

CANADIAN INTELLECTUAL PROPERTY OFFICE

AS
DESIGNATED (OR ELECTED) OFFICE

CONTENTS

THE ENTRY INTO THE NATIONAL PHASE — SUMMARY

THE PROCEDURE IN THE NATIONAL PHASE

ANNEXES

| | |
|------------------------------------|--------------|
| Fees | Annex CA.I |
| National processing form | Annex CA.II |
| Definition of “small entity” | Annex CA.III |

List of abbreviations:

Office: Canadian Intellectual Property Office

CPA: Patent Act of Canada

CPR: Patent Rules of Canada

SUMMARY**Designated
(or elected) Office****SUMMARY****CA****CANADIAN INTELLECTUAL PROPERTY****CA****OFFICE****Summary of requirements for entry into the national phase**

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| Time limits applicable for entry into the national phase: | Under PCT Article 22(1): 30 months from the priority date ¹ Under PCT Article 39(1)(a): 30 months from the priority date ¹ |
| Translation of international application required into: ² | English or French |
| Required contents of the translation for entry into the national phase: ² | Under PCT Article 22: Description, claims (if amended, as amended only, together with any statement under PCT Article 19), any text matter of drawings, abstract Under PCT Article 39(1): Description, claims, any text matter of drawings, abstract (if any of those parts has been amended, only as amended by the annexes to the international preliminary examination report) |
| Is a copy of the international application required? | No |
| National fee: | Currency: Canadian dollar (CAD) Basic national fee: ² CAD 400 (200) ³ Additional fee for late entry into the national phase : CAD 200 Maintenance fee in respect of each one-year period due at the time of entry into the national phase where that entry is effected on or after the 2 nd or possibly 3 rd anniversary of the international filing date: ⁴ CAD 100 (50) ³ Examination fee: CAD 800 (400) ³ |
| Exemptions, reductions or refunds of the national fee: | The examination fee is reduced by 75% where the international search report has been established by the Canadian Intellectual Property Office. |

[Continued on next page]

¹ 42 months from the priority date provided the applicant pays the additional fee for late entry into the national phase.

² Must be furnished or paid within the time limit applicable under PCT Article 22 or 39(1).

³ The amount in parentheses is applicable in case of filing by a "small entity." In order to claim "small entity" status, a statement must be made by the applicant or his agent on his behalf (see Schedule I and Form 3, section 7, of the Canadian Patent Rules and *PCT Applicant's Guide*, National Phase, Annexes CA.II and CA.III).

⁴ Where PCT Article 22 or 39(1) applies, this fee is due within 24 months from the international filing date or within 30 months from the priority date if that time limit expires later or, provided the applicant pays the additional fee for late entry into the national phase, within 42 months from the priority date.

SUMMARY**Designated
(or elected) Office****SUMMARY****CA****CANADIAN INTELLECTUAL PROPERTY
OFFICE****CA***[Continued]*Special requirements of the Office
(PCT Rule 51*bis*):⁵An address for service if the applicant does not reside or carry out
business in CanadaEvidence of entitlement to file where the applicant is not the
inventor⁶Evidence of entitlement to file where the applicant is not the
applicant originally indicated

Appointment of an agent if the applicant is not the inventor

If the appointed agent does not reside in Canada, the appointment by
the agent of an agent who resides in Canada to be the associate
agent

Who can act as agent?

Any person or firm entitled to practice before the Office

Does the Office accept requests for
restoration of the right of priority
(PCT Rule 49*ter.2*)?

No

⁵ Where PCT Article 22 or 39(1) applies, if not complied with within 36 months from the priority date or, provided that the applicant pays the additional fee for late entry into the national phase, if not complied with within six months after the applicant has performed the acts necessary for entry into the national phase, the application will be deemed abandoned.

⁶ This requirement may be satisfied if the corresponding declaration has been made in accordance with PCT Rule 4.17.

