

Improvements to Canadian Patent Protection are Around the Corner



This article provides a short update on some key potential changes to Canadian patent protection. Most of these changes result from international treaties.

Overview

Pharma patent extensions for up to two years are likely to be implemented, even though we have not seen the draft Canadian legislation yet.

Patent formalities will be harmonized to ensure consistent filing requirements for applicants from other countries that have implemented the Patent Law Treaty.

Design registration in Canada may become simpler, and no longer require some non-Canadian applicants to file a separate design application in Canada.

Longer Drug Patent Terms

Canada and Europe announced an agreement in principle on a Comprehensive Economic and Trade Agreement (“CETA”) in fall 2013. Its most significant aspect for patents is the potential increase of some drug patent terms by up to two years. Patent term extension will be provided in the case of government regulatory delays in approving the drug. This is a similar concept as U.S. patent term extension for FDA regulatory delays. This extension will be available only to drugs entering the market after the new rules come into effect. All patent applicants filing in Canada will benefit, not just those in Europe that are part of the trade agreement.

It will take some time for the governments to draft and finalize an agreement, likely more than a year from the original announcement last fall. The next Canadian federal election is expected in 2015, so the government will aim to have the deal completed by then. CETA would be in jeopardy if it remained an agreement in principle at election time and there was a change in power.

Process Efficiencies - Patent Law Treaty

The Canadian government also tabled the Patent Law Treaty in Parliament. This treaty, once implemented via legislation, would streamline patent formalities, such as requirements to obtain a patent filing date and the form of applications.

Industrial Designs — The Hague Agreement Concerning the International Deposit of Industrial Designs (“Hague Treaty”)

Canada does not have a design patent, but Canadian industrial design registrations are generally similar to U.S. design patents.

Both Canada and the U.S. intend to implement this treaty (the EU is already a member). It allows an applicant to file and prosecute a *single design application* to obtain industrial design protection in all member states (62 countries as of July 2014). This would be much cheaper than filing a design application in each country separately.

The timeline for implementation of the Patent Law Treaty and Hague Treaty is also uncertain, since the government may engage in industry consultation before making amendments to the *Patent Act*, *Industrial Design Act* and their Regulations.

The changes discussed in this article are not certain, but are more likely to go through than not. We are happy to provide status updates upon request. ■



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