the patent's issuance or 20 years for filing - whichever is longer. [This is a transitional provision presently in force.] Both of the amendments will ensure public knowledge of issued patents and limit the subversive tactics of some firms who cry product infringement only after a product life cycle is at its peak.

In addition, a provisional patent application was also introduced with the June 8, 1995 legislation. "Provisional patent applications have the advantage of not requiring "claims" - the specific statements that define the invention. Provisional applications still require the invention's full disclosure - enabling one of ordinary skill in the art to practice it."[3] A provisional patent gives the applicant time, up to one year, to gather further information for filing a U.S. or international patent application.

A patent my be applied for at the U.S. Patent and Trademark Office (PTO) or at the Canadian Patent Office. The application is generally filed using the services of a professional patent attorney. After a series of correspondence between the attorney and PTO a computer-related patent is typically granted in two to three years from date of filing. A single international Patent Cooperation Treaty applications can be filed that will cover any or all of the 76 member countries, including his or her own country.

Patent Infringement

Patent holders may seek to enforce a patent whenever they believe an infringement has occurred; however, the burden of proof of infringement relies solely on the patent holder who must present a preponderance of evidence to the court. When damages are sought, there is a right to a jury trial (in U.S. only), no matter how technical the case. The alleged infringer may choose a defense by claiming no-infringement, an invalid patent or both.

If the defense elects invalidity, the burden of proof is by clear and convincing evidence because under current patent laws in Canada and the United States patents are presumed valid. "Since the U.S. court of Appeals for the Federal Circuit, which has exclusive jurisdiction over patent appeals, was created in 1982, it has exhibited a stronger tendency to uphold the validity of patents and to find that they have been infringed, than was the case before the court was created."[4]

"If a dispute occurs over the first-to-invent, and is based on activities that have occurred

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[3] Enayati, E. (1995) "Intellectual Property Under GATT", *Bio/Technology*, Vol. 13 May, pp. 460-463.

[4] Smart T.A., Desevo R.A. (1994) "*Managing Intellectual Property*" March, p. 44.