

from people skilled in the field, are not patentable.

#### **Registered Patent Agents**

Preparing and carrying through a patent application require 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. United States patent law requires filing there within one year of sale in the U.S. 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. Key aspects of the recent changes:

- A first-to-file system replaced the first-to-invent system.
- Patent applications are made public 18 months after they are filed ("early publication") rather than after a patent is issued.
- Patent applications will not go to the examination stage until or unless that is requested ("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, 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 invention was first, which often led to expensive and time-consuming litigation.

Nearly every country in the world is now on a first-to-file system. The only major exception is the United States.

#### **Early Publication**

Under the old system the patent office published the contents of a patent, or made it available to the public, only after it was granted. The amended Act, however, provides for a patent application to be open to inspection by the public 18 months after its filing date.

With early opening of the patent application to the public and, in particular, small and medium-sized businesses have access to information about new technology much earlier. While Canadian patent law continues to protect the rights of the inventor, it now does more to fulfill the other primary function of the