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Chapter 2

Opening and inspection of documents

2.01 Inspection of documents

In accordance with Section 10 of the *Patent Act*, all applications that have been opened to public inspection, protests when associated with an opened application file and prior art filed pursuant to Section 34.1 of the *Patent Act* when associated with an opened application file, patents and re-examination files, and all documents associated with any of the above, shall be available for inspection on request in the Patent Office. This information will also be made available via Techsource at designated Industry Canada Offices across Canada.

A patent application open to public inspection will be called "opened" throughout this Manual. A patent application not opened to inspection by the public will be called "unopened" in this Manual.

2.01.01 Opening of applications

All patent applications, except those filed prior to October 1, 1989 and documents on file in connection therewith, shall be open to public inspection after the expiration of an eighteen-month confidentiality period (subsection 10(2) of the *Patent Act*). The confidentiality period is one of

- i) eighteen months from the Canadian filing date, or
- ii) where a request for priority has been made, eighteen months from the earliest filing date of any previously regularly filed application on which the request is based.

Applications filed under the Patent Cooperation Treaty (PCT) that include a designation for Canada and have not entered the national phase in Canada and documents on file in connection therewith will be available for inspection in the Patent Office as soon as possible after the expiration of eighteen months from the international filing date or the priority date thereof.

In accordance with subsection 10(2) of the *Patent Act*, an applicant may make a written request to have an application opened to public inspection before the expiry of the confidentiality period.

An application will not be laid open to public if it has been withdrawn at least two months prior to the expiration of the confidentiality period or a later date if the technical preparations to open the application to public inspection can be stopped (Sections 91, 92 and 145 of the *Patent Rules*).

A listing of applications opened to public inspection each week will appear in the Canadian Patent Office Record.

PCT applications entering the national phase in Canada after the date of publication by the International Bureau of the World Intellectual Property Organization in English or French will bear, as the laid-open date, the date of publication of the international application. This date will normally be within thirteen days after the expiry of eighteen months from the priority date or filing date of the international application.

2.01.02 Confidentiality of unopened applications

Unopened applications are confidential. Sections 10 and 11 of the *Patent Act* and sections 11, 91 and 92 of the *Patent Rules* apply. The Patent Office is required to protect the interest of the applicant by ensuring that only authorized persons are allowed to inspect unopened files. Individuals authorized to see the file by the applicant or the applicant's agent are permitted to do so. Individual persons, not known to the Patent Office, requesting access to a file must provide evidence that they have the right to see a file. A letter of introduction and authorization from the applicant or the applicant's agent, for example, would suffice. Inventors who have assigned all interest in their invention to others will not have access to the unopened file without authorization from the assignee or agent. If an agent has been appointed and the inventor has retained some interest in the application, the inventor may see the file and discuss the case with the examiner in general terms, but in accordance with subsection 6(3) of the *Patent Rules* an interview including a detailed discussion of the prosecution is permitted only in the agent's presence or with the agent's consent. An examiner will not discuss matters relating to the prosecution of an application with persons other than the agent or those who have the agent's permission to discuss the application.

2.01.03 Effect of withdrawal of priority on opening to public inspection

A request for priority may be withdrawn at any time before a patent is issued. If the applicant withdraws a request for priority before the expiry of the confidentiality period it may be possible to delay the opening of the application to public inspection (subsection 10(4) of the *Patent Act*). The withdrawal must be made within sixteen months of the filing date of the priority application, or a later date if the technical preparations to open the application to public inspection can be stopped (sections 91 and 145 of the *Patent Rules*). The application will then be laid open to public inspection at the end of the new confidentiality period (eighteen months from the Canadian filing or eighteen months from the earliest of any other priority date, if more than one priority was claimed).

2.01.04 Legal Implication of date of opening to public inspection

The opening to public inspection starts the protection period for a patentee in accordance with subsection 55(2) of the *Patent Act*, provided that the opened application is subsequently issued to patent.

2.02 Information on applications

Opened applications for patents may be accessed through use of the INQUIRE/Text database which provides the capability of searching for applications by cover page information, such as by number, the inventor's name or the international patent classification, or alternatively any such document may be located by conducting a word search of the text's subject matter.

2.02.01 Numbering of applications

Applications for patents filed after October 1, 1989 are given unique numbers at filing. This number will be in the two million series of numbers and any patent issuing from such applications will bear the same number. A reissued patent and a reexamined patent will bear the same number as the original patent. Divisional applications are given a number in the two million series but different from the number of the original patent application.

Applications for patents filed prior to October 1, 1989 bear unique numbers. Patents issuing from these applications are given unique numbers in the one million series. Divisional applications arising from such applications will be given numbers that are different from those given the original patent applications. Applications for reissue will also be given unique numbers that are different from their original patent numbers.

2.02.02 Status information relating to applications identified by serial numbers

On payment of the fee set out in Schedule II, item 24, the Patent Office will indicate whether a Canadian application identified by serial number has issued to patent.

2.03 Searches by the public

It is a function of the Information Branch to help agents and members of the public in their searches by providing the necessary search tools and explaining their use. Searchers unfamiliar with Patent Office's classification systems and those searchers requiring further assistance are referred to the Classification Division where classification examiners will recommend a search pattern. In case of any doubt about a search pattern, the classification examiners may suggest that searchers consult examiners in a particular field. Examiners are expected to give such searchers specific directions where to search in their particular field of technology, but are not expected to carry out these searches themselves.

2.04 Opinions on opened applications

The Patent Office Staff will not express any opinion with respect to the claims of an opened application except on examination of the application, nor will they give any opinion concerning the final scope of those claims. Furthermore, they will not express a view as to whether any proposal presented would infringe the claims of an opened application.

2.04.01 Validity and interpretation of patents

Issued patents granted by the Patent Office are presumed valid under section 43 of the

Patent Act until such time as the Courts decide otherwise or the patent is made subject to reissue or re-examination procedures. Employees of the Patent Office may not comment on the validity of any issued patent, nor may they discuss how claims of any issued patent should be interpreted, or express a view as to whether they would be infringed by any proposal presented. Any member of the public requesting information of this type is advised to seek advice from a registered patent agent or a patent lawyer.