner the filing date and the name of the country or office of filing of the previously regularly filed application for a patent.

Non-application of subsection 3(1)

(3) Subsection 3(1) does not apply in respect of the time prescribed by subsection (1).

Divisional application - within 12 months

78 Paragraph 28.4(6) (b) of the Act does not apply in respect of a divisional application, in relation to a previously regularly filed application, if the filing date of the original application is deemed under subsection 28.4(6) of the Act to be within 12 months after the filing date of that previously regularly filed application for a patent.

Request for Examination

Contents of request

79 A request for examination of an application for a patent, referred to in subsection 35(1) of the Act, must contain

- (a) the name and postal address of the person making the request;
- (b) the name of the applicant, if the person making the request is not the applicant; and
- (c) the application number or other information sufficient to identify the application.

Examination fee

80 (1) For the purposes of subsection 35(1) of the Act, the prescribed fee for an application for the examination of an application for a patent is

- (a) the small entity fee set out in subparagraph 10(a) (i) or (ii) of Schedule 2, as applicable, and, for each claim in excess of 20

that is included in the application on the day on which the request for examination is made, the small entity fee set out in paragraph 10(b) of that Schedule, if the small entity status condition set out in subsection 44(2) is met and a small entity declaration is filed in respect of the application in accordance with subsection 44(3)

(i) within the applicable time prescribed by section 81, or
(ii) if a notice is required to be sent under paragraph 35(3) (b) of the Act, before the notice is sent or, if the notice has been sent, before the end of two months after the date of the notice;
and

(b) in any other case, the standard fee set out in subparagraph 10(a) (i) or (ii) of Schedule 2, as applicable, and, for each claim in excess of 20 that is included in the application on the day on which the request for examination is made, the standard fee set out in paragraph 10(b) of that Schedule.

Claims defined in the alternative

(1.1) A claim that defines the subject-matter of an invention in the alternative, including a dependent claim within the meaning of section 63 that refers to more than one preceding claim, counts as a single claim for the purposes of subsection (1).

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the times prescribed by subsection (1).

Prescribed time - subsection 35(2) of Act

81 (1) For the purposes of subsection 35(2) of the Act, the prescribed time for making a request for examination and for paying the fee is any time before

(a) in respect of an application for a patent other than a divisional application, the end of a period of four years after the filing date of the application; and

(b) in respect of a divisional application, the later of

(i) the end of the time that is applicable under this subsection in respect of the original application, and

(ii) the end of a period of three months after the presentation date of the divisional application.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the times prescribed by subsection (1).

Late fee

82 For the purposes of subsection 35(3) of the Act, the prescribed late fee is the fee set out in item 11 of Schedule 2.

Prescribed time - subsection 35(5) and paragraph 73(1)(e) of Act

83 (1) For the purposes of subsection 35(5) and paragraph 73(1)(e) of the Act, the prescribed time for making a request for examination and for paying the fee is any time before the end of a period of three months after the date of the notice referred to in that subsection or that paragraph.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the time prescribed by subsection (1).

Date of payment

83.1 If an amount paid for the examination of an application for a patent is less than the prescribed fee set out in subsection 80(1) and an amendment is made to the application on or after the day on which the request for examination is made to reduce the number of claims such that the amount paid is greater than or equal to the amount of that prescribed fee, the fee is considered to have been paid on the day on which the amendment is made.

Examination

Advancing examination

84 (1) In respect of an application for a patent that is open to public inspection at the Patent Office, the Commissioner must advance out of its routine order the examination of the application under subsection 35(1) of the Act on the request of

- (a) any person, if they pay the fee set out in item 12 of Schedule 2 and file with the Commissioner a statement indicating that failure to advance the examination of the application is likely to prejudice that person's rights; or
- (b) the applicant, if the applicant files with the Commissioner a statement indicating that the application relates to technology

the commercialization of which would help to resolve or mitigate environmental impacts or to conserve the natural environment or natural resources.

Exception

(2) In respect of a request made under subsection (1) by an applicant, the Commissioner must not advance the examination of the application for a patent out of its routine order or, if the examination is advanced, must return it to its routine order if

- (a) the Commissioner has, under subsection 3(1), extended the time fixed for doing anything in respect of the application; or
- (b) the application is or was deemed to be abandoned.

Notice - invention in foreign application

85 (1) If, in the course of examining an application for a patent, an examiner has reasonable grounds to believe that an application for a patent disclosing the same invention has been filed, in or for any country other than Canada, by an inventor of that invention or a person claiming through them, the examiner may by notice requisition the applicant

(a) to submit the following information or, if any of the information is not known to the applicant, to so indicate:

- (i) any prior art cited in respect of the foreign application for a patent,
- (ii) the application number of the foreign application for a patent, the filing date and, if the patent has been granted, the patent number, and (iii) particulars of any opposition, re-examination, impeachment or similar proceedings in respect of the foreign application or any patent granted on the basis of that application;

(b) to submit a copy of any document related to the information referred to in paragraph (a) or, if the document is not available to the applicant, to so indicate; and

(c) to submit an English or French translation of any document, or part of a document, related to the information referred to in paragraph (a), that is not in either English or French or, if such a translation is not available to the applicant, to so indicate.

Notice - invention previously published or patented

(2) If, in the course of examining an application for a patent, an examiner has reasonable grounds to believe that an invention disclosed in an application for a patent was, before the filing date of the application, published or the subject of a patent, the examiner may by notice requisition the applicant to identify the first publication of or patent for that invention or, if that information is not known to the applicant, to so indicate.

Continued examination

85.1 (1) If three notices have been sent to the applicant under either or both of subsections 86(2) and (5) since the examination of an application for a patent under subsection 35(1) of the Act began, and a notice of allowance or conditional notice of allowance has not been set aside under subsection (4) before the third notice is sent, the examiner must, by notice, inform the applicant of the need to make a request for continued examination and pay the prescribed fee.

Continued examination - subsequent request

(2) If two notices have been sent to the applicant under either or both of subsections 86(2) and (5) since the most recent request for continued examination was made, the examiner must, by notice, inform the applicant of the need to make a request for continued examination and pay the prescribed fee.

Time limit for making request

(3) The applicant must make a request for continued examination and pay the prescribed fee not later than four months after the day on which a notice is sent under subsection (1) or (2) to inform the applicant of the need to make the request and pay the fee.

Notice set aside

(4) A notice of allowance or conditional notice of allowance that is sent to the applicant under subsection 86(1), (1.1), (6) or (10) is set aside if the applicant makes a request for continued examination and pays the prescribed fee not later than the earlier of

- (a) four months after the day on which the notice of allowance or conditional notice of allowance is sent; and
- (b) the day before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, the day before the day on which the final fee is paid again.

Fee for continued examination

- (5) The prescribed fee for the continued examination is
- (a) the small entity fee set out in item 13 of Schedule 2, if the small entity status condition set out in subsection 44(2) is met and a small entity declaration is filed in respect of the application in accordance with subsection 44(3) before the end of the applicable time, referred to in subsection (3) or (4), for the payment of the fee; or
 - (b) in any other case, the standard fee set out in that item.

Interpretation – number of notices

- (6) For greater certainty, a notice sent under subsection 86(2) or (5) that is withdrawn by an examiner or by the Commissioner does not count as a notice for the purposes of subsection (1) or (2).

Non-application of subsection 3(1)

- (7) Subsection 3(1) does not apply in respect of the times referred to in subsection (3) or (4).

Notice - application found allowable by examiner

86 (1) If an examiner has reasonable grounds to believe that an application for a patent complies with the Act and these Rules, the Commissioner must by notice inform the applicant that the application has been found to be allowable and require the payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of the notice.

Conditional notice of allowance

(1.1) If an examiner has reasonable grounds to believe that, but for certain minor defects, an application for a patent would comply with the Act and these Rules, the Commissioner may by notice inform the applicant that the application has been found to be allowable subject to certain amendments being made and require the applicant to, not later than four months after the day on which the notice is sent, make those amendments, or submit arguments as to why the application does comply, and pay the final fee set out in item 14 of Schedule 2.

Notice of defects

- (2) If an examiner has reasonable grounds to believe that an application for a patent does not comply with the Act or these

Rules, the examiner must by notice inform the applicant of the application's defects and requisition the applicant to amend the application in order to comply with the Act and these Rules, or to submit arguments as to why the application does comply, not later than four months after the date of the notice.

Rejection for defect

(3) If an applicant replies in good faith to the requisition made under subsection (2), on or before the date set out in subsection (4), but the examiner, after receiving the reply, has reasonable grounds to believe that the application for a patent still does not comply with the Act or these Rules in respect of any of the defects referred to in the requisition and that the applicant will not amend the application to comply with the Act and these Rules, the examiner may reject the application.

Date

(4) For the purpose of subsection (3), the date is the last day of the period referred to in subsection (2) or, if the application for a patent is deemed to be abandoned under paragraph 73(1)(a) of the Act for failure to reply in good faith to a requisition made under subsection (2), the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment.

Final action

(5) If an examiner rejects an application for a patent, the examiner must send a notice bearing the notation "Final Action" or "Decision finale", indicating the outstanding defects and requisitioning the applicant to amend the application in order to comply with the Act and these Rules, or to submit arguments as to why the application does comply, not later than four months after the date of the notice.

Notice - application found allowable after final action

(6) If an applicant, on or before the date set out in subsection (8), replies in good faith to a requisition made under subsection (5) and the examiner has reasonable grounds to believe that the application for a patent complies with the Act and these Rules, the Commissioner must by notice inform the applicant that the rejection is withdrawn and the application has been found to be allowable and

require the payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of the notice.

Rejection not withdrawn after final action

(7) If an applicant replies in good faith to a requisition made under subsection (5) on or before the date set out in subsection (8) but, after that date, the examiner still has reasonable grounds to believe that the application for a patent does not comply with the Act or these Rules, (a) the Commissioner must by notice inform the applicant that the rejection has not been withdrawn;

(b) any amendments made to that application during the period beginning on the date of the final action notice and ending on the date set out in subsection (8) are considered never to have been made; and

(c) the application must be reviewed by the Commissioner.

Date

(8) For the purposes of subsections (6) and (7), the date is four months after the date of the notice referred to in subsection (5) or, if the application for a patent is deemed to be abandoned under paragraph 73(1)(a) of the Act for failure to reply in good faith to a requisition made under subsection (5), the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment.

Additional defects

(9) If, during the review of a rejected application for a patent, the Commissioner has reasonable grounds to believe that the application does not comply with the Act or these Rules in respect of defects other than those indicated in the final action notice, the Commissioner must by notice inform the applicant of those defects and invite the applicant to submit arguments, not later than one month after the date of the notice, as to why the application does comply.

Notice - rejection withdrawn

(10) If, after review of a rejected application for a patent, the Commissioner has reasonable grounds to believe that the application complies with the Act and these Rules, the Commissioner must by notice inform the applicant that the rejection is withdrawn and that the application has been found to be allowable and require the

payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of the notice.

Notice requiring certain amendments

(11) If, after review of a rejected application for a patent, the Commissioner has reasonable grounds to believe that the application does not comply with the Act or these Rules and certain amendments are necessary in order to make the application allowable, the Commissioner must by notice inform the applicant that those amendments must be made not later than three months after the date of the notice.

Notice - application found allowable after amendments

(12) If the applicant complies with the notice sent under subsection (11), the Commissioner must by notice inform the applicant that the rejection is withdrawn and that the application has been found to be allowable and require the payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of the notice.

Right to hearing

(13) Before refusing an application for a patent under section 40 of the Act, the Commissioner must give the applicant an opportunity to be heard.

Withdrawal of notice of allowance

(14) If, after a notice of allowance is sent but before a patent is issued, the examiner has reasonable grounds to believe that the application for a patent does not comply with the Act or these Rules, the Commissioner must, subject to subsection (14.2),

(a) by notice, inform the applicant that the application does not comply with the Act or these Rules and that the notice of allowance is withdrawn; and

(b) if the final fee has been paid, refund it.

Withdrawal of conditional notice of allowance - other defects

(14.1) If, after a conditional notice of allowance is sent but before a patent is issued, the examiner has reasonable grounds to believe that the application for a patent does not comply with the Act or these Rules in respect of defects other than those referred to in that notice, the Commissioner must, subject to subsection

(14.2),

(a) by notice, inform the applicant that the application does not comply with the Act or these Rules and that the conditional notice of allowance is withdrawn; and

(b) if the final fee has been paid, refund it.

Exception to subsections (14) and (14.1)

(14.2) The Commissioner is not required to take the actions referred to in subsection (14) or (14.1) if the examiner has reasonable grounds to believe that the defects in the application for a patent would not affect the readability, clarity or validity of the patent, if it were granted.

Withdrawal of conditional notice of allowance after reply

(15) If an applicant replies in good faith to a conditional notice of allowance on or before the date set out in subsection (16) but the examiner, after receiving the reply, has reasonable grounds to believe that the application for a patent still does not comply with the Act or these Rules in respect of any of the defects referred to in that notice, the Commissioner must

(a) by notice, inform the applicant that the application does not comply with the Act or these Rules and that the conditional notice of allowance is withdrawn; and

(b) if the final fee has been paid, refund it

Date

(16) For the purposes of subsection (15), the date is the last day of the period referred to in subsection (1.1) or, if the application for a patent is deemed to be abandoned under subsection 73(2) of the Act in the circumstances referred to in paragraph 132(1)(g), the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment.

Suspension of examination – abandoned application

(17) The examination of an application for a patent under subsection 35(1) of the Act is suspended for any period during which the application is deemed to be abandoned under section 73 of the Act

Non-application of subsection 3(1)

(18) Subsection 3(1) does not apply in respect of the times referred to in subsection (1), (1.1), (6), (10) or (12).

Final fee

87 (1) The prescribed final fee in respect of an application for a patent is

(a) if the small entity status condition set out in subsection 44(2) is met and if a small entity declaration is filed in respect of the application in accordance with subsection 44(3) before the end of the applicable time for the payment of the fee, the sum of the following:

- (i) the small entity fee set out in paragraph 14(a) of Schedule 2,
- (ii) the fee set out in paragraph 14(b) of Schedule 2 for each page of specification and drawings in excess of 100 pages other than pages of a sequence listing submitted in electronic form, and
- (iii) the small entity fee set out in paragraph 14(c) of Schedule 2 for each claim in excess of 20 that is included in the application at any time during the period beginning on the day after the day on which the request for examination is made or, if section 83.1 applies in respect of the application, on the day after the day on which the amendment referred to in that section is made and ending on the day on which the final fee is paid and in respect of which the fee set out in paragraph 10(b) of Schedule 2 was not paid in connection with the request for examination; and

(b) in any other case, the sum of the following:

- (i) the standard fee set out in paragraph 14(a) of Schedule 2,
- (ii) the fee set out in paragraph 14(b) of Schedule 2 for each page of specification and drawings in excess of 100 pages other than pages of a sequence listing submitted in electronic form, and
- (iii) the standard fee set out in paragraph 14(c) of Schedule 2 for each claim in excess of 20 that is included in the application at any time during the period beginning on the day after the day on which the request for examination is made or, if section 83.1 applies in respect of the application, on the day after the day on which the amendment referred to in that section is made and ending on the day on which the final fee is paid and in respect of which the fee set out in paragraph 10(b) of Schedule 2 was not paid in connection with the request for examination.

Claims defined in the alternative

(1.1) A claim that defines the subject-matter of an invention in the alternative, including a dependent claim within the meaning of section 63 that refers to more than one preceding claim, counts as a single claim for the purposes of subparagraphs (1)(a)(iii) and

(b) (iii).

