

patent system: speed up the diffusion of new ideas to the public and stimulate further innovation.

Deferred Examination

Before the *Patent Act* was amended, every patent application had to be examined. Since October 1989, the Patent Office does not proceed with the examination phase until requested to do so, up to a maximum of seven years after filing. If at the end of this time a request for examination has not been made, the application will never be examined and will never become a patent.

The benefit of this feature is that it allows an applicant to preserve priorities and patent rights, and the right to obtain protection, while a market or business plan is being developed. The applicant can then decide whether the invention justifies the time and expense of patenting.

The Patent Cooperation Treaty

The *Patent Cooperation Treaty* (PCT), administered by the World Intellectual Property Organization in Geneva, Switzerland, came into effect in Canada on January 2, 1990. It regulates the formal requirements that any international application must comply with, and provides Canadian inventors with a more practical and economical way of protecting their inventions.

Using a single international application filed in Canada, inventors can now initiate patent protection in some 50 member countries, including the United States, Japan and most of the European Community. The application may be filed by residents or nationals of any country that is a party to the treaty, in the national patent office of that country.

The international application is then subjected to an **international search**, carried out by one of the major patent offices. The applicant receives an **international search report** which lists the patent documents that

might affect the patentability of the invention. At this point, the applicant may decide to withdraw the application if the report makes it clear that patents are unlikely to be granted in the countries desired.

Twenty months after the international application is filed (or, if an earlier application in another country has priority, 20 months after the filing date of the earlier application), the applicant must furnish a translation of the application to each designated national office in its official language and pay the usual fees to that office. This period is extended by a further 10 months if the applicant asks for an **international preliminary report**. This report, prepared by one of the major patent offices, gives a preliminary, non-binding opinion on the patentability of the claimed invention.

The procedure under the *Patent Cooperation Treaty* has great advantages for the applicant, the patent offices and the general public:

- The applicant has more time to decide whether to apply for protection in foreign countries, appoint local patent agents in each country, prepare translations and pay national fees. If the international application is in the prescribed form, it cannot be rejected on formal grounds by any of the designated offices. On the basis of the international search report, the applicant can evaluate the chances of the invention being patented.
- The search and examination work of the national patent offices is greatly reduced thanks to the international search report and the international preliminary examination report, which accompany each international application. In Canada, as in many other countries, the delay in reaching the examination stage of a patent application is what slows down the process. The patent is often issued shortly after that hurdle is surmounted.