THE PROCEDURE IN THE NATIONAL PHASE

- CPR 61 CA.01 **FORM FOR ENTERING THE NATIONAL PHASE.** The Office has available a form for entering the national phase (see Annex CA.II). This form should preferably (but need not) be used.
- CPR 58 CA.02 **TRANSLATION (CORRECTION).** Errors in the translation of the international application can be corrected with reference to the text of the international application as filed (see National Phase, paragraphs 6.002 and 6.003).
- CA.03 **LANGUAGE OF PROCEEDINGS.** The language of correspondence is either English or French at the choice of the applicant, irrespective of the language of the international application or its translation.
- CPR 2 CA.04 **FEE REDUCTION FOR “SMALL ENTITY.”** Applicants having “small entity” status are entitled to a reduction in certain fees. Annex CA.III provides the definition of a small entity. Paragraph 4 of the special form referred to in paragraph CA.01 (see Annex CA.II) indicates the kind of statement to be made in order to pay a fee as a small entity. A decision of the Federal Court of Appeal (*Barton No-Till Disk Inc. v. Dutch Industries Ltd.* (2003 FCA 121)) has held that entity status is determined only once, when the patent regime is first engaged. In the case of a PCT application entering the national phase in Canada, the Office considers that the regime is first engaged as of the international filing date. In order to be entitled to make fee payments at the small entity rate, a small entity declaration must be presented.
- CA.05 **FEES (MANNER OF PAYMENT).** The manner of payment of the fees indicated in the Summary and in this Chapter is outlined in Annex CA.I.
- CPA 15 CA.06 **APPOINTMENT OF AGENT.** An agent may be appointed either by submitting to the Commissioner a notice signed by the applicant or as part of the special form referred to in paragraph CA.01 (see Annex CA.II). Where the appointed agent does not reside in Canada, the agent shall appoint, as associate agent, a patent agent who resides in Canada either by submitting to the Commissioner a notice signed by the patent agent who appointed the associate patent agent or as part of the special form referred to in paragraph CA.01 (see Annex CA.II).
- CPR 20, 21, 61, 62(1), 77
- CPA 2, 29 CA.07 **ADDRESS FOR SERVICE.** An applicant who does not reside or carry on business at a specified address in Canada is required to nominate a person or firm residing or carrying on business at a specified address in Canada to be the representative of the applicant (see paragraph 3 of the special form referred to in paragraph CA.01 and given in Annex CA.II).
- CPR 23, 62(1), 78
- CPA 27.1 CA.08 **MAINTENANCE FEES.** They are payable for the third and each subsequent year following the international filing date. Payments are due on or before each anniversary of the international filing date, starting with the second anniversary. Where the applicant fails to pay by the due date, payment may still be made, together with the request for reinstatement and reinstatement fee (for the application) or the additional fee for late payment (for the patent), within 12 months following the due date. It is to be noted that, where the 30-month time limit under PCT Article 22 or 39(1) and Section 58(3)(a) of the Canadian Patent Rules applies, or where the 42-month time limit under PCT Article 22 or 39(1) and Section 58(3)(b) applies, a maintenance fee which is or maintenance fees which are due at an earlier date can be paid without a surcharge up to the expiry of the 30-month time limit or 42-month time limit, respectively. The maintenance fees can be paid yearly or for any number of years in advance. The amount of the maintenance fees is indicated in Annex CA.I.
- CPR 46(1), 73(1)(c), 73(3), 58(2), 58(3), 99
- CPA 35(1) CA.09 **REQUEST FOR EXAMINATION.** A patent will be granted only after examination as to patentability which may be requested by the applicant or by a third party. There is no special form for the request.
- CPR 95, 96

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| CPA | 73(1)(d) | CA.10 TIME LIMIT FOR REQUESTING EXAMINATION. Examination must be requested within five years from the international filing date. If the request for examination is not received within that period, the application becomes abandoned. It may be reinstated within 12 months of abandonment on payment of the fee for requesting examination together with the request for reinstatement and the reinstatement fee. The amounts of both fees are indicated in Annex CA.I. |
| CPR | 73(3) 96 | |
| CPR | 96(1) | CA.11 FEE FOR REQUESTING EXAMINATION. The request for examination is effective only if the fee for requesting examination has been paid. The amount of the fee is indicated in Annex CA.I. |
| CPR | 30(1) 30(5) 4(10) | CA.12 FEE FOR GRANT. A “final fee” and a fee for each page of specification and drawings in excess of 100 pages must be paid within six months from the date of the notice of allowance of patent. The amounts of the fees are indicated in Annex CA.I. |
| CPA | 73(1)(a) | CA.13 AMENDMENT OF THE APPLICATION; TIME LIMITS. Amendments may be made in the national phase: (i) up to allowance of the application either on the applicant's own volition or in response to an action by the examiner, provided that no new matter is introduced into the disclosure of the invention; (ii) after allowance, amendments may be made before payment of the final fee but only where no further search by the examiner would be required. |
| CPR | 38.2 31-35 | |
| PCT Art. | 28 | |
| | 41 | |
| CPA | 27(6) | CA.14 REVIEW UNDER ARTICLE 25 OF THE PCT. The applicable procedure is outlined in paragraphs 6.018 to 6.021 of the National Phase. If, upon review under PCT Article 25, the Office denies an error or omission on the part of the receiving Office or the International Bureau, an appeal against this decision may be lodged with the Federal Court. |
| CPR | 27(7) 34 98 | |
| PCT Art. | 25 | CA.15 EXCUSE OF DELAYS IN MEETING TIME LIMITS. Reference is made to paragraphs 6.022 to 6.027 of the National Phase. |
| PCT Rule | 51 | |
| PCT Art. | 24(2) | CA.16 Reinstatement may be requested where the applicant failed to comply with a time limit before the Office. A request for reinstatement must be made within 12 months of the expiry of the time limit (see the following paragraphs) and the applicant must complete the omitted act and pay the reinstatement fee (indicated in Annex CA.I). |
| PCT Rule | 48(2) 82bis | |
| CPA | 73(3) | CA.17 In the case of failure to comply with the time limit applicable under PCT Article 22 or 39(1) for entering the national phase, the applicant may comply by paying the additional fee for late payment within 12 months of the time limit. |
| CPR | 98 | |
| CPA | 73(1) | CA.18 In the case of failure to comply with the time limits before the Office, other than the time limit applicable under PCT Article 22 or 39(1) for entering the national phase (see paragraph CA.17, above), reinstatement may be requested before the expiry of 12 months after the time limit. |
| CPR | 73(3) 98 | |
| CPA | 78 | CA.19 Subject to certain exceptions, including time limits for payment of application and patent maintenance fees and for requests for examination, extension of a time limit may be requested provided the time limit is prescribed by the Patent Rules or fixed by the Commissioner. An extension of time may be requested before the expiry of the time limit and on payment of a fee (the amount of which is indicated in Annex CA.I). The request must satisfy the Commissioner that the circumstances justify the extension. |
| CPR | 26(1) | |