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the time referred to in subsection (1).

Divisional Applications

Definition of one invention

88 For the purposes of section 36 of the Act, one invention includes a group of inventions linked in such a manner that they form a single general inventive concept.

Requirements

89 (1) An application for a patent is a divisional application only if

- (a) the application on its presentation date contains a petition that includes a statement to the effect that the application is a divisional application that results from the division of an original application filed in Canada;
- (b) the original application number is submitted to the Commissioner not later than three months after the presentation date;
- (c) the applicant, or if there are joint applicants, at least one of the joint applicants, was an applicant of the original application at any time during the period beginning on the filing date of the original application and ending on the presentation date;
- (d) the application on its presentation date contains one or more claims; and
- (e) if the applicant of the original application is required, under subsection 15(2) or (3), to provide a translation in respect of that application, that applicant has provided the translation to the Commissioner not later than the presentation date.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply to the time referred to in paragraph (1) (b).

Time for filing if original application refused

90 Unless a shorter time is applicable under subsection 36(2), (2.1) or (3) of the Act, if an application for a patent is refused by the

Commissioner under section 40 of the Act, the time for filing a divisional application resulting from the division of that application is any time before

(a) if an appeal is not taken under section 41 of the Act, the end of a period of six months after the notice as provided for in section 40 of the Act is mailed;

(b) if an appeal is taken under section 41 of the Act and no appeal is taken to the Federal Court of Appeal from the final judgment of the Federal Court on that appeal, the later of

- (i) the end of the period referred to in paragraph (a), and
- (ii) the end of a period of two months after the day on which final judgment is rendered in the appeal by the Federal Court or, if the appeal is discontinued, the end of a period of two months after the day on which the appeal is discontinued;

(c) if an appeal is taken under section 41 of the Act and the final judgment of the Federal Court in that appeal is appealed to the Federal Court of Appeal and no appeal is taken to the Supreme Court of Canada from the final judgment of the Federal Court of Appeal in that appeal, the later of

- (i) the end of a period of two months after the day on which the final judgment of the Federal Court of Appeal is rendered in the appeal or, if the appeal to the Federal Court of Appeal is discontinued, the end of a period of two months after the day on which the appeal is discontinued, and
- (ii) if an application is made in accordance with the Supreme Court Act for leave to appeal to the Supreme Court of Canada from the final judgment of the Federal Court of Appeal, the end of a period of two months after the day on which the application is dismissed or granted; and

(d) if an appeal is taken under section 41 of the Act and the final judgment of the Federal Court in that appeal is appealed to the Federal Court of Appeal and an appeal is taken to the Supreme Court of Canada from the final judgment of the Federal Court of Appeal in that appeal, the end of a period of two months after the day on which the final judgment of the Supreme Court is rendered in the appeal or, if the appeal to the Supreme Court is discontinued, the end of a period of two months after the day on which the appeal is discontinued.

Clarification

91 For greater certainty, the specification and the drawings contained in a divisional application, other than a divisional application resulting from a PCT national phase application, must not contain matter that is not in the specification and the drawings contained in the original application on its filing date, or if the original application is itself a divisional application, on its presentation date, unless

- (a) the matter may be or could have been added, under section 38.2 of the Act without taking into account subsection 38.2(4) of the Act, to the specification and the drawings contained in the original application; or
- (b) it is admitted in the specification contained in the divisional application that the matter is prior art.

Actions considered taken - divisional application

92 If, on or before the presentation date of a divisional application, any of the following measures has been taken with respect to the original application, the same measure is considered to have been taken, with respect to the divisional application, on the date the action was taken in respect of the original application:

- (a) a small entity declaration has been filed;
- (b) a request for priority has been made and has not been withdrawn;
- (c) information required under subsection 28.4(2) of the Act has been submitted to the Commissioner in respect of a request for priority;
- (d) a copy or an English or French translation of a previously regularly filed application for a patent, or a certificate showing its filing date, has been submitted to the Commissioner;
- (e) a copy of a previously regularly filed application for a patent has been made available to the Commissioner in a digital library;
- (f) information required by paragraph 93(1)(b) in respect of a deposit of biological material has been submitted to the Commissioner; or
- (g) a request has been submitted under subsection 95(1).

Deposit of Biological Material

Conditions

93 (1) For the purpose of subsection 38.1(1) of the Act, the

following conditions apply to a deposit of biological material:

(a) the deposit of biological material must be made by the applicant or their predecessor in title with an international depositary authority on or before the filing date of the application for a patent;

(b) the applicant must, before the day on which the application for a patent becomes open to public inspection at the Patent Office, inform the Commissioner of the name of the international depositary authority and the accession number given by the authority to the deposit;

(c) the information required by paragraph (b) must be included in the description;

(

d) in the case where a sample of the biological material is transferred to a substitute authority under Rule 5 of the Regulations under the Budapest Treaty, the applicant or patentee must inform the Commissioner of the accession number given to the deposit by that authority not later than

(i) in respect of an application for a patent other than a PCT national phase application, three months after the day on which the authority issues a receipt, and

(ii) in respect of a PCT national phase application, the later of three months after the day on which the authority issues a receipt and three months after the national phase entry date of that application;

(e) in the case where the depositor is notified under Article 4 of the Budapest Treaty of the inability of the international depositary authority to furnish samples, a new deposit must be made in accordance with that Article; and

(f) in the case where a new deposit of the biological material is made with another international depositary authority under Article 4(1)(b)(i) or (ii) of the Budapest Treaty, the applicant or patentee must inform the Commissioner of the accession number given to the deposit by that authority not later than

(i) in respect of an application for a patent other than a PCT national phase application, three months after the day on which the authority issues a receipt, and

(ii) in respect of a PCT national phase application, the later of three months after the day on which the authority issues a receipt and three months after the national phase entry date of that application;

PCT national phase application

(1.1) In respect of an international application that has become a PCT national phase application and that is published by the International Bureau of the World Intellectual Property Organization under Article 21 of the Patent Cooperation Treaty on or before its national phase entry date, the requirement set out in paragraph (1) (b) is considered to be met only if the information referred to in that paragraph was furnished in accordance with the requirements of the Patent Cooperation Treaty before the day on which the international application is published.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply to the time referred to in paragraph (1) (b).

Inclusion of date of deposit of biological material

94 If a specification refers to a deposit of biological material and the deposit is taken into consideration by an examiner in determining whether the specification complies with subsection 27(3) of the Act and the date of that deposit is not already included in the description, the examiner may by notice requisition the applicant to amend the description to include the date of that deposit.

Request to furnish sample to independent expert

95 (1) If the specification contained in an application for a patent refers to a deposit of biological material, the applicant may, before the day on which the application becomes open to public inspection at the Patent Office, submit to the Commissioner a request that, until a patent has been issued on the basis of the application or the application is refused, withdrawn or deemed to be abandoned and no longer subject to reinstatement, the Commissioner only authorize in respect of that application the furnishing of a sample of the deposited biological material to an independent expert nominated under section 96.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply to the time for submitting the request referred to in subsection (1).

Nomination of independent expert

96 (1) If an applicant submits a request under section 95, the Commissioner must, on the request of any person and with the agreement of the applicant, nominate an independent expert.

No agreement on nomination

(2) If the Commissioner and the applicant cannot agree on the nomination of an independent expert, the request under section 95 is considered not to have been submitted.

Form for submitting request

97 (1) The Commissioner must publish on the website of the Canadian Intellectual Property Office a form for submitting a request for the furnishing of a sample of deposited biological material, the contents of which must be the same as the contents of the form referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty.

Certification

(2) Subject to section 98, if a specification contained in a Canadian patent, or in an application for a patent filed in Canada that is open to public inspection at the Patent Office, refers to a deposit of biological material by the applicant and if a person submits a request to the Commissioner on the form referred to in subsection (1), the Commissioner must make the certification referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty in respect of that person if

(a) a patent has been issued on the basis of the application or the application has been refused, withdrawn or deemed to be abandoned and is no longer subject to reinstatement; or

(b) the Commissioner has received an undertaking by that person

(i) not to make any sample of biological material furnished by the international depositary authority or any material derived from such a sample available to any other person before either a patent is issued on the basis of the application or the application is refused, withdrawn or deemed to be abandoned and no longer subject

to reinstatement, and

(ii) to use the sample of biological material furnished by the international depositary authority and any material derived from such a sample solely for the purpose of experiments that relate to the subject-matter of the application until either a patent is issued on the basis of the application or the application is refused, withdrawn or deemed to be abandoned and no longer subject to reinstatement.

Copy of request and certification to be sent

(3) Except in the case where subsection 98(2) applies, if the Commissioner makes a certification under subsection (2), the Commissioner must send a copy of the request together with the certification to the person who submitted the request.

Person authorized to submit request

98 (1) If an applicant submits a request under section 95, until a patent is issued on the basis of the application or the application is refused, withdrawn or deemed to be abandoned and no longer subject to reinstatement, a request under section 97 may only be submitted by an independent expert nominated under section 96.

Copy of request and certification to be sent

(2) If the Commissioner makes a certification under subsection 97(2) in respect of an independent expert nominated by the Commissioner, the Commissioner must send a copy of the request together with the certification to the applicant and to the person who requested the nomination of the expert.

Amendment to Specification and Drawings

No amendment before submission of translation

99 If an applicant is required to submit a translation under subsection 15(2) or (3), the specification and the drawings contained in the application for a patent must not be amended by the applicant before they submit the translation to the Commissioner.

No amendment after notice of allowance or conditional notice of allowance

100 (1) Subject to subsection (2), the specification and the drawings contained in an application for a patent must not be

amended by the applicant after a notice of allowance or conditional notice of allowance is sent, unless

- (a) the notice is withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4); or
- (b) the amendments are those referred to in the conditional notice of allowance and are made in accordance with subsection 86(1.1) or, if the application is deemed to be abandoned under subsection 73(2) of the Act in the circumstances referred to in paragraph 132(1)(g) of these Rules, on or before the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment.

Exception - obvious error

(2) The applicant may amend the specification and the drawings contained in the application if it is obvious from the specification and the drawings contained in the application on the day on which the notice of allowance or conditional notice of allowance was sent that something other than what appears in the specification and the drawings was intended and that nothing other than the proposed amendment could have been intended. The amendments must be made

- (a) if a notice of allowance was sent and has not been withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4), on or before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, on or before the day on which the final fee is paid again; and
- (b) if a conditional notice of allowance was sent and has not been withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4), on or before the day on which the applicant replies in good faith to the conditional notice of allowance.

Effect of withdrawal or setting aside

(3) If a conditional notice of allowance is withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4), any amendments made to the application during the period beginning on the day on which the conditional notice of allowance is sent and ending on the day before the day on which the conditional notice of allowance is withdrawn or set aside are considered never to have been made.

No amendment after rejection

101 If an application for a patent is rejected by an examiner under

subsection 86(3), the specification and the drawings contained in the application must not be amended by the applicant after the date prescribed by subsection 86(8), unless

- (a) a notice is sent to the applicant informing them that the rejection is withdrawn;
- (b) the amendments are those required in a notice sent under subsection 86(11); or
- (c) the Supreme Court of Canada, the Federal Court of Appeal or the Federal Court orders the amendments to be made.

Amendment to specification or drawings

102 An amendment by the applicant to the specification or the drawings contained in an application for a patent must be made by submitting a new page to replace each page altered by the amendment and a statement explaining the purpose of the amendment and identifying the differences between the new page and the replaced page.

Prescribed Documents and information - divisional application

103 (1) For the purpose of paragraph 38.2(3.1)(b) of the Act, the prescribed documents and information are ,

- (a) an explicit or implicit indication that the granting of a Canadian patent is being sought;
- (b) information allowing the identity of the applicant to be established;
- (c) information allowing the Commissioner to contact the applicant; and
- (d) a document that, on its face, appears to be a description.

Presentation date

(2) The presentation date of an application for a patent is the date on which the Commissioner receives the documents and information referred to in subsection (1) or, if they are received on different dates, the latest of those dates.

Corrections

Error - naming of applicants

104 The Commissioner must, on request, correct an error with respect to the naming of applicants in an application for a patent, other than a PCT national phase application, if the request contains a

statement to the effect that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, and is made by the person who submitted the application not later than the earlier of

- (a) the day on which the application becomes open to public inspection at the Patent Office, and
- (b) if the Commissioner records a transfer of the application under section 49 of the Act, the day on which the Commissioner received the request to record that transfer.

Error - naming of applicants

105 The Commissioner must, on request, correct an error with respect to the naming of applicants in an application for a patent if the request contains a statement to the effect that the correction does not add or delete the name of an applicant or change the identity of a named applicant and is made by the applicant on or before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, on or before the day on which the final fee is paid again.

Error - naming of inventors

106 The Commissioner must, on request, correct an error with respect to the naming of inventors in an application for a patent if

(a) in the case of a request that contains a statement to the effect that the correction does not add or delete the name of an inventor or change the identity of a named inventor, the request is made by the applicant on or before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, on or before the day on which the final fee is paid again; or

(b) in any other case, the request is made by the applicant before the day on which a notice of allowance or conditional notice of allowance is sent or, if the notice of allowance or conditional notice of allowance is withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4), before the day on which another notice of allowance or conditional notice of allowance is sent.

Obvious error made by Commissioner

107 (1) The Commissioner may, on his or her own initiative within 12 months after the day on which a patent is issued under the Act, or on the request of the patentee made within that period, correct an

error made by the Commissioner in the patent or in the specification or the drawings referenced in the patent if, from the documents that were in the possession of the Patent Office on that day, it is obvious that something other than what appears in the patent, the specification or the drawings was intended and that nothing other than the correction could have been intended.

Date of correction

(2) A correction made under subsection (1) is considered to have been made on the day on which the patent was issued.

Obvious error made by reexamination board

108 (1) The Commissioner may, on his or her own initiative within six months after the day on which a certificate is issued under section 48.4 of the Act, or on the request of the patentee made within that period, correct an error made by the re-examination board in the certificate if, from the documents that were in the possession of the Patent Office on that day, it is obvious that something other than what appears in the certificate was intended and that nothing other than the correction could have been intended.

Date of correction

(2) A correction made under subsection (1) is considered to have been made on the day on which the certificate was issued.

Correction on request of patentee

109 (1) On the request of the patentee, made in accordance with subsection (2), not later than 12 months after the day on which a patent is issued under the Act and on payment of the fee set out in item 24 of Schedule 2, the Commissioner must correct

(a) an error with respect to the naming of a patentee or an inventor included in the patent, if the request for a correction contains a statement to the effect that the correction does not add or delete the name of a patentee or an inventor or change the identity of a named patentee or inventor, as the case may be; or

(b) an error in the specification or the drawings referenced in the patent, if from the specification or the drawings referenced in the patent at the time the patent was issued it would have been obvious to a person skilled in the art or science to which the patent

pertains that something other than what appears in the specification or the drawings was intended and that nothing other than the correction could have been intended.

Contents of request

- (2) A request under subsection (1) must contain
- (a) an indication that a correction of an error is being requested;
 - (b) the number of the patent concerned;
 - (c) the correction to be made; and
 - (d) new pages to replace the pages altered by the correction, if the error is in the specification or the drawings and the error was not made by the Commissioner.

