

FILING PATENT APPLICATIONS IN CANADA (Our First-to-File, Absolute Novelty System)

The filing of patent applications in Canada is generally governed by sections 27 and 28 of the *Patent Act*. When one is contemplating filing in Canada one should consider the following points:

- 1.** Canada has a first to file patent system, which means that the first person to reach the Patent Office with a patent application will be the one to obtain a patent for the invention. This basic system is modified by the following:
 - a.** Someone having an earlier effective filing date, i.e. an earlier priority date, will prevail, even if the actual Canadian filing date of that applicant is later.

- 2.** Canada also has an absolute novelty patent system, which means that any disclosure to the public of the invention anywhere in the world prior to the Canadian filing date (or the priority date if such applies) will defeat the Canadian application. This basic system is modified by the following:
 - a.** If the invention is disclosed by the applicant, or by someone who obtained information respecting the invention directly or indirectly from the applicant, anywhere in the world, such that it became available to the public, then the applicant has one year from that disclosure date in which to file the Canadian application. Thus, if the disclosure date is earlier than the priority date the applicant must be concerned about the actual Canadian filing date, since a priority claim will not save the application, i.e. the clock starts ticking with the disclosure date. If disclosure takes place after the priority application is filed, there is less concern as long as the Canadian case is filed as a convention application. If the Canadian case is to be a non-convention filing then the concern with respect to prior disclosure arises again.

- 3.** The requirement that a Canadian non-convention application be filed prior to issuance of the first patent for the invention has been abolished. A United States patent, for example, is considered to be a publication and if that patent is the first disclosure of the invention the Canadian application would have to be filed within one year of the U.S. publication date.

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