

inventor more than one year before the patent application is filed, whether in patents, periodicals, technical articles or elsewhere, is an absolute bar to obtaining a valid patent in Canada.

The utility requirement means that a patent is granted only for a product or for a process that produces something operable or that has practical use. Scientific principles, abstract theorems, mere ideas or methods of doing business are not patentable. Registration of processes or inventions that have no immediate commercial use is not ruled out, however.

Finally, to be patentable, an invention must be a development or improvement that would not have been obvious beforehand to workers skilled in the technology involved. Routine workshop changes, normally expected from people skilled in the field, are not patentable.

Registered Patent Agents

Preparing and carrying through a patent application requires extensive knowledge of patent law and patent office practice. It is usually recommended that inventors hire a registered patent agent to do this work for them. Although inventors are allowed to prepare and prosecute their own patent applications, they may run into difficulties unless they are familiar with patent law and practice. Even if an inventor succeeds in having a patent issued, it may not provide adequate protection if it has not been drafted with skill and experience.

When to Apply for a Patent

In Canada, if a patent application is going to be filed, it must be filed before the invention has been published or used publicly unless the disclosure originated from the inventor, in which case it must be filed within one year. U.S. patent law requires filing in that country within one year of sale in the United States or publication anywhere. In some other countries, many countries in Europe, for example, there is no such one-year "grace period." The application must be filed before

use or written disclosure anywhere ("absolute novelty"). For this reason, you must take care to keep your invention completely confidential until you have decided where you will file patent applications.

On the other hand, if you file too soon when the invention is still being developed, the application may not include essential features which may be difficult to add to the application later. You may have to abandon the original application in favour of a new one, which will add to the expense of protecting your invention.

Canada's Patent Act

Major changes to the *Patent Act* came into effect in October 1989. The changes were designed to modernize Canadian patent law and make it more consistent with our European trading partners. Four key aspects of the recent changes are:

- a first-to-file system, which replaced the first-to-invent system
- patent applications are now made public as early as 18 months after they are filed ("early publication") rather than after a patent is issued
- patent applications will no longer go to the examination stage until or unless a request is made ("deferred examination")
- Canada has joined the *Patent Cooperation Treaty*.

First-to-File

Under the first-to-file system, when two or more applications for the same invention are pending at the same time, subject to any priority which may exist by virtue of the treaty, the patent is granted to the first applicant who files a patent application on the invention rather than to the applicant who invented it first. The earlier first-to-invent system was extremely cumbersome because the Patent Office had to determine which