Notice

(3) If a request is made under subsection (1) during the 12-month period referred to in that subsection but the request does not comply with subsection (2) or the fee referred to in subsection (1) is not paid, the Commissioner must by notice require the patentee to submit the elements referred to in subsection (2) or pay the fee referred to in subsection (1), as applicable, not later than three months after the date of the notice.

Correction after notice

(4) The Commissioner must make the correction if the applicant complies with the notice not later than three months after the date of the notice and if the error is one referred to in subsection (1).

Date of correction

(5) A correction made under subsection (1) or (4) is considered to have been made on the day on which the patent was issued.

Non-application of subsection 3(1)

110 Subsection 3(1) does not apply in respect of the times referred to in section 104, 105 or 106 or subsection 107(1), 108(1) or 109(1), (3) or (4).

Certificate

111 (1) If the Commissioner corrects an error under section 107, 108 or 109, the Commissioner must, under the seal of the Patent Office, issue a certificate setting out the correction.

Obvious error made by Commissioner

(2) The Commissioner may correct an error made in the certificate if, from the documents that were in the possession of the Patent Office on the day on which the certificate was issued, it is obvious that something other than what appears in the certificate was intended and that nothing other than the correction could have been intended.

Maintaining Rights Accorded by a Patent

Prescribed fee

112 (1) Subject to subsection (5), for the purposes of subsection 46(1) of the Act, the prescribed fee to maintain the rights accorded by a patent issued under the Act in effect is, for an anniversary date set out in item 25 of Schedule 2 that falls on or after the day on which the patent was issued,

(a) the applicable small entity fee set out in that item for that anniversary date, if the small entity status condition set out in subsection (2) is met and a small entity declaration is filed in accordance with subsection (3) in respect of the patent, or in accordance with subsection 44(3) in respect of the application on the basis of which the patent is granted,

(i) on or before that anniversary date, or

(ii) if a notice is required to be sent under paragraph 46(2)(b) of the Act, before the notice is sent or, if the notice is sent, before the later of the end of six months after that anniversary date and the end of two months after the date of the notice; and

(b) in any other case, the standard fee set out in that item for that anniversary date.

Small entity status condition

(2) The small entity status condition is that

(a) in respect of a patent granted on the basis of an application for a patent - other than a PCT national phase application or a divisional application - the applicant of the application on the filing date is, on that date, an entity that has fewer than 100 employees or is a university, other than

(i) an entity that is controlled directly or indirectly by an entity, other than a university, has 100 employees or more,

- (ii) an entity that has transferred or licensed, or has an obligation other than a contingent obligation to transfer or license, any right or interest in a claimed invention to an entity, other than a university, that has 100 employees or more;
- (b) in respect of a patent granted on the basis of a PCT national phase application, the applicant of the application on the national phase entry date is, on that date, an entity that has fewer than 100 employees or is a university, other than an entity referred to in subparagraph (a) (i) or (ii); and
- (c) in respect of a patent granted on the basis of a divisional application, the applicable requirements set out in subsection 44(2) are met in respect of the original application.

Small entity declaration

- (3) A small entity declaration must
 - (a) be filed with the Commissioner in a document other than the abstract, the specification or the drawings of the application on the basis of which the patent was granted, that identifies the patent to which the declaration relates;
 - (b) contain a statement that the patentee believes that the small entity status condition set out in subsection (2) is met in respect of the patent;
 - (c) be signed by a patent agent appointed in respect of that patent or by
 - (i) if there is a single patentee, the patentee,
 - (ii) if there is a single patentee and a document authorizing a foreign practitioner to sign a small entity declaration is signed by the patentee and submitted to the Commissioner at the same time as the declaration, that foreign practitioner,
 - (iii) if there are joint patentees, any one of the patentees, or
 - (iv) if there are joint patentees and a document authorizing a foreign practitioner to sign a small entity declaration is signed by any one of the patentees and submitted to the Commissioner at the same time as the declaration, that foreign practitioner; and
 - (d) indicate the name of the patentee and, if applicable, the name of the patent agent or the foreign practitioner signing the declaration.

Non-application of subsection 3(1)

(4) Subsection 3(1) does not apply in respect of the times referred to in subsection (1).

Exception

(5) For the purposes of subsection 46(1) of the Act, if a patent is granted on the basis of an application for a patent, in respect of which a fee was payable under subsection 27.1(1) of the Act for an anniversary of the filing date of the application that fell within the 12-month period preceding the day on which the patent was issued but that was not yet paid before that day, the prescribed fee to maintain in effect the rights accorded by the patent is, for the day of the first of the anniversaries of the filing date of the application that fall on or after the day on which the patent was issued, the total of

- (a) the unpaid fee,
- (b) the late fee set out in item 26 of Schedule 2, and
- (c) the fee prescribed by paragraph (1)(a) or (b) of this section for that anniversary, as applicable.

Prescribed Dates

113 For the purposes of subsection 46(1) of the Act, the prescribed dates are

- (a) for a fee referred to in subsection 112(1) of these Rules, the anniversary date for which it is paid; and
- (b) for a fee referred to in subsection 112(5) of these Rules, the date of the first of the anniversaries of the filing date of the application that fall on or after the day on which the patent was issued.

Clarification

114 For greater certainty, for the purposes of sections 112 and 113, a reissued patent is considered to be granted on the basis of the original application and is considered to be issued on the day on which it is reissued.

Late fee

115 For the purposes of subsection 46(2) of the Act, the prescribed late fee is the fee set out in item 26 of Schedule 2.

Time - paragraph 46(5) (a) of Act

116 (1) For the purposes of paragraph 46(5) (a) of the Act, the prescribed time is 12 months after the end of the six-month period referred to in subsection 46(4) of the Act.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the time prescribed by subsection (1).

Additional prescribed fee

117 For the purpose of subparagraph 46(5) (a) (iii) of the Act, the additional prescribed fee is the fee set out in item 27 of Schedule 2.

Reissue

Form

118 An application for the reissue of a patent under section 47 of the Act must be filed in Form 1 of Schedule 1.

Prescribed fee

119 For the purpose of subsection 47(1) of the Act, the prescribed fee is the fee set out in item 28 of Schedule 2.

Disclaimer of Any Part of a Patent

Form

120 A disclaimer under section 48 of the Act must be filed in Form 2 of Schedule 1.

Prescribed fee

121 For the purpose of subsection 48(1) of the Act, the prescribed fee is the fee set out in item 29 of Schedule 2.

Re-examination

Prescribed fee

122 (1) For the purposes of subsection 48.1(1) of the Act, the prescribed fee for a request for re-examination of one or more claims of a patent is

- (a) the small entity fee set out in item 30 of Schedule 2 if
 - (i) the person requesting re-examination is the patentee, the

small entity status condition set out in subsection 112(2) is met and a small entity declaration is filed in accordance with subsection 112(3) in respect of the patent or filed in accordance with subsection 44(3) in respect of the application on the basis of which the patent is granted, or

(ii) the person requesting re-examination is not the patentee, the small entity status condition set out in subsection (3) is met and a small entity declaration is filed in respect of the request for re-examination in accordance with subsection (4); and

(b) in any other case, the standard fee set out in that item.

Clarification

(2) For greater certainty, for the purposes of subparagraph

(1)(a)(i), a reissued patent is considered to be granted on the basis of the original application.

Exception - small entity status condition

(3) In respect of a request for re-examination under subsection 48.1(1) of the Act by a person other than the patentee, the small entity status condition is that the person requesting the re-examination is, on the date of the request, an entity that has fewer than 100 employees or is a university, other than an entity that is controlled directly or indirectly by an entity, other than a university, that has more than 100 employees or more.

Exception - small entity declaration

(4) In respect of a request for re-examination under subsection 48.1(1) of the Act by a person other than the patentee, a small entity declaration must

(a) be filed with the Commissioner;

(b) identify the request for re-examination to which it relates;

(c) contain a statement that the person requesting reexamination believes that the small entity status condition set out in subsection (3) is met in respect of that request;

(d) be signed by

(i) the person requesting re-examination,

(ii) if a document authorizing a foreign practitioner to sign a small entity declaration is signed by the person requesting re-examination and submitted to the Commissioner at the same time as the declaration, that foreign practitioner, or

(iii) a patent agent who is appointed in respect of that request;

and

(e) indicate the name of the person requesting re-examination and, if applicable, the name of the patent agent or the foreign practitioner signing the declaration.

Numbering of claims

123 An amended claim or a new claim proposed by a patentee under subsection 48.3(2) of the Act must be numbered consecutively in Arabic numerals, beginning with the number immediately following the number of the last claim in the patent.

Registration of Documents and Recording of Transfers

Related documents

124 The Commissioner must, on the receipt of a request and the fee set out in item 33 of Schedule 2, register in the Patent Office a document relating to a patent or an application for a patent.

Name change

125 If an applicant for a patent or a patentee changes their name, the Commissioner must, on the receipt of a request from that applicant or patentee and the fee set out in item 34 of Schedule 2, record that name change.

Request to record transfer

126 A request to record a transfer under section 49 of the Act must contain the name and postal address of the transferee and be accompanied by the fee set out in item 35 of Schedule 2.

Condition for recording transfer of application

127 The Commissioner must not record the transfer of an application for a patent under subsection 49(2) of the Act if the request to record the transfer is submitted after the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, after the day on which the final fee is paid again.

Third party Rights

Period

128 For the purposes of subsections 55.11(2), (3), (7) and (9) of the Act, the prescribed periods are

(a) in the case of a patent that was granted on the basis of an application referred to in subparagraph 55.11(1)(a)(i) of the Act, any period beginning six months after a day on which a prescribed fee referred to in subsection 27.1(1) of the Act was due under that subsection but was not paid, without taking into account subsection 27.1(3) of the Act, and ending

(i) if the Commissioner, under paragraph 27.1(2)(b) of the Act, sent a notice to the applicant because of that omission, and if the application is deemed to be abandoned under paragraph 73(1)(c) of the Act because the prescribed fee and the late fee referred to in that notice were not paid within the time referred to in that paragraph, on the earlier of

(A) the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment, and

(B) the day on which the patent was granted, or

(ii) if the application was not deemed to be abandoned under paragraph 73(1)(c) of the Act for the reason referred to in subparagraph (i), on the earlier of

(A) the day on which that prescribed fee and the late fee referred to in subsection 27.1(2) of the Act were paid - or, if they were paid on different days, the later of those days ? without taking into account subsection 27.1(3) of the Act, and

(B) the day on which the patent was granted;

(b) in the case of a patent that was granted on the basis of an application referred to in subparagraph 55.11(1)(a)(ii) of the Act, the period beginning six months after the end of the prescribed time referred to

in subsection 35(2) of the Act and ending

(i) if the application was deemed to be abandoned under paragraph 73(1)(d) of the Act, on the earlier of

(A) the day on which the conditions for reinstatement set out in subsection 73(3) of the Act are met in respect of that abandonment, and

(B) the day on which the patent was granted, or

(ii) if the application was not deemed to be abandoned under paragraph 73(1)(d) of the Act, on the earlier of

(A) the day on which the request referred to in subsection 35(3) of the Act was made and the prescribed fee and late fee referred to in that subsection were paid ? or, if the request was made on

a different day than the day on which those fees were paid, or those fees were paid on different days, the latest of those days ? without taking into account subsection 35(4) of the Act, and

(B) the day on which the patent was granted;

(c) in the case of a patent that was granted on the basis of a divisional application referred to in paragraph 55.11(1) (b) of the Act, any period that applies under this section in respect of a patent granted on the basis of the original application, or that would apply to that patent if it were granted, but excluding any part of that period that is after the presentation date of the divisional application; and

(d) in the case of a patent referred to in paragraph 55.11(1) (c) of the Act, any period beginning six months after a day on which a prescribed fee referred to in subsection 46(1) of the Act was due under that subsection but was not paid, without taking into account subsection 46(3) of the Act, and ending

(i) if the Commissioner, under paragraph 46(2) (b) of the Act, sent a notice to the patentee because of that omission and if, without taking into account subsection 46(5) of the Act, the patent was deemed to have expired under subsection 46(4) of the Act because the prescribed fee and the late fee referred to in subsection 46(2) of the Act were not paid within the time referred to in subsection 46(4) of the Act, on the day on which subsection 46(4) of the Act is deemed never to have produced its effects under subsection 46(5) of the Act, or

(ii) if, without taking into account subsection 46(5) of the Act, the term limited for the duration of the patent is not deemed to have expired under subsection 46(4) of the Act for the reason referred to in subparagraph (i), on the day on which that prescribed fee and the late fee referred to in subsection 46(2) of the Act were paid - or, if they were paid on different days, the later of those days - without taking into account subsection 46(3) of the Act.

Abuse of Rights Under Patents

Application fee

129 (1) A person who makes an application under section 65 or 127 of the Act must pay the fee set out in item 31 of Schedule 2.

Fee for advertisement

(2) If the applicant requests advertisement of the application on the website of the Canadian Intellectual Property Office, they must pay the fee set out in item 32 of Schedule 2.

Time to deliver counter statement

130 (1) For the purposes of subsection 69(1) of the Act, including that subsection as modified by section 128 of the Act, the prescribed time is four months after the latest of the following dates:

- (a) in respect of a person that is served with copies of the application and the statutory declarations referred to in subsection 68(1) of the Act, the day on which that person is served or, if the copies of the application and the statutory declarations are served on that person on different days, the later of those days,
- (b) the day on which the application is advertised in the Canada Gazette, and
- (c) the day on which the application is advertised on the website of the Canadian Intellectual Property Office.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply in respect of the time prescribed by subsection (1).

Abandonment and Reinstatement**Time to reply**

131 (1) For the purposes of paragraph 73(1)(a) of the Act, the prescribed time is four months after the date of the notice of the requisition made by the examiner.

Exception to subsection 3(1)

(2) Subsection 3(1) does not authorize the Commissioner to extend the time prescribed by subsection (1) beyond six months after the date of the notice.

Delayed receipt of notice

(3) However, in the case of a notice under subsection 86(2) or (5) that was received by the applicant more than one month after the day

on which it was sent, the Commissioner may extend the time prescribed by subsection (1) to up to six months after the day on which the notice was received if the applicant

(a) applies for the extension within 14 days after the day on which the notice was received; and

(b) in that application, provides evidence satisfactory to the Commissioner of the date of receipt of the notice.

Application deemed abandoned

132 (1) Subject to subsection (2) and for the purposes of subsection 73(2) of the Act, an application for a patent is deemed to be abandoned if

(a) the applicant does not comply with a notice of the Commissioner referred to in subsection 15(4) within the time referred to in that subsection;

(b) a notice is sent under section 31 and the requirements are not complied with within the applicable time referred to in that section;

(c) the applicant does not reply in good faith to a request of the Commissioner for further drawings under subsection 27(5.2) of the Act not later than three months after the date of the request;

(d) the applicant does not reply in good faith to a notice of the Commissioner referred to in section 65 within the time referred to in that section; or

(e) the applicant does not make a request for continued examination of an application for a patent and pay the prescribed fee in accordance with subsection 85.1(3);

(f) a notice of allowance is sent under subsection 86(1), (6), (10) or (12) and the applicant does not pay the final fee set out in item 14 of Schedule 2 within the time referred to in the applicable subsection;

(g) the applicant does not reply in good faith to a conditional notice of allowance of the Commissioner sent under subsection 86(1.1) and pay the final fee set out in item 14 of Schedule 2 within the time referred to in that subsection; or

(h) the applicant does not comply with a notice of the Commissioner referred to in subsection 155.5(6) within the time referred to in that subsection.