FEES

(Currency: Canadian dollar)

| | |
|---|-----|
| Basic national fee: | |
| (a) by a small entity | 200 |
| (b) by other than a small entity | 400 |
| Reinstatement fee | 200 |
| Additional fee for late payment | 200 |
| On requesting an extension of time under Section 26 or 27 of the Patent Rules | 200 |
| Maintenance fees: | |
| on or before each of the 2 nd , 3 rd , and 4 th anniversary of the international filing date: | |
| by a small entity | 50 |
| by other than a small entity | 100 |
| on or before each of the 5 th , 6 th , 7 th , 8 th and 9 th anniversary of the international filing date: | |
| by a small entity | 100 |
| by other than a small entity | 200 |
| on or before each of the 10 th , 11 th , 12 th , 13 th and 14 th anniversary of the international filing date: | |
| by a small entity | 125 |
| by other than a small entity | 250 |
| on or before each of the 15 th , 16 th , 17 th , 18 th and 19 th anniversary of the international filing date: | |
| by a small entity | 225 |
| by other than a small entity | 450 |
| Fee for requesting examination of an application: | |
| (a) if the application has been the subject of international search by the Commissioner: | |
| (i) if the applicant is a small entity | 100 |
| (ii) if the applicant is a large entity | 200 |
| (b) except if paragraph (a) applies: | |
| (i) if the applicant is a small entity | 400 |
| (ii) if the applicant is a large entity | 800 |
| Final fee: | |
| by a small entity | 150 |
| by other than a small entity | 300 |
| plus for each page of specification and drawings in excess of 100 pages | 6 |

How can payment of fees be effected?

The payment of fees must be effected in Canadian dollars. All payments must indicate the national application number if it is known (otherwise the international application number may be used), the name of the applicant and the category of fee being paid.

Payment may be effected by money order, by check, by bank draft or by deposit account.

The fees payable are to be forwarded to the Commissioner of Patents at Ottawa, Canada K1A 0C9, and are to be made payable to the Receiver General.

No. de dossier :

PCT / CA

Form for Request of Entry into National Phase under Article 22 or
39 of the Patent Cooperation Treaty

IN THE MATTER OF PCT International Application

_____ filed _____ in the name
(international application #) (International filing date)

of _____
(full name of applicant)

1. The above-identified applicant, whose complete address is, _____
owns the entire right in Canada to an invention entitled _____
_____ made by

(a) _____
(inventor's name & address)

(b) _____
(inventor's name & address)

(c) _____
(inventor's name & address)

as described and claimed in the above-identified international application and any amendments thereto.

2. The applicant requests priority in respect of the application on the basis of the previously regularly filed application.

Country of Filing:

Date of filing:

Application No.:

NOTE : Paragraph 2 should be omitted if there is no request for priority.

3. The applicant appoints _____, whose complete address in Canada is _____ as
- (a) the applicant's representative in Canada, pursuant to Section 29 of the Patent Act; and
 - (b) the applicant's Patent agent.
4. The applicant believes that the applicant is entitled to claim status as a "small entity" as defined under Section 2 of the Patent Rules.
5. The applicant accordingly requests commencement of national phase procedures consequent to the designation of Canada in the above identified international application and requests the grant of a patent for the invention which is described and claimed in the international application.

SIGNED at _____ this _____ day of _____
(city or town)
 _____, 19 _____.

 Signature

NOTE : If the applicant resides in Canada, paragraph 3 should be omitted if the applicant intends to prosecute the application himself. If the applicant does not reside in Canada and no agent is appointed, paragraph 3a) should be included.

Paragraph 4 should be omitted if the applicant is not a small entity.

DEFINITION OF “SMALL ENTITY”

The definition of “small entity” is provided in Section 2 of the Patent Rules.

The definition is as follows:

“‘small entity’ in respect of an invention, means an entity that employs 50 or fewer employees or that is a university, but does not include an entity that

- (a) has transferred or licensed, or is under a contractual or other legal obligation to transfer or license, any right in the invention to an entity, other than a university, that employs more than 50 employees, or
- (b) has transferred or licensed, or is under a contractual or other legal obligation to transfer or license, any right in the invention to an entity that employs 50 or fewer employees or that is a university, and has knowledge of any subsequent transfer or license of, or of any subsisting contractual or other legal obligation to transfer or license, any right in the invention to any entity, other than a university, that employs more than 50 employees;”