Exception

(2) Paragraphs (1) (f) and (g) do not apply in respect of a notice of

allowance or a conditional notice of allowance that is set aside in accordance with subsection 85.1(4).

Prescribed time - request for reinstatement

133 (1) For the purposes of paragraph 73(3)(a) of the Act, in respect of a failure to take an action, the prescribed time is 12 months after the day on which the application for a patent is deemed, as a result of that failure, to be abandoned.

Request for reinstatement - multiple failures

(2) A request for reinstatement may be made in respect of more than one failure to take an action, if the request is made before the end of the applicable prescribed time that is the first to end.

Failure to pay certain fees

(3) If an application for a patent is deemed to be abandoned for failure to pay a fee referred to in subsection 68(1) or (2), 80(1), 85.1(5) or 87(1), the action that should have been taken in order to avoid that abandonment and that the applicant must take before the end of the time prescribed by subsection (1) in order to reinstate the application is

- (a) the payment of the applicable standard fee; or
- (b) if the small entity status condition set out in subsection 44(2) is met, the filing of a small entity declaration in respect of the application in accordance with subsection 44(3) and the payment of the applicable small entity fee.

Non-application of subsection 3(1)

(4) Subsection 3(1) does not apply to the time prescribed by subsection (1).

Prescribed fee

134 (1) Subject to subsection (2) and for the purposes of subparagraph 73(3)(a)(iv) of the Act, the prescribed fee is, for each failure to take an action referred to in the request for reinstatement, the fee set out in item 15 of Schedule 2.

Interpretation - failure to take action

(2) If both of the following failures to take action are referred to in the request for reinstatement, they are considered to be a single failure to take action:

- (a) a failure to reply in good faith, within the time referred to in the applicable subsection, to any requisition made by an examiner under subsection 86(2) or (5); and
- (b) a failure to make a request for continued examination of an application for a patent and pay the prescribed fee in accordance with subsection 85.1(3).

Non-application of certain portions of subsection 73(3) of Act

135 (1) Subparagraph 73(3)(a)(ii) and paragraph 73(3)(b) of the Act do not apply

(a) in respect of a failure under paragraph 73(1)(a), (b) or (e) or subsection 73(2) of the Act; or

(b) in respect of a failure under paragraph 73(1)(d) of the Act if, within six months after the applicable time prescribed by subsection 35(2) of the Act and in respect of that failure, the applicant makes a request for reinstatement to the Commissioner, takes the action that should have been taken in order to avoid the abandonment and pays the fee prescribed by section 134 of these Rules.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply to the time prescribed by paragraph (1)(b).

Fees for Services

Fee for certified copies

136 (1) A person who requests from the Commissioner a certified copy of a document that is in the Commissioner's possession must pay the fee set out in item 36 or 37 of Schedule 2, as applicable.

Exception

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

Fee for non-certified copies

137 A person who requests from the Commissioner a non-certified copy of a document that is in the Commissioner's possession must pay the fee set out in item 38 or 39 of Schedule 2, as applicable.

Fee for requesting information

138 A person who requests that the Patent Office provide information concerning the status of a patent or an application for a patent must pay the fee set out in item 40 of Schedule 2.

Refund and Waiver of Fees

Refund of fees

139 (1) Only the following fees may be refunded by the Commissioner:

- (a) [Repealed]
- (b) any fee, other than the fee referred to in subsection 27(2) of the Act, paid in respect of an application, other than a PCT national phase application, that was filed through inadvertence, accident or mistake and that was withdrawn not later than the fourteenth day after the earliest date on which the Commissioner received any document or information in respect of that application under subsection 28(1) of the Act or, in the case of a divisional application, not later than the fourteenth day after the earliest date on which the Commissioner received any document or information referred to in subsection 103(1) in respect of that application;
- (c) any fee, other than the fee set out in any of items 16 to 21 of Schedule 2, paid in respect of an international application, if one or more of the requirements for entry into the national phase were met in respect of the application through inadvertence, accident or mistake and, if the international application has become a PCT national phase application, that PCT national phase application was withdrawn not later than the fourteenth day after its national phase entry date;
- (d) a fee paid in respect of a request for the registration of a document relating to a patent or an application for a patent, if the fee is received but the document is not submitted;
- (e) a fee paid for advertising on the website of the Canadian Intellectual Property Office an application presented to the Commissioner under section 65 of the Act, if the application was not advertised on that website;
- (f) a fee paid in respect of a request for a copy of a document if the request is withdrawn before the copy is made;
- (g) a fee paid in respect of a request for a copy of a document, if the Patent Office does not have that document;
- (h) any overpayment of a fee;

- (i) any fee paid, if payment of the fee is waived by the Commissioner;
- (j) a fee paid under subsection 85.1(3) for the continued examination of an application for a patent, if the fee was paid in response to a notice referred to in subsection 85.1(6); and
- (k) any fee that is to be refunded under these Rules.

Request

(2) The Commissioner must not give a refund under any of paragraphs (1) (a) to (h) unless a request for the refund is received not later than three years after the day on which the fee was paid.

Waiver – paragraph 3(4) (d)

139.1

(1) In the case where the Commissioner considers that the circumstances do not justify requiring the statement and the application referred to in paragraph 3(4) (c), the Commissioner is authorized to waive, in favour of the applicant or patentee, payment of the difference referred to in paragraph 3(4) (d) if the Commissioner considers that the circumstances justify the waiver.

Additional waiver

(2) In the case where the Commissioner waives payment under subsection (1), the Commissioner is also authorized to waive, in favour of any applicant or patentee, payment of the difference between the amount specified in the erroneous information provided by the Commissioner and the amount that should have been specified if

- (a) the Commissioner provided the same erroneous information concerning the amount of the fee in question;
- (b) the period of time for the payment of the fee has not expired;
- (c) the payment of the insufficient amount is made not later than the earlier of the day that is four months after the day on which the Commissioner issues the waiver under subsection (1) and the day fixed by the Commissioner; and
- (d) the Commissioner considers that the circumstances justify the waiver.

Non-application of subsection 3(1)

(3) Subsection 3(1) does not apply to the time referred to in

paragraph (2) (c).

Waiver of fee - request to correct errors

140 (1) The Commissioner is authorized to waive the payment of the fee set out in item 24 of Schedule 2 that is payable for a request for a correction if the request is in regard to an error made by the Commissioner and if the Commissioner is satisfied that the circumstances justify it.

Waiver of fee - reissue of patent

(2) The Commissioner is authorized to waive the payment of the fee set out in item 28 of Schedule 2 for filing an application to reissue a patent if the application for reissue is as a result of an error made by the Commissioner and if the Commissioner is satisfied that the circumstances justify it.

Waiver of fee - extension of time

(3) The Commissioner is authorized to waive the payment of the fee set out in item 1 of Schedule 2 that is payable for filing an application for an extension of the time for replying to a requisition made under subsection 86(2) or (5) if

- (a) the notice sent under subsection 86(2) or (5) was received by the applicant more than one month after the day on which the notice was sent;
- (b) the applicant applies for the extension within 14 days after the day on which the notice was received and, in that application, provides evidence satisfactory to the Commissioner of the date of receipt of the notice; and
- (c) the Commissioner is satisfied that the circumstances justify it.

PART 2 Patent Cooperation Treaty

Definitions

Definitions

141 The following definitions apply in this Part.

international filing date means the date accorded to an international application under Article 11 of the Patent Cooperation Treaty.

priority date has the same meaning as in Article 2(xi) of the Patent Cooperation Treaty.

Application of Treaty

International applications

142 (1) Subject to subsection (2) and subsections 154(11) and (12), the provisions of the Patent Cooperation Treaty, the Regulations under the PCT and the Administrative Instructions under the PCT apply in respect of

- (a) an international application filed with the Commissioner; and
- (b) an international application in which Canada is designated under the Patent Cooperation Treaty.

Exceptions

(2) Article 24(2) of the Patent Cooperation Treaty and Rule 49.6 of the Regulations under the PCT do not apply in respect of an international application in which Canada is designated under the Patent Cooperation Treaty.

International Phase

Receiving Office

143 If an international application is filed with the Commissioner and the applicant or, if there is more than one applicant, at least one of the applicants, is a national or resident of Canada, the Commissioner must act as a receiving Office in accordance with the Patent Cooperation Treaty, the Regulations under the PCT and the Administrative Instructions under the PCT.

Application in English or French

144 An international application, other than any text matter

contained in a sequence listing, that is filed with the Commissioner must be entirely in English or entirely in French.

International Searching Authority and International Preliminary Examining Authority

145 The Commissioner must act as an International Searching Authority and an International Preliminary Examining Authority in accordance with the Patent Cooperation Treaty, the Regulations under the PCT and the Administrative Instructions under the PCT.

Appointment of all the patent agents

145.1 If all of the agents at the same firm are appointed under Rule 90 of the Regulations under the PCT to represent an applicant before the Commissioner, section 28.1, subsection 29(2) and section 29.1 apply in respect of the appointment.

Fees payable in Canadian currency

146 (1) Fees payable under Rules 15 and 57 of the Regulations under the PCT must be paid in Canadian currency.

Patent Cooperation Treaty Fund

(2) Money received under Rules 15 and 57 of the Regulations under the PCT must be deposited in the account entitled the Patent Cooperation Treaty Fund within the account entitled the Canadian Intellectual Property Office Revolving Fund and must be paid out of that account in accordance with those Rules.

Transmittal fee

147 An applicant of an international application filed with the Commissioner must pay the transmittal fee set out in item 16 of Schedule 2 for the performance of the tasks referred to in Rule 14 of the Regulations under the PCT.

Search fee

148 An applicant of an international application filed with the Commissioner must pay the search fee set out in item 17 of Schedule 2 for the performance of the tasks referred to in Rule 16 of the Regulations under the PCT.

Late payment fee

148.1 An applicant of an international application filed with the

Commissioner must pay the late payment fee set out in Rule 16 bis. 2 of the Regulations under the PCT if an invitation is sent to that applicant by the Commissioner under Rule 16 bis. 1(a) of the Regulations under the PCT.

Additional fee

149 The amount of the additional fee for searching under Article 17(3) (a) of the Patent Cooperation Treaty is the fee set out in item 18 of Schedule 2.

Preliminary examination fee

150 An applicant of an international application filed with the Commissioner who requests an international preliminary examination must pay the preliminary examination fee set out in item 19 of Schedule 2 for the performance of the tasks referred to in Rule 58 of the Regulations under the PCT.

Late payment fee

150.1 An applicant of an international application filed with the Commissioner must pay the late payment fee set out in Rule 58 bis. 2 of the Regulations under the PCT if an invitation is sent to that applicant by the Commissioner under Rule 58 bis. 1(a) of the Regulations under the PCT.

Additional fee

151 The amount of the additional fee for an international preliminary examination under Article 34(3) (a) of the Patent Cooperation Treaty is the fee set out in item 20 of Schedule 2.

National Phase

Designated Office

152 If an international application in which Canada is designated under the Patent Cooperation Treaty is filed, the Commissioner must act as the designated Office in accordance with the Patent Cooperation Treaty, the Regulations under the PCT and the Administrative Instructions under the PCT.

Elected Office

153 If an international application in which Canada is designated under the Patent Cooperation Treaty is filed and the applicant has

elected Canada under Article 31 of the treaty, the Commissioner must act as an elected Office in accordance with the Patent Cooperation Treaty, the Regulations under the PCT and the Administrative Instructions under the PCT.

Requirements

154 (1) An applicant who designates Canada in an international application must, not later than 30 months after the priority date, (a) if the International Bureau of the World Intellectual Property Organization has not published the international application, submit to the Commissioner a copy of the international application;

(b) if the description contained in the international application, other than any sequence listings, is entirely in a language other than English or French, submit to the Commissioner an English or French translation of the description other than any sequence listings;

(b.1) if the claims contained in the international application are entirely in a language other than English or French, submit to the Commissioner an English or French translation of the claims; and

(b) if the international application, other than any text matter contained in a sequence listing, is partly or entirely in a language other than English or French, submit to the Commissioner a translation in English or French of any part of the international application, other than any text matter contained in a sequence listing, that is in a language other than English or French; and

(c) pay the basic national fee, which is

(i) the small entity fee set out in item 21 of Schedule 2, if the small entity status condition set out in subsection 44(2) is met and if, not later than 30 months after the priority date, a small entity declaration is filed in respect of the application in accordance with subsection 44(3), and

(ii) in any other case, the standard fee set out in that item.

Fee

(2) An applicant who complies with the requirements of subsection (1) after the second anniversary of the international filing date must, not later than 30 months after the priority date, pay

(a) the small entity fee set out in item 8 of Schedule 2 for the

second anniversary of the filing date of an application for a patent, if the small entity status condition set out in subsection 44(2) is met and if, not later than 30 months after the priority date, a small entity declaration is filed in respect of the application for a patent in accordance with subsection 44(3); and

(b) in any other case, the standard fee set out in that item for the second anniversary of the filing date of an application for a patent.

Reinstatement of rights

(3) An applicant who fails to comply with the requirements of subsection (1) and, if applicable, subsection (2) not later than 30 months after the priority date, is considered to have complied with those requirements within that time if

(a) not later than 12 months after that time, the applicant

(i) submits to the Commissioner a request that the rights of the applicant be reinstated with respect to that international application and a statement that the failure was unintentional,

(ii) complies with the requirements of paragraphs (1)(a) and (b.1),

(iii) pays the basic national fee, which is

(A) the small entity fee set out in item 21 of Schedule 2, if the small entity status condition set out in subsection 44(2) is met and if, not later than 12 months after the time referred to in subsection (1), a small entity declaration is filed in respect of the application in accordance with subsection 44(3), and

(B) in any other case, the standard fee set out in that item, and
(iv) pays the fee for reinstatement of rights set out in item 22 of Schedule 2; and

(b) if the applicant complies with the requirements of paragraph (a) after the second anniversary of the international filing date, the applicant,

(i) on or before the third anniversary of the international filing date but not later than 12 months after the time referred to in subsection (1), pays

(A) if the small entity status condition set out in subsection 44(2) is met and if, on or before that third anniversary, a small entity declaration is filed in respect of the application for a patent in accordance with subsection 44(3), the small entity fee

set out in item 8 of Schedule 2 for the second anniversary of the filing date of an application for a patent, and

(B) in any other case, the standard fee set out in that item for the second anniversary of the filing date of an application for a patent, or

(ii) after the third anniversary of the international filing date but not later than 12 months after the time referred to in subsection (1), pays

(A) if the small entity status condition set out in subsection 44(2) is met and if, not later than 12 months after the time referred to in subsection (1), a small entity declaration is filed in respect of the application for a patent in accordance with subsection 44(3), the small entity fee set out in item 8 of Schedule 2 for the second and third anniversary of the filing date of an application for a patent, and

(B) in any other case, the standard fee set out in that item for the second and third anniversary of the filing date of an application for a patent.

Extension in case of attempted payment

(4) If the applicant of an international application fails to comply with the requirements of subsection (1) and, if applicable, subsection (2), not later than 30 months after the priority date and if, before the end of a period of 12 months after that time, the Commissioner receives a communication clearly indicating the applicant's intention to pay some or all of the fees required by subsection (3), but all of the fees required by subsection (3) are not paid before the end of that 12-month period, those fees are considered to have been paid on the day on which that communication is received if the unpaid fees, together with the additional fee for late payment set out in item 23 of Schedule 2, are paid after the end of that 12-month period but not later than two months after the day on which the communication is received.

Fee considered paid

(5) If the Commissioner has, under subsection 3(3), extended the time period for the payment of a fee prescribed by paragraph (1)(c), subsection (2) or subparagraph (3)(a)(iii) or (b)(i) or (ii) and the fee is paid before the end of the extended period, for the purposes of subsection (1), (2) or (3), as applicable, that fee is considered to have been paid on the day on which the small entity fee was paid.

Fee considered paid – insufficient payment

(5.1) If the Commissioner has, under subsection 3(4), extended the time period for the payment of a fee prescribed by paragraph (1)(c), subsection (2) or subparagraph (3)(a)(iii) or (b)(i) or (ii) and the fee is paid before the end of the extended period, for the purposes of subsection (1), (2) or (3), as applicable, that fee is considered to have been paid on the day on which the insufficient payment was made.

Correction of error – naming of applicants

(6) The Commissioner must, on request, correct an error in the records of the Patent Office with respect to the naming of applicants in respect of a PCT national phase application if the request contains a statement to the effect that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, and is made by the person who paid the basic national fee prescribed by paragraph (1)(c) or subparagraph (3)(a)(iii) not later than the earlier of

(a) the later of

(i) the day on which a period of three months after the national phase entry date of that application expires, and

(ii) if the Commissioner sends a notice under subsection (7) before the end of a period of three months after the national phase entry date of that application, the day on which a period of three months after the date of the notice expires, and

(b) if the Commissioner records a transfer of the application for a patent under section 49 of the Act, on or before the day on which the Commissioner received the request to record that transfer.

Notice

(7) If the Commissioner has reasonable grounds to believe that the person who complied with the requirements of subsection (1) and, if applicable, subsection (2), is neither the applicant of the international application nor their legal representative, the Commissioner must by notice require that person to establish that they are either the applicant of the international application or their legal representative.

Person considered never to have complied

(8) If the person who complied with the requirements of subsection

(1) and, if applicable, subsection (2), fails to comply with the notice not later than three months after the date of the notice, that person is considered never to have complied with those requirements.

Non-application of subsection 3(1)

(9) Subsection 3(1) does not apply in respect of the times referred to in subsection (1), (2), (3), (4) or (6).

Exception to subsection 3(1)

(10) Subsection 3(1) does not authorize the Commissioner to extend the time referred to in subsection (8) for complying with the notice beyond the later of the end of a period of six months after the date of the notice and the end of a period of 30 months after the priority date.

Non-application of Article 48(2) of Patent Cooperation Treaty

(11) Article 48(2) of the Patent Cooperation Treaty does not apply in respect of the times referred to in subsection (1), (2), (3) or (4) of this section or in respect of any time limit applicable to a PCT national phase application.

Non-application of certain Rules under the PCT

(12) Rules 49 ter.1(f) and 49 ter.2 of the Regulations under the PCT do not apply to a PCT national phase application.

New PCT national phase application

(13) Once an international application becomes a PCT national phase application, it may not become a new PCT national phase application unless the earlier PCT national phase application is withdrawn.

Application of Canadian legislation

155 (1) If an international application becomes a PCT national phase application, the application is considered, beginning on its national phase entry date, to be an application for a patent filed in Canada and, subject to sections 157 to 163, the Act and these Rules apply beginning on that date in respect of that application.

National phase entry date

(2) Subject to section 210, the national phase entry date of an application for a patent is

(a) if the applicant has not complied with the applicable requirements of subsection 154(3), the day on which the applicant complied with the requirements of subsection 154(1) and, if applicable, subsection 154(2) or, if the applicant complied with those requirements on different days, the latest of those days; and

(b) if the applicant has complied with the applicable requirements of subsection 154(3), the day on which the applicant complied with those requirements or, if the applicant complied with those requirements on different days, the latest of those days.

Small entity declaration

(3) For the purpose of subsection (2), an applicant is not considered to have paid the fee referred to in subparagraph 154(1)(c)(i), paragraph 154(2)(a) or clause 154(3)(a)(iii)(A) or 154(3)(b)(i)(A) or (ii)(A) until the small entity declaration has been filed.

(4) [repealed]

(5) [repealed]

Translation – part of description or claims

155.1 (1) At or before the time that an international application becomes a PCT national phase application, the applicant must submit to the Commissioner a translation of any part of the description – other than any sequence listings – and any part of the claims that are in a language other than English or French.

Translation – abstract, request or statement

(2) At or before the time that an international application becomes a PCT national phase application, the applicant must submit to the Commissioner a translation of any of the following elements, or any part of the following elements, that are in a language other than English or French:

- (a) any language-dependent free text contained in a sequence listing that does not also appear in English or French;
- (b) any text matter in a drawing;
- (c) the abstract;
- (d) the request referred to in article 4 of the Patent Cooperation Treaty, except if the International Bureau of the World Intellectual Property Organization has published the

international application on or before the national phase entry date; and

- (e) any statement made under Article 19 of the Patent Cooperation Treaty.

Error in translation – notice

155.2 (1) If the Commissioner, before a request for examination is made, or an examiner, in the course of examining an application for a patent, has reasonable grounds to believe that a translation submitted under paragraph 154(1)(b) or (b.1) or section 155.1 contains an error, the Commissioner or the examiner, as the case may be, must by notice inform the applicant of the error.

Error in translation – correction

(2) An applicant may correct a translation submitted under paragraph 154(1)(b) or (b.1) or section 155.1 that contains an error by submitting the following to the Commissioner before the day on which a notice of allowance or a conditional notice of allowance is sent or, if that notice is withdrawn by the Commissioner or set aside in accordance with subsection 85.1(4), before the day on which a notice of allowance or a conditional notice of allowance is sent again:

- (a) the corrected translation;
- (b) a request that the corrected translation replace the original translation; and
- (c) a statement to the effect that
 - (i) at the time the original translation was submitted, it would have been obvious to a skilled translator fluent in both the original language and the language of translation that the original translation contained an error and that the corrected translation is an accurate translation,
 - (ii) the error in the original translation occurred despite due care having been taken in its preparation, and
 - (iii) the request is being made within a reasonable time after the applicant became aware of the error.

Date of replacement

(3) Subject to subsection (4), a corrected translation submitted in accordance with subsection (2) replaces the original translation and is considered to have been submitted on the day on which the original translation was submitted.

Open to public inspection – date

(4) For the purposes of subsection 55(2) of the Act, if a corrected translation of any part of the specification contained in an application for a patent is submitted under subsection (2) after the application became open to public inspection, in English or French, under section 10 of the Act, the specification is considered to have become open to public inspection, in English or French, on the day on which the applicant submits the corrected translation or, if more than one corrected translation of the specification is submitted, on the last day on which a corrected translation is submitted.

Restriction – translation of specification or drawings

155.3 A translation or corrected translation, submitted under section 155.1 or subsection 155.2(2), respectively, of all or part of the text matter in a specification or a drawing must not contain any matter not reasonably to be inferred from the specification or the drawings contained in the application on its filing date.

Complete copy

155.4 (1) An applicant who submits a translation under section 155.1 or a corrected translation under subsection 155.2(2) must, at the same time, submit the following to the Commissioner:

- (a) in the case of a translation referred to in subsection 155.1(1) or a correction to that translation, a complete copy of the description – other than any sequence listings – or the claims, as the case may be, that contains the translated text matter and the text matter that already appeared in English or French;
- (b) in the case of a translation referred to in paragraph 155.1(2)(a) or a correction to that translation, a complete copy of the sequence listing that contains the translated text matter and the text matter that already appeared in English or French;
- (c) in the case of a translation referred to in paragraph 155.1(2)(b) or a correction to that translation, a complete copy of the drawing that contains the translated text matter and the text matter that already appeared in English or French; and
- (d) in the case of a translation referred to in paragraph 155.1(2)(c), (d) or (e) or a correction to that translation, a complete copy of the abstract, request or statement, as the case may be, that contains the translated text matter and the text matter that already appeared in English or French.

Integrated translation

(2) For the purposes of section 155.1 and subsection 155.2(2), if a complete copy is submitted in accordance with subsection (1), the applicant need not submit the translation or corrected translation as a separate document.

Translation replaces original – description

155.5 (1) If a translation is submitted under paragraph 154(1)(b), the translation replaces the entirety of the description other than any sequences listings.

Translation replaces original – claims

(2) If a translation is submitted under paragraph 154(1)(b.1), the translation replaces the entirety of the claims.

Translation replaces original – element of application

(3) If a translation is submitted under section 155.1, the translation replaces the corresponding text matter in the PCT national phase application.

Failure to provide translation – certain elements

(4) If the applicant fails to provide a translation of a part of the description or claims or of any text matter in a drawing, in accordance with subsection 155.1(1) or paragraph 155.1(2)(b), respectively, the corresponding untranslated text matter in the PCT national phase application must not be taken into account for the purpose of interpreting the scope of protection sought or obtained.

Failure to provide translation – statement

(5) If the applicant fails to provide a translation of all or part of the statement referred to in paragraph 155.1(2)(e) in accordance with that paragraph, the statement may be disregarded by the Commissioner.

Failure to provide translation or complete copy

(6) If the applicant fails to provide a translation in accordance with paragraph 155.1(2)(c) or (d) or a complete copy in accordance with paragraph 155.4(1)(a), (b) or (c), the Commissioner may by notice require the applicant to provide the translation or complete copy no later than three months after the date of the notice.

Amendments to specification and drawings

155.6 (1) If all or part of the text matter of the specification or the drawings contained in an international application on its international filing date is in a language other than English or French, the specification and the drawings contained in the PCT national phase application must not be amended to add matter not reasonably to be inferred from both

(a) the specification or the drawings contained in the international application on its international filing date; and

(b) the specification or the drawings contained in the international application immediately after it became a PCT national phase application, excluding any text matter that is not in English or French other than text matter in a sequence listing that is not language-dependent free text.

Sequence listing

(2) For the purposes of paragraph (1)(a), if the international application contains, on its international filing date, text matter in a sequence listing that is both in English or French and in a language other than English or French, the text matter that is in a language other than English or French is considered not to have been included in the application on that date.

Divisional application

(3) The specification and the drawings contained in a divisional application resulting from the division of a PCT national phase application must not be amended to add matter that may not be or could not have been added under subsection 38.2(2) of the Act, subsection (1) of this section or this subsection – to the specification and the drawings contained in the application for a patent from which the divisional application results.

Non-application of subsections (1) and (3)

(4) Subsections (1) and (3) do not apply if it is admitted in the specification contained in the divisional application that the matter is prior art.

Clarification – divisional application

155.7 For greater certainty, the specification and the drawings contained in a divisional application resulting from the division of a PCT national phase application must not contain matter that is not

in the specification and the drawings contained in the original application on its filing date, or if the original application is itself a divisional application, on its presentation date, unless

- (a) the matter may be or could have been added – under section 155.6 of these Rules and subsection 38.2(1) and paragraph 38.2(3.1)(b) of the Act, without taking into account subsection 155.6(4) of these Rules or subsection 38.2(4) of the Act – to the specification and the drawings contained in the original application; or
- (b) it is admitted in the specification contained in the divisional application that the matter is prior art.

Clarification

156 (1) For greater certainty, in respect of an international application that has become a PCT national phase application, for the purposes of the Act and these Rules,

- (a) documents or information included in the international application as filed are deemed to have been received by the Commissioner on the international filing date; and
- (b) documents or information, other than the documents or information referred to in paragraph (a), furnished in accordance with the requirements of the Patent Cooperation Treaty before the application became a PCT national phase application are deemed to have been received by the Commissioner on the day on which they were so furnished.

Exception - sequence listings

(2) Paragraph (1)(b) does not apply in respect of sequence listings that do not form part of the international application.

Application considered open to public inspection

157 If an international application is published in English or French by the International Bureau of the World Intellectual Property Organization under Article 21 of the Patent Cooperation Treaty on or before its national phase entry date, the application is considered to be open to public inspection under section 10 of the Act beginning on the date of that publication.

Non-application of subsection 27(2) of Act

158 The requirements of subsection 27(2) of the Act regarding the

petition and the application fee do not apply in respect of a PCT national phase application.

Non-application of certain provisions of Act

159 (1) Subsection 27(7), sections 27.01, 28 and 28.01, subsection 38.2(3), 78.1(2) and section 78.2 of the Act do not apply in respect of a PCT national phase application.

Non-application of paragraph 38.2(3.1) (a) of Act

(2) Paragraph 38.2(3.1) (a) of the Act does not apply in respect of a divisional application resulting from the division of a PCT national phase application.

Non-application of section 78 of Act

160 Section 78 of the Act does not apply in respect of a time period referred to in that section that ends before the national phase entry date of a PCT national phase application.

Filing date

161 The filing date of a PCT national phase application is the international filing date.

Filing date deemed to be within 12 months

162 For the purposes of paragraph 28.1(1) (b) of the Act and subparagraphs 28.2(1) (d) (iii) and 28.4(5) (a) (i) and (ii) of the Act, even if the conditions referred to in paragraph 28.4(6) (b) of the Act are not met, the filing date of the pending application or the co-pending application, as the case may be, shall be deemed to be within 12 months after the filing date of the previously regularly filed application if

- (a) the filing date of the pending application or the co-pending application, as the case may be, is more than 12 months after the filing date of the previously regularly filed application, but within two months after the end of those 12 months;
- (b) the pending application or the co-pending application, as the case may be, is a PCT national phase application or a divisional application resulting from the division of a PCT national phase application; and
- (c) the right of priority, in respect of the previously regularly filed application, was restored under Rule 26bis.3 of the Regulations under the PCT and that restoration is, under Rule

49ter.1 of those Regulations, effective in Canada.

Application considered not to be referred to in paragraph 28.2(1) (c) or (d) of Act

163 An international application is considered not to be an application for a patent referred to in paragraph 28.2(1) (c) of the Act or not to be a co-pending application referred to in paragraph 28.2(1) (d) of the Act, unless it has become a PCT national phase application.

Patent not invalid

164 A patent that was granted on the basis of an international application must not be declared invalid by reason only that a fee referred to in section 154 was not paid.

PART 3 Transitional Provisions

DIVISION 1 Interpretation

Definitions

165 (1) The following definitions apply in this Part.

application preceding the coming-into-force date [repealed]

category 1 application means an application for a patent for which the filing date is before October 1, 1989.

category 2 application [repealed]

category 3 application means an application for a patent for which the filing date is on or after October 1, 1996 but before October 30, 2019.

coming-into-force date [repealed]

former Rules means the Patent Rules as they read before October 30, 2019.

Interpretation

(2) If the filing date of an application for a patent, other than a PCT national phase application, as determined in accordance with section 78.2 of the Act, precedes October 30, 2019, the filing date of that application is, for the purposes of these Rules, the filing date determined in accordance with that section.

Reissued patents

166 For greater certainty, for the purposes of this Part, a reissued patent is considered to be issued on the basis of the original application.

Application of subsection 3(1)

167 For greater certainty, subsection 3(1) applies in respect of any time limit fixed by the former Rules that continues to apply under these Rules.

DIVISION 2 Rules in Respect of Category 1 Applications

Non-application of certain provisions of these Rules

168 (1) Sections 14, 47 to 51, 55, 56, 58 to 63, 65 and 74, subsection 86(1.1), subparagraphs 87(1)(a)(iii) and (b)(iii), sections 93 to 96, subsections 97(2) and (3) and sections 98 and 104 do not apply in respect of a category 1 application.

Non-application of subsection 86(14)

(2) Subsection 86(14) does not apply in respect of a category 1 application at any time at which it is forfeited under subsection 73(1) of the Act, as it read immediately before October 1, 1989.

(3) [Repealed]

Application of certain provisions of former Rules

169 (1) Subject to subsection (3), sections 170, 171, 174, 175, 177, 181 and 183 to 186 of the former Rules continue to apply in respect of a category 1 application.

Application of section 32 of former Rules

(2) Section 32 of the former Rules continues to apply in respect of a category 1 application for which a notice of allowance was sent before October 30, 2019, other than such an application that is forfeited under subsection 73(1) of the Act, as it read immediately before October 1, 1989, and is subsequently restored.

Photographs

(3) Paragraphs 177(1)(a), (b), (e) and (h) of the former Rules do not apply in respect of photographs provided in respect of a category 1 application.

Application of section 179 of former Rules

(4) Section 179 of the former Rules continues to apply in respect of a category 1 application, except that the reference to "the filing date and number of each application in a country other than Canada on which the applicant bases the claim" in that section is to be read as a reference to "the filing date and the name of the country of filing of each application that was filed in a country other than Canada on which the claim is based".

Reference to "the Act"

170 A reference in section 42 and subsection 86(13) to "the Act", in relation to a category 1 application, is to be read as a reference to "the Act as it read immediately before October 1, 1989".

Final fee

171 With respect to a category 1 application,
(a) the reference to "the final fee set out in item 14 of Schedule 2

not later than four months after the date of the notice" in subsections 86(1), (6), (10) and (12) is to be read as a reference to "the final fee set out in paragraph 6(b) of Schedule II to the former Rules within six months after the date of the notice"; and

(b) the reference to "the small entity fee set out in paragraph 14(a) of Schedule 2", "the standard fee set out in paragraph 14(a) of Schedule 2" and "the fee set out in paragraph 14(b) of Schedule 2" in subsection 87(1) is to be read as a reference to "the small entity fee set out in subparagraph 6(b)(i) of Schedule II to the former Rules", "the standard fee set out in paragraph 6(b)(i) of Schedule II to the former Rules" and "the fee set out in subparagraph 6(b)(ii) of Schedule 2 o the former Rules", respectively.

Rejection for defects

172 (1) If an applicant of a category 1 application replies in good faith to a requisition made under subsection 30(2) of the former Rules, on or before the date set out in subsection (4) of this section, but the examiner, after receiving the reply, has reasonable grounds to believe that the application does not comply with the Act or these Rules in respect of any of the defects referred to in the requisition and that the applicant will not amend the application to comply with the Act and these Rules, the examiner may reject the application.

Notice - application found allowable after final action

(2) If an applicant of a category 1 application replies in good faith to a requisition made under subsection 30(4) of the former Rules, on or before the date set out in subsection (4) of this section, if the examiner has reasonable grounds to believe that the application complies with the Act and these Rules and if the Commissioner has not sent a notice of allowance under subsection 30(5) of the former Rules, the Commissioner must by notice inform the applicant that the rejection is withdrawn and the application has been found to be allowable and must require the payment of the final fee set out in paragraph 6(b) of Schedule II to the former Rules not later than four months after the date of that notice.

Rejection not withdrawn after final action

(3) If an applicant of a category 1 application replies in good

faith to a requisition made under subsection 30(4) of the former Rules, on or before the date set out in subsection (4) of this section, but the examiner, after that date, still has reasonable grounds to believe that the application does not comply with the Act or these Rules,

- (a) if a notice was not sent under paragraph 30(6)(a) of the former Rules, the Commissioner must by notice inform the applicant that the rejection has not been withdrawn;
- (b) any amendments made during the period beginning on the date of the final action notice and ending on the date set out in subsection (4) of this section are considered never to have been made; and
- (c) the application must be reviewed by the Commissioner.

Date

(4) For the purposes of subsections (1) to (3), the date is the later of

- (a) the day that is six months after the date of the requisition referred to in subsection 30(2) or (4) of the former Rules, as applicable, and
- (b) if the application is deemed to be abandoned under subsection 30(1) of the Act, as it read immediately before October 1, 1989, for the failure of the applicant to prosecute the application following the requisition made under subsection 30(2) or (4) of the former Rules, as applicable, the day on which the conditions for reinstatement set out in subsection 30(2) of the Act, as it read immediately before October 1, 1989, are met in respect of that abandonment.

Notice - application found allowable after amendments

(5) If the applicant of a category 1 application has complied with a notice sent under subsection 30(6.3) of the former Rules in respect of amendments that have to be made and if a notice of allowance was not sent under that subsection, the Commissioner must by notice inform the applicant that the rejection is withdrawn and the application has been found to be allowable and require the payment of the final fee set out in paragraph 6(b) of Schedule II to the former Rules not later than four months after the date of the notice sent under this subsection.

Non-application of paragraph (3) (b)

(6) Paragraph (3) (b) does not apply in respect of an application for a patent that, before December 29, 2013, was rejected by an examiner under subsection 30(3) of the former Rules unless the rejection has been withdrawn.

Non-application of subsection 3(1)

(7) Subsection 3(1) does not apply in respect of the time referred to in subsection (2) or (5).

No amendment after rejection

173 If a category 1 application is rejected by an examiner under subsection 172(1) of these Rules or subsection 30(3) of the former Rules, the specification and the drawings contained in the application must not be amended after the date prescribed by subsection 172(4) of these Rules, unless

- (a) a notice is sent to the applicant informing them that the rejection is withdrawn;
- (b) the amendments made are those required in a notice sent under subsection 86(11) of these Rules or subsection 30(6.3) of the former Rules; or
- (c) the Supreme Court of Canada, the Federal Court of Appeal or the Federal Court orders the amendments to be made.

Reference

174 The reference to "may be or could have been added, under section 38.2 of the Act without taking into account subsection 38.2(4) of the Act, to the specification and the drawings contained in the original application" in paragraph 91(a) is to be read, in relation to a category 1 application, as a reference to "results from an amendment to the specification or drawings that is not prohibited by section 181 of the former Rules".

Reference to subsection 28.4(2) of Act and paragraph 93(1) (b) of these Rules

175 The reference to "subsection 28.4(2) of the Act" in paragraph 92(c) and the reference to "paragraph 93(1) (b)" in paragraph 92(f), in relation to a category 1 application, are to be read as a reference to "section 179 of the former Rules" and "subsection 184(3) of the former Rules", respectively.

Additional fee for restoration of application

176 The additional fee to be paid for the restoration of a category 1 application that was forfeited under subsection 73(1) of the Act, as it read immediately before October 1, 1989, is \$200.

DIVISION 3 Rules in Respect of Category 2 Applications

[Repealed]

177 [Repealed]

178 [Repealed]

179 [Repealed]

180 [Repealed]

181 [Repealed]

182 [Repealed]

183 [Repealed]

184 [Repealed]

185 [Repealed]

186 [Repealed]

187 [Repealed]

DIVISION 4 Rules in Respect of Category 3 Applications

Non-application of certain provisions of these Rules

188 (1) Subsections 73(1) and (4), 81(1), 84(2) and 103(2) and section 132 do not apply in respect of a category 3 application.

Non-application of section 74

(2) Section 74 does not apply in respect of a request for priority made in relation to a category 3 application before October 30, 2019.

Application of section 100

(3) [Repealed]

Non-application of subsection 103(1)

(4) Subsection 103(1) does not apply in respect of a category 3 application that has a presentation date before October 30, 2019.

Non-application of section 104

(5) Section 104 does not apply in relation to a category 3 application in respect of which an assignment was registered under

subsection 49(2) of the Act, as it read immediately before October 30, 2019.

Application of section 26.1 of former Rules

189 (1) Section 26.1 of the former Rules continues to apply in respect of the time prescribed by section 98 of the former Rules in respect of a category 3 application.

Application of section 32 of former Rules

(2) Section 32 of the former Rules continues to apply in respect of a category 3 application for which a notice of allowance was sent before October 30, 2019 other than such an application that is deemed to be abandoned under paragraph 73(1)(f) of the Act, as it read before October 30, 2019, and is subsequently reinstated.

Application of section 66 of the former Rules

(3) Section 66 of the former Rules continues to apply in relation to a category 3 application in respect of which the applicant, before October 30, 2019, complied with the requirements of subsection 58(1) of the former Rules and, if applicable, with the requirements of subsection 58(2) of those Rules.

Application of section 98 of former Rules

(4) If, under section 78.51 or 78.52 of the Act, section 73 of the Act, as it read immediately before October 30, 2019, applies in respect of the abandonment of a category 3 application, section 98 of the former Rules continues to apply in respect of that abandonment.

Extension of time

190 The Commissioner is authorized to extend, in respect of a category 3 application, the time referred to in the former Rules for payment of the fee referred to in subsection 3(3), (5) or (7) of the former Rules or the time referred to in subsection 199(2) or (5) of these Rules for the payment of the final fee, after the expiry of that time, if the Commissioner considers that the circumstances justify the extension and if the conditions referred to in subsection 3(3) of these Rules are met.

Prescribed date - withdrawal of request for priority

191 For the purposes of subsection 10(4) of the Act, if a request

for priority that was made in respect of a category 3 application has been withdrawn with respect to a previously regularly filed application for a patent before October 30, 2019, the prescribed date is, despite section 17, the later of

(a) the earlier of

(i) the day on which a period of 16 months after the filing date of the previously regularly filed application expires, and

(ii) if the request for priority is based on more than one previously regularly filed application, the day on which a period of 16 months after the earliest of the filing dates of those applications expires, and

(b) if the Commissioner is able to stop the technical preparations to open the category 3 application to public inspection before the expiry of the confidentiality period referred to in subsection 10(2) of the Act, the day on which the Commissioner stops those preparations.

Prescribed date - withdrawn application

192 If a category 3 application is withdrawn before October 30, 2019, for the purposes of subsection 10(5) of the Act, the prescribed date is, despite section 18 of these Rules, the day that is two months before the expiry date of the confidentiality period referred to in subsection 10(2) of the Act or, if the Commissioner is able to stop the technical preparations to open the application to public inspection at a subsequent date preceding the expiry of that period, that subsequent date.

Exception to subsection 50(1)

193 In respect of a category 3 application, the applicant may comply with the requirements of subsection 73(1) of the former Rules instead of the requirements of subsection 50(1) of these Rules.

Exception to section 58

194 In respect of a category 3 application for which the filing date was before June 2, 2007, the applicant may comply with the requirements of sections 111 to 131 of the Patent Rules, as they read immediately before June 2, 2007, instead of the requirements of section 58 of these Rules.

Requirements for request for priority

195 (1) For the purposes of subsection 28.4(2) of the Act, a request for priority in respect of a category 3 application must be made in the petition of that application or in a separate document, before the later of the end of

- (a) a period 16 months after the earliest of the filing dates of the previously regularly filed applications for a patent on which the request is based, and
- (b) a period four months after the filing date of the category 3 application.

Time prescribed by subsection 73(1)

(2) With respect to a request for priority made in relation to a category 3 application, the reference to "the time prescribed by subsection (1)" in subsections 73(2) and (6) is to be read as a reference to "the time prescribed by subsection 195(1)".

Correction - error in filing date

(3) An error in a filing date submitted under subsection 28.4(2) of the Act in relation to a request for priority in respect of a category 3 application may be corrected on request submitted before the earliest of

- (a) the end of the period referred to in subsection (1), as determined using the corrected filing date,
- (b) the end of the period referred to in subsection (1), as determined using the uncorrected filing date, and
- (c) if applicable, the day on which the applicant submits their approval, under subsection 10(2) of the Act, for the category 3 application to be open to public inspection before the expiry of the confidentiality period, unless that approval is withdrawn in time to permit the Commissioner to stop the technical preparations to open the application to public inspection.

Non-application of subsection 3(1)

(4) Subsection 3(1) does not apply to the time referred to in subsection (1).

Notice requiring application to be made accessible

196 (1) If, for the purpose of examining a pending category 3 application in respect of which a request for priority was made before October 30, 2019, the examiner takes into account a

previously regularly filed application for a patent other than such an application that was filed in Canada on which the request for priority is based, the examiner may by notice require the applicant of the pending application to do one of the following not later than four months after the date of the notice:

- (a) to submit to the Commissioner a copy of that previously regularly filed application, certified by the patent office where it was filed, as well as a certificate from that office indicating the filing date; or
- (b) to make a copy of that previously regularly filed application available to the Commissioner in a digital library that is specified by the Commissioner as being accepted for that purpose, and inform the Commissioner that it is so available.

Request for priority considered withdrawn

(2) If the applicant fails to comply with the requirements of paragraph (1) (a) or (b) in respect of a previously regularly filed application for a patent not later than four months after the date of the notice referred to in subsection (1), the request for priority is considered to have been withdrawn at the end of that time in respect of that previously regularly filed application unless, before the end of that time,

- (a) a request is made to the patent office where the previously regularly filed application was filed to provide the copy and certificate referred to in paragraph (1) (a); and
- (b) the applicant submits to the Commissioner a request that the Commissioner restore the right of priority on the basis of that previously regularly filed application and a statement indicating the patent office to which the request referred to in paragraph (a) was made and the date of that request.

Applicant considered to comply

(3) If the conditions set out in paragraphs (2) (a) and (b) are met by the applicant in respect of a previously regularly filed application for a patent, the applicant is considered to have complied with subsection (1) in respect of that application.

Submission of copy and certificate

(4) If the conditions set out in paragraphs (2) (a) and (b) are met in respect of a previously regularly filed application for a patent and if the patent office where that application was filed provides

the copy and certificate referred to in paragraph (1)(a), the applicant or the patentee, as applicable, must submit the copy and certificate to the Commissioner not later than three months after the day on which they were provided.

Request for priority considered withdrawn

(5) If the applicant or patentee fails to comply with subsection (4) in respect of a previously regularly filed application for a patent, the request for priority is considered to have been withdrawn at the end of the time referred to in that subsection in respect of that application.

Exception

(6) Subsections (1) to (5) do not apply in respect of a previously regularly filed application on the basis of which an applicant requests priority if the pending category 3 application is a PCT national phase application or a divisional application resulting from the division of a PCT national phase application and if the requirements of Rule 17.1(a), (b) or (b-bis) of the Regulations under the PCT are complied with in respect of that previously regularly filed application.

Prescribed time - subsection 35(2) of Act

197 (1) For the purposes of subsection 35(2) of the Act, in respect of a category 3 application, the prescribed time for making a request for examination and for paying the fee is any time before

- (a) in the case of such an application that is not a divisional application, the end of a period of five years after the filing date of the application; and
- (b) in the case of such an application that is a divisional application, the later of
 - (i) the end of the time that is applicable under this subsection in respect of the original application, and
 - (ii) the end of a period of three months after the presentation date of the divisional application or, if the presentation date precedes October 30, 2019, the end of a period of six months after the presentation date of the divisional application.

Non-application of subsection 3(1)

(2) Subsection 3(1) does not apply to the times prescribed by subsection (1).

Exception to subsection 84(1)

198 If a request is made by an applicant under subsection 84(1) in relation to a category 3 application, the Commissioner must not, despite that subsection, advance the examination of that application out of its routine order or, if the examination has been advanced, must return it to its routine order if

- (a) the Commissioner has, under subsection 3(1), extended the time fixed for doing anything in respect of the application;
- (b) after April 30, 2011, the Commissioner has, under subsection 26(1) of the former Rules, extended the time fixed for doing anything in respect of the application;
- (c) after April 30, 2011, the application is or was deemed to be abandoned under
 - (i) subsection 73(1) of the Act, or
 - (ii) subsection 73(1) of the Act, as it read immediately before October 30, 2019; or
- (d) on or after October 30, 2019, the application is or was deemed to be abandoned under subsection 73(2) of the Act.

Exception to subsection 86(16)

198.1 In subsection 86(16), the reference to paragraph 132(1)(g), in relation to a category 3 application, is to be read as a reference to paragraph 203(1)(e).

Rejection for defects

199 (1) If an applicant of a category 3 application replies in good faith to a requisition made under subsection 30(2) of the former Rules on or before the date set out in subsection (4) of this section but the examiner, after receiving the reply, has reasonable grounds to believe that the application does not comply with the Act or these Rules in respect of any of the defects referred to in the requisition and that the applicant will not amend the application to comply with the Act and these Rules, the examiner may reject the application.

Notice - application found allowable after final action

(2) If an applicant of a category 3 application replies in good faith to a requisition made under subsection 30(4) of the former Rules, on or before the date set out in subsection (4) of this section, and the examiner has reasonable grounds to believe that the application complies with the Act and these Rules and if the

Commissioner has not sent a notice of allowance under subsection 30(5) of the former Rules, the Commissioner must by notice inform the applicant that the rejection is withdrawn and the application has been found to be allowable and require the payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of notice sent under this subsection.

Rejection not withdrawn after final action

(3) If an applicant of a category 3 application replies in good faith to a requisition made under subsection 30(4) of the former Rules on or before the date set out in subsection (4) of this section but the examiner, after that date, still has reasonable grounds to believe that the application does not comply with the Act or these Rules,

- (a) if a notice was not sent under paragraph 30(6)(a) of the former Rules, the Commissioner must by notice inform the applicant that the rejection has not been withdrawn;
- (b) any amendments made to that application during the period beginning on the date of the final action notice and ending on the date set out in subsection (4) of this section are considered never to have been made; and
- (c) the application must be reviewed by the Commissioner.

Date

(4) For the purposes of subsections (1) to (3), the date is the later of

- (a) the earlier of
 - (i) the day that is six months after the date of the requisition referred to in subsection 30(2) or (4) of the former Rules, as applicable, and
 - (ii) the last day of the period determined by the Commissioner, if any, under paragraph 73(1)(a) of the Act, as it read immediately before October 30, 2019, and

(b) if the category 3 application is deemed to be abandoned under paragraph 73(1)(a) of the Act, as it read immediately before October 30, 2019, for failure to reply in good faith to a requisition made under subsection 30(2) or (4) of the former Rules, as applicable, the day on which the conditions for reinstatement set out in subsection 73(3) of the Act, as it read before October 30, 2019, are met in respect of that abandonment.

Notice - application found allowable after amendments

(5) If the applicant of a category 3 application has complied with a notice sent under subsection 30(6.3) of the former Rules in respect of specific amendments that have to be made and if a notice of allowance was not sent under that subsection, the Commissioner must by notice inform the applicant that the rejection is withdrawn and that the application has been found to be allowable and require the payment of the final fee set out in item 14 of Schedule 2 not later than four months after the date of notice sent under this subsection.

Non-application of paragraph (3) (b)

(6) Paragraph (3) (b) does not apply in respect of an application for a patent that, before December 29, 2013, was rejected by an examiner under subsection 30(3) of the former Rules unless the rejection has been withdrawn.

Non-application of subsection 3(1)

(7) Subsection 3(1) does not apply in respect of the time referred to in subsection (2) or (5).

No amendment after rejection

200 If a category 3 application is rejected by an examiner under subsection 199(1) of these Rules or subsection 30(3) of the former Rules, the specification and the drawings contained in the application must not be amended after the date prescribed by subsection 199(4) of these Rules, unless

- (a) a notice is sent to the applicant informing them that the rejection is withdrawn;
- (b) the amendments are those required in a notice sent under subsection 86(11) of these Rules or subsection 30(6.3) of the former Rules; or
- (c) the Supreme Court of Canada, the Federal Court of Appeal or the Federal Court orders the amendments to be made.

Request to furnish sample to independent expert

201 (1)

A notice referred to in subsection 104(4) of the former Rules that was filed in respect of a category 3 application is considered to be a request referred to in section 95 of these Rules.

Independent expert considered to be nominated

(2) An independent expert who was nominated under subsection 109(1) of the former Rules is considered to be nominated under section 96 of these Rules.

Documents and information - divisional application

202 (1) For the purposes of paragraph 38.2 (3.1) (b) of the Act, the prescribed documents and information in respect of a category 3 application that has a presentation date before October 30, 2019 are

- (a) in the case of such an application that has a presentation date before June 2, 2007, the documents and information referred to in clauses 78.2(a) (iii) (A) to (D) of the Act; and
- (b) in the case of such an application that has a presentation date on or after June 2, 2007 but before October 30, 2019, the documents and information referred to in clauses 78.2(a) (iv) (A) to (D) of the Act.

Presentation date

(2) The presentation date of a category 3 application is

- (a) if all of the elements referred to in clauses 78.2(a) (iii) (A) to (E) of the Act were received by the Commissioner before June 2, 2007, the day on which they were received or, if they were received on different days, the latest of those days;
- (b) if paragraph (a) does not apply and if at least one of the elements referred to in clauses 78.2(a) (iv) (A) to (E) of the Act was received by the Commissioner on or after June 2, 2007 and all of those elements were received by the Commissioner before October 30, 2019, the day on which they were received, or if they were received on different days, the latest of those days; and
- (c) if paragraphs (a) and (b) do not apply and if all of the documents and information referred to in subsection 103(1) of these Rules were received by the Commissioner and at least one of those elements was received by the Commissioner on or after October 30, 2019, the day on which they were received or, if they were received on different days, the latest of those days.

Application deemed abandoned

203 (1) For the purposes of subsection 73(2) of the Act, a category 3 application is deemed to be abandoned if

- (a) a notice is sent under section 31 and the requirements are not complied with within the applicable time referred to in that

section;

- (b) the applicant does not reply in good faith to a request of the Commissioner for further drawings under subsection 27(5.2) of the Act not later than three months after the date of the request;
- (c) the applicant does not reply in good faith to a notice of the Commissioner referred to in section 65 within the time referred to in that section;
- (c.1) the applicant does not make a request for continued examination of an application for a patent and pay the prescribed fee in accordance with subsection 85.1(3);
- (d) a notice of allowance is sent under subsection 86(1), (6), (10) or (12) or 199(2) or (5) and the applicant does not pay the final fee set out in item 14 of Schedule 2 within the time referred to in the applicable subsection; or
- (e) the applicant does not reply in good faith to a conditional notice of allowance of the Commissioner sent under subsection 86(1.1) and pay the final fee set out in item 14 of Schedule 2 within the time referred to in that subsection; or
- (f) the applicant does not comply with a notice of the Commissioner referred to in subsection 155.5(6) within the time referred to in that subsection.

Exception

(2) Paragraphs (1)(d) and (e) do not apply in respect of a notice of allowance or a conditional notice of allowance that is set aside in accordance with subsection 85.1(4).

Refund of final fee

204 If a category 3 application is deemed to be abandoned under paragraph 73(1)(f) of the Act, as it read immediately before October 30, 2019, and is subsequently reinstated,

- (a) the Commissioner must refund the final fee paid in respect of that application if a request for a refund of the fee is received not later than one month after the date of the reinstatement of the application; and
- (b) if the final fee paid in respect of that application has not been refunded, despite subsections 86(1), (1.1), (6), (10) and (12), the Commissioner must not require payment of that fee in any notice of allowance or conditional notice of allowance sent after the reinstatement of the application.

DIVISION 5 Rules Applicable to Certain Patents

Non-application of subsections 97(2) and (3)

205 (1) Subsections 97(2) and (3) do not apply in respect of a patent granted on the basis of a category 1 application.

Application of subsections 187(2) and (3) of former Rules

(2) Subsections 187(2) and (3) of the former Rules continue to apply in respect of a patent issued on the basis of a category 1 application, except that the reference to subsection (1) in subsection 187(2) is to be read as a reference to subsection 97(1) of these Rules.

Application of subsections 163(2) and (3) of former Rules

(3) [Repealed]

Application of certain provisions of former Rules to patents granted on basis of category 1 application

206 Subsections 3(9) and 182(1) to (3) of the former Rules and item 32 of Schedule II to those Rules continue to apply in respect of the applicable fee payable to maintain the rights accorded by a patent granted on the basis of a category 1 application, if the time not including the period of grace referred to in that item for the payment of that fee ends before October 30, 2019.

Application of certain provisions of former Rules to patents granted on basis of category 3 application

207 (1) Subsection 3(8) and sections 100 and 101 of the former Rules and item 31 of Schedule II to those Rules continue to apply in respect of the applicable fee payable to maintain the rights accorded by a patent granted on the basis of a category 3 application, if the time - not including the period of grace - referred to in that item for the payment of that fee ends before October 30, 2019.

Extension of time

(2) The Commissioner is authorized to extend the time for payment of the fee referred to in subsection 3(8) of the former Rules in respect of a patent issued on the basis of a category 3 application - after that the time, including a period of grace, has expired - if

the Commissioner considers that the circumstances justify the extension and if the conditions referred to in subsection 3(3) of these Rules are met.

Maintenance fee - patent

208 In respect of a patent granted on the basis of a category 1 application, the reference to "set out in item 25 of Schedule 2" in subsection 112(1) is to be read as a reference to "set out in item 1 of Schedule 3".

Patent not invalid

209 (1) A patent that was granted on the basis of an international application must not be declared invalid by reason only that a fee referred to in section 58 of the former Rules was not paid.

Exception

(2) Subsection (1) does not apply in respect of a patent that was granted before October 30, 2019 or a reissued patent if the original patent was granted before that date.

DIVISION 6 Other Rules

Exception - national phase entry date

210 (1) For the purposes of these Rules, if the applicant of an international application for which the international filing date, as defined in section 141, precedes October 30, 2019 has, before October 30, 2019, complied with the requirements of subsection 58(1) and, if applicable, subsection 58(2) of the former Rules, the national phase entry date in respect of that application is the date on which the applicant complied with those requirements, or, if the applicant complied with those requirements on different dates, the latest of those dates.

Fee considered paid

(2) If the Commissioner has, under section 190 of these Rules or subsection 26(3) of the former Rules, extended the time for the payment of a fee referred to in subsection 3(5) or (7) of the former Rules, and the fee is paid before the end of the extended period, for the purposes of subsection (1), that fee is considered to have been paid on the day on which the amount of the small entity fee was paid.

Exception - national phase entry date

(3) In these Rules, if the applicant of an international application for which the international filing date, as defined in section 141, precedes October 30, 2019 has, on or after October 30, 2019, complied with the requirements of subparagraphs 154(3)(a)(ii) to (iv) and paragraph 154(3)(b), the national phase entry date in respect of that application is the date on which the applicant complied with those requirements, or, if the applicant complied with those requirements on different dates, the latest of those dates.

Small entity declaration

(4) For the purpose of subsection (3), an applicant is not considered to have paid the fee referred to in clause 154(3)(a)(iii)(A) or 154(3)(b)(i)(A) or (ii)(A) until the small entity declaration has been filed.

Extension of period - section 208

211 The Commissioner is authorized to extend the time for the payment of a fee referred to in subsection 112(1), as modified by section 208, after the expiry of that time, if the Commissioner considers that the circumstances justify the extension and if the conditions referred to in subsection 3(3) are met.

Extension of period established by Commissioner

212 If, under paragraph 73(1)(a) of the Act, as it read immediately before October 30, 2019, the Commissioner established a shorter period for replying in good faith to any requisition made by an examiner in connection with an examination, the Commissioner is authorized to extend that period for up to six months after the requisition was made - whether that time has expired or not ? if the Commissioner considers that the circumstances justify the extension and if, before the expiration of that period, the extension is applied for and the fee set out in item 1 of Schedule 2 is paid.

Extension of time fixed by former Rules

213 If, before October 30, 2019, a requisition referred to in section 23, 25, 37 or 94 of the former Rules was sent by notice by the Commissioner, the Commissioner is authorized to extend the time period to reply in good faith under that section to the requisition - whether that period has expired or not - if the Commissioner considers that the circumstances justify the extension and if,

before the expiration of that period, the extension is applied for and the fee referred to in item 1 of Schedule 2 to these Rules is paid.

214 [Repealed]

Documents not in English or French

215 Despite section 15, the Commissioner must have regard to any document or part of a document that is submitted or made available in a language other than English or French under subsection 196(1) of these Rules, or provided under subsection 29(1) or paragraph 58(1)(a) of the former Rules or filed under section 89 or 180 of the former Rules, in a language other than English or French.

Patent agent deemed to be appointed

216 If, before October 30, 2019, a patent agent was appointed in the petition or in a notice to that effect signed by the applicant and submitted to the Commissioner, the appointment of the patent agent is deemed to have been made in accordance with section 27.

Associate patent agent deemed to be appointed

217 If, before October 30, 2019, an associate patent agent was appointed in the petition or in a notice that was signed by the patent agent who appointed the associate patent agent and submitted to the Commissioner, the appointment of the associate patent agent is deemed to have been made in accordance with section 28.

Representation - application filed before October 30, 2019

218 In respect of an application for a patent for which the filing date is before October 30, 2019 – other than a divisional application that has a presentation date on or after October 30, 2019 – for which there are joint applicants and in respect of which no common representative is appointed under paragraph 26(3)(a) or (c), in respect of which no correction or decision referred to in subsection 26(6) was made – other than a decision made before October 30, 2019 – and in respect of which subsection 26(9) does not apply,

(a) if, immediately before October 30, 2019, no patent agent residing in Canada is appointed

(i) subsections 26(4) to (6) do not apply, and

(ii) subject to subsection 26(11), the joint applicant who, before October 30, 2019 force was the authorized correspondent under the former Rules, is deemed to be appointed as the common representative; and

(b) if, before October 30, 2019, a patent agent residing in Canada is appointed,

(i) if the appointment of that patent agent has been revoked, the joint applicant whose name appears first when listed in alphabetical order at the time of the revocation is, subject to subsection 26(11), deemed to be appointed as the common representative, and

(ii) in any other case,

(A) subsections 26(4) to (6) and paragraph 27(7)(a) do not apply,

(B) any appointment of a patent agent by the applicants on or after October 30, 2019 may, despite subsection 27(3), be made only by a notice to that effect signed by all of the applicants and submitted to the Commissioner, and

(C) an appointment of a patent agent may be revoked by submitting to the Commissioner a notice to that effect signed by all of the applicants or by that patent agent.

Representation - patent granted before October 30, 2019

219 In respect of a patent - other than a reissued patent - granted before October 30, 2019 for which there are joint patentees and in respect of which no common representative is appointed under paragraph 26(3)(a) and in respect of which subsection 26(9) does not apply,

(a) if, immediately before the patent was granted, no patent agent residing in Canada was appointed in respect of the application on which the patent was based and if the joint applicant who, immediately before the patent was granted, was the authorized correspondent under the former Rules, is a patentee before October 30, 2019,

(i) subsection 26(7) does not apply, and

(ii) subject to subsection 26(11), that applicant is deemed to be appointed as the common representative; and

(b) in any other case,

(i) subsection 26(7) and paragraph 27(7)(a) do not apply,

(ii) any appointment of a patent agent by the patentees on or after October 30, 2019 date may, despite subsection 27(3), be made only by a notice to that effect signed by all of the patentees and submitted to the Commissioner, and

(iii) an appointment of a patent agent, including a deemed appointment, may be revoked by submitting to the Commissioner a notice to that effect signed by all of the patentees or by that patent agent.

Representation - patent reissued before October 30, 2019

220 In respect of a patent that is reissued before October 30, 2019 for which there are joint patentees and in respect of which no common representative is appointed under paragraph 26(3) (a) and in respect of which subsection 26(9) does not apply,

(a) if, immediately before the original patent was granted, no patent agent residing in Canada was appointed in respect of the application on which the original patent was based and if the joint applicant who, immediately before the original patent was granted, was the authorized correspondent under the former Rules, is a patentee of the reissued patent immediately before these Rules come into force,

(i) subsection 26(8) does not apply, and

(ii) subject to subsection 26(11), that applicant is deemed to be appointed as the common representative; and

(b) in any other case,

(i) subsection 26(8) and paragraph 27(7) (a) do not apply,

(ii) any appointment of a patent agent by the patentees on or after October 30, 2019 may, despite subsection 27(3), be made only by a notice to that effect signed by all of the patentees and submitted to the Commissioner, and

(iii) an appointment of a patent agent, including a deemed appointment, may be revoked by submitting to the Commissioner a notice to that effect signed by all of the patentees or by that patent agent.

Representation - patent granted on or after October 30, 2019

221 In respect of a patent, other than a reissued patent, granted on or after October 30, 2019, on the basis of an application for a patent for which the filing date is before October 30, 2019, for

which there are joint patentees and in respect of which no common representative is appointed under paragraph 26(3) (a), if, immediately before the patent was granted, no common representative was appointed in respect of that application,

- (a) subsection 26(7) and paragraph 27(7) (a) do not apply;
- (b) any appointment of a patent agent on or after October 30, 2019 may, despite subsection 27(3), be made by the patentees only by a notice to that effect signed by all of the patentees and submitted to the Commissioner; and
- (c) an appointment of a patent agent, including a deemed appointment, may be revoked by submitting to the Commissioner a notice to that effect signed by all of the patentees or by that patent agent.

Representation - patent reissued on or after October 30, 2019

222 In respect of a patent that is reissued -on the basis of an application for a patent for which the filing date is before October 30, 2019 – on or after October 30, 2019 for which there are joint patentees and in respect of which no common representative is appointed under paragraph 26(3) (a), if, immediately before the patent was reissued, no common representative was appointed in respect of the original patent,

- (a) subsection 26(8) and paragraph 27(7) (a) do not apply;
- (b) any appointment of a patent agent on or after October 30, 2019 may, despite subsection 27(3), be made by the patentees only by a notice to that effect signed by all of the patentees and submitted to the Commissioner; and
- (c) an appointment of a patent agent may be revoked by submitting to the Commissioner a notice to that effect signed by all of the patentees or by that patent agent.

Non-application of section 37

223 Section 37 does not apply in respect of business before the Patent Office for the purpose of a procedure commenced before October 30, 2019.

Small entity declaration for patent or application

224 (1) A small entity declaration filed before October 30, 2019 in respect of a patent or an application for a patent in accordance with section 3.01 of the former Rules is considered to be filed in accordance with subsection 44(3) or 112(3) of these Rules, as

applicable.

Small entity declaration - patent

(2) A small entity declaration filed in respect of a patent in accordance with section 3.02 of the former Rules before October 30, 2019 is considered to be filed in accordance with subsection 122(4) of these Rules.

Exception to section 54 - filing date before June 2, 2007

225 (1) In respect of an application for a patent, other than a PCT national phase application, that has a filing date before June 2, 2007, the applicant, instead of complying with the requirements of section 54, may comply with

- (a) the requirements of section 37 of the former Rules;
- (b) the requirements of section 77 of the Patent Rules, as they read immediately before October 1, 2010; or
- (c) the requirements of sections 37 and 77 of the Patent Rules, as they read immediately before June 2, 2007.

Exception - compliance with other requirements

(2) In respect of a PCT national phase application for which the filing date is before June 2, 2007, the applicant may, instead of complying with the requirements of section 54, comply with the requirements of paragraph (1)(a), (b) or (c) or file a declaration as to the applicant's entitlement on the filing date to apply for and be granted a patent in accordance with Rule 4.17 of the Regulations under the PCT.

Exception to section 54 - filing date before October 1, 2010

226 (1) In respect of an application for a patent, other than a PCT national phase application, for which the filing date is June 2, 2007 or later but before October 1, 2010, the applicant, instead of complying with the requirements of section 54, may comply with

- (a) the requirements of section 37 of the former Rules; or
- (b) the requirements of section 77 of the Patent Rules, as they read immediately before October 1, 2010.

Exception - compliance with other requirements

(2) In respect of a PCT national phase application for which the filing date is June 2, 2007 or later but before October 1, 2010, the applicant may, instead of complying with the requirements of section

54, comply with the requirements of paragraph (1) (a) or (b) or file a declaration as to the applicant's entitlement on the filing date to apply for and be granted a patent in accordance with Rule 4.17 of the Regulations under the PCT.

Exception to section 54 - filing date before October 30, 2019

227 In respect of an application for a patent for which the filing date is October 1, 2010 or later but before October 30, 2019, the applicant, instead of complying with the requirements of section 54, may comply with the requirements of section 37 of the former Rules.

Clarification

228 For greater certainty, the dates prescribed by sections 69 and 113 do not include any dates that precede October 30, 2019.

Final fee paid before October 30, 2019

229 If, before October 30, 2019, the applicant of an application for a patent for which the filing date is before that date, paid, in respect of that application, the applicable final fee set out in item 6 of Schedule II to the former Rules and that fee was not refunded before that date,

(a) the reference to "on or before the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, on or before the day on which the final fee is paid again" in subsection 73(5), paragraph 100(2) (a), section 105 and paragraph 106(a) is to be read, in respect of that application, as a reference to "on or before the day on which the applicable final fee set out in item 6 of Schedule II to the former Rules is paid or, if the final fee is refunded, on or before the day on which the final fee set out in item 14 of Schedule 2 is paid"; and,

(b) the reference to "after the day on which the final fee set out in item 14 of Schedule 2 is paid or, if the final fee is refunded, after the day on which the final fee is paid again" in section 127 is to be read as "after the day on which the applicable final fee set out in item 6 of Schedule II to the former Rules is paid or, if the final fee is refunded, after the day on which the final fee set out in item 14 of Schedule 2 is paid".

Notice of allowance considered not sent

230 For greater certainty, a notice of allowance is considered not to have been sent if it was deemed not to have been sent before October 30, 2019.

Non-application of section 89

231 Section 89 does not apply in respect of an application for a patent for which the presentation date preceded October 30, 2019.

Periods referred to in section 128

232 For greater certainty, the periods prescribed by paragraph 128(a), (b) or (d) do not include any period that begins less than six months after October 30, 2019.

Publication in Canadian Patent Office Record

233 For the purposes of paragraph 130(1)(c), an application that was advertised in the Canadian Patent Office Record before October 30, 2019 is considered to have been advertised on the website of the Canadian Intellectual Property Office on the day on which it was advertised in the Canadian Patent Office Record.

Non-application of subparagraph 154(3)(a)(i)

234 Subparagraph 154(3)(a)(i) does not apply in respect of an international application for which the international filing date, as defined in section 141, precedes October 30, 2019.

Exception to section 162

235 If the right of priority in respect of a previously regularly filed application, on which the request for priority in relation to a pending application is based, was restored under Rule 26bis.3 of the Regulations under the PCT before October 30, 2019, section 162 does not apply in respect of that previously regularly filed application.

PART 4 Repeal and Coming into Force

236 [Repealed]

237 [Repealed]

SCHEDULE 1 Prescribed Forms (omitted)

SCHEDULE 2 Tariff of Fees

(Sections 3, 4, 19, 22 to 24, 44, 45, 68, 70, 73, 80, 82, 84, 85.1, 86, 87, 100, 105, 106, 109, 112, 115, 117, 119, 121, 122, 124 to 127, 129, 132, 134, 136 to 140, 147 to 151, 154, 171, 199, 203, 208, 212, 213 and 229)

PART 1 Fee in Respect of Extension of Time

Column 1		Column 2
Item	Description	Amount (\$)
1.	Fee for applying for an extension of time, in respect of each period of time referred to in the application for an extension	277.00

PART 2 [Repealed]

PART 3 Fees in Respect of Applications for a Patent

Column 1		Column 2
Item	Description	Amount (\$)
6.	Application fee	
	(a) small entity fee	225.00
	(b) standard fee	555.00
7.	Late fee under subsection 27(7) of the Act	150.00
8.	Fee for maintaining an application for a patent in effect	
	(a) for the dates of each of the second, third and fourth anniversaries of the filing date of the application,	
	(i) small entity fee	50.00
	(ii) standard fee	125.00
	(b) for the dates of each of the fifth, sixth, seventh, eighth and ninth anniversaries of the filing date of the application,	
(i) small entity fee	100.00	
(ii) standard fee	277.00	

8.	(c) for the dates of each of the 10th, 11th, 12th, 13th and 14th anniversaries of the filing date of the application,	
	(i) small entity fee	125.00
	(ii) standard fee	347.00
	(d) for the dates of each of the 15th, 16th, 17th, 18th and 19th anniversaries of the filing date of the application,	
(i) small entity fee	253.00	
(ii) standard fee	624.00	
9.	Late fee under subsection 27.1(2) of the Act.	150.00
10.	Fee for examination of an application for a patent	
	(a) the basic fee,	
	(i) if the application for a patent has been the subject of an international search by the Commissioner in the Commissioner's capacity as an International Search Authority,	
	(A) small entity fee	110.00
	(B) standard fee	277.00
	(ii) in any other cases,	
(A) small entity fee	450.00	
(B) standard fee	1,110.00	
(b) fee for each claim in excess of 20 that is included in the application		
(i) small entity fee	55.00	
(ii) standard fee	110.00	
11.	Late fee under subsection 35(3) of the Act	150.00
12.	Fee to advance an application for a patent out of its routine order	694.00
13.	Fee for continued examination of an application for a patent	
	(a) small entity fee	450.00
	(b) standard fee	1,110.00
14.	Final fee	
	(a) the basic fee	
	(i) small entity fee	169.00
	(ii) standard fee.	416.00
(b) fee for each page of specification and drawings in excess of 100 pages	8.00	

14	(c) fee for each claim in excess of 20 included in the application in respect of which the fee set out in paragraph 10(b) was not paid (i) small entity fee (ii) standard fee.	55.00 110.00
15.	Fee for reinstatement of an application deemed to be abandoned, in respect of each failure to take an action	277.00

PART 4 Fees in Respect of International Applications

Column 1		Column 2
Item	Description	Amount (\$)
16.	Transmittal fee for the performance of the tasks referred to in Rule 14 of the Regulations under the PCT	416.00
17.	Search fee for the performance of the tasks referred to in Rule 16 of the Regulations under the PCT	2,220.00
18.	Additional fee for conducting a search under Article 17(3) (a) of the Patent Cooperation Treaty, in respect of each invention other than the main invention	2,220.00
19.	Preliminary examination fee for the performance of the tasks referred to in Rule 58 of the Regulations under the PCT	1,110.00
20.	Additional fee for an international preliminary examination under Article 34(3) (a) of the Patent Cooperation Treaty, in respect of each invention other than the main invention	1,110.00
21.	Basic national fee	
	(a) small entity fee	225.00
	(b) standard fee	555.00
22.	Fee for reinstatement of rights	277.00
23.	Additional fee for late payment under subsection 154(4) of these Rules	150.00

PART 5 Fees in Respect of Patents

Column 1		Column 2
tem	Description	Amount (\$)
24.	Fee for requesting the correction of an error under subsection 109(1) of these Rules, for each patent referred to in the request for correction	277.00
25.	Fee for maintaining the rights accorded by a patent in effect	
	(a) for the dates of each of the second, third and fourth anniversaries of the filing date of the application on the basis of which the patent was granted, (i) small entity fee (ii) standard fee	50.00 125.00
	(b) for the dates of each of the fifth, sixth, seventh, eighth and ninth anniversaries of the filing date of that application, (i) small entity fee (ii) standard fee	100.00 277.00
	(c) for the dates of each of the 10th, 11th, 12th, 13th and 14th anniversaries of the filing date of that application, (i) small entity fee (ii) standard fee	125.00 347.00
	(d) for the dates of each of the 15th, 16th, 17th, 18th and 19th anniversaries of the filing date of that application, (i) small entity fee (ii) standard fee	253.00 624.00
26.	Late fee under subsection 46(2) of the Act	150.00
27.	Additional fee under subparagraph 46(5) (a) (iii) of the Act	277.00
28.	Fee for filing an application to reissue a patent	2,220.00
29.	Fee for a disclaimer	125.00
30.	Fee for re-examination of one or more claims of a patent	
	(a) small entity fee	1,124.00
	(b) standard fee	2,775.00

31.	Fee for presenting an application under section 65 or 127 of the Act	
	(a) for the first patent or certificate of supplementary protection to which the application relates	3,468.00
	(b) for each additional patent or certificate to which the application relates	347.00
32.	Fee to advertise an application under section 65 or 127 of the Act on the website of the Canadian Intellectual Property Office	277.00

PART 6 Fees in Respect of Registration of Documents or Recording of Transfers

Column 1		Column 2
Item	Description	Amount (\$)
33.	Fee for requesting the registration of a document relating to a patent or an application for a patent, for each patent or application for a patent to which the document relates	125.00
34.	Fee for requesting the recording of a change of name, for each patent or application for a patent to which the change of name relates	125.00
35.	Fee for requesting that a transfer be recorded under section 49 of the Act, for each patent or application for a patent to which the transfer relates	125.00

PART 7 Fees in Respect of Information or Copies

Column 1		Column 2
Item	Description	Amount (\$)
36.	Fee for requesting a certified copy in paper form	
	(a) for each certification	44.00
	(b) for each page	1.00
37.	Fee for requesting a certified copy in electronic form	
	(a) for each certification	44.00
	(b) for each patent or application for a patent to which the request relates	13.00
38.	Fee for requesting a non-certified copy in paper form, for each page	
	(a) if the person requesting makes the copy using Patent Office equipment	1.00
	(b) if the Patent Office makes the copy	1.00
39.	Fee for requesting a non-certified copy in electronic form	
	(a) for each request	13.00
	(b) for each patent or application for a patent to which the request relates	13.00
	(c) if the copy is requested on more than one physical medium, for each additional physical medium requested	13.00
40.	Fee for requesting that the Patent Office provide information concerning the status of a patent or an application for a patent, for each patent or application for a patent	19.00

SCHEDULE 3 Transitional Provisions

(Section 208)

Column 1		Column 2
Item	Description	Amount (\$)
1.	Fee for maintaining in effect the rights accorded by a patent granted on the basis of a category 1 application	
	(a) for the dates of each of the second, third and fourth anniversaries of the day on which the patent was issued,	
	(i) small entity fee	50.00
	(ii) standard fee	125.00
	(b) for the dates of each of the fifth, sixth, seventh, eighth and ninth anniversaries of the day on which the patent was issued,	
	(i) small entity fee	100.00
	(ii) standard fee	277.00
	(c) for the dates of each of the 10th, 11th, 12th, 13th and 14th anniversaries of the day on which the patent was issued,	
	(i) small entity fee	125.00
	(ii) standard fee	347.00
	(d) for the dates of each of the 15th and 16th anniversaries of the day on which the patent was issued,	
	(i) small entity fee	253.00
	(ii) standard fee	624.00