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A GUIDE TO PATENTS

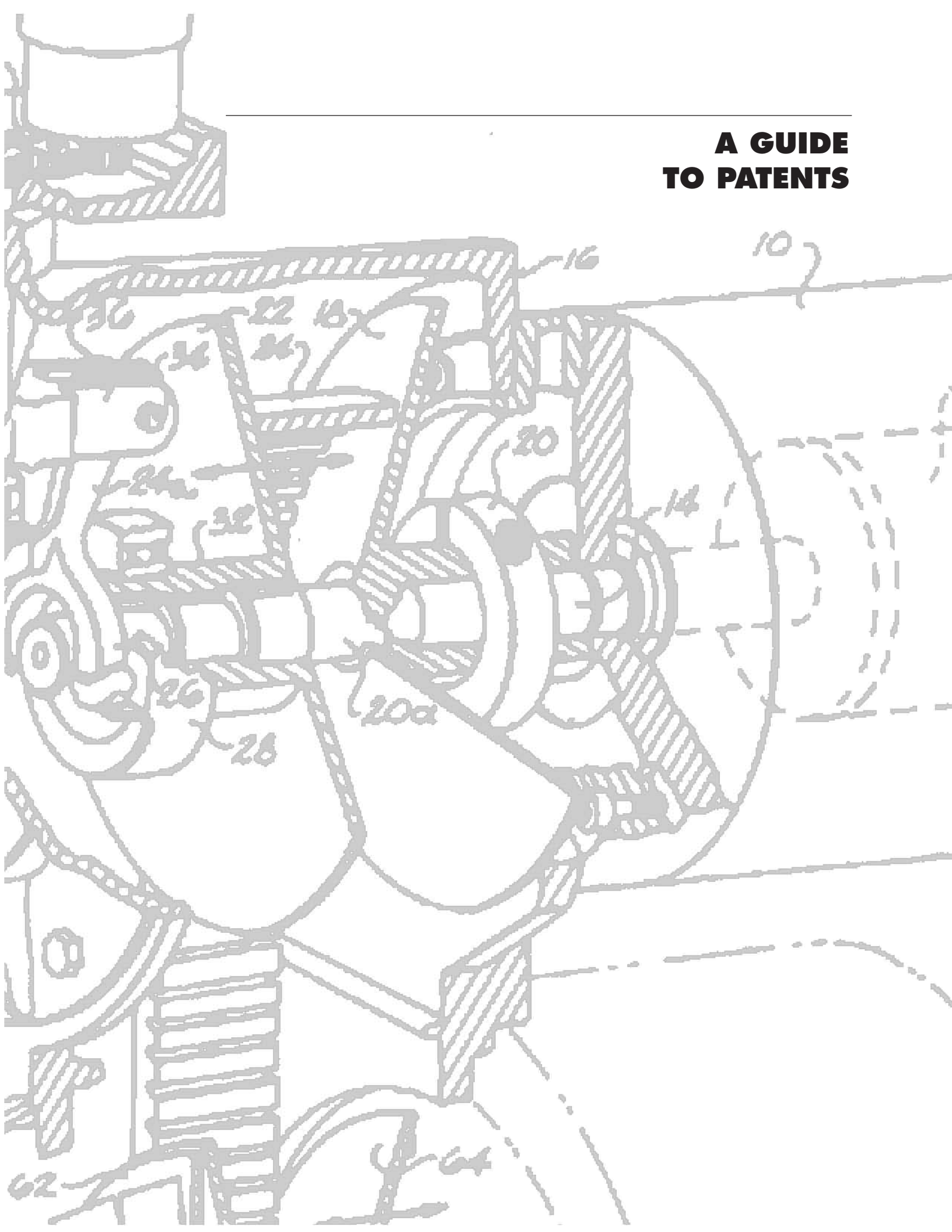


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CIPO  OPIC

A GUIDE TO PATENTS



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INTRODUCTION

Patents fuel progress

Where would we be without patents? At a more primitive stage of industrial development, without a doubt. Technological progress and economic strength in modern industrialized nations — and Canada is no exception — depend greatly on the patent system both at home and abroad.

Patents offer inventors monopolies on their creations for specific periods, and thus provide incentives for research and development. Without the possibility of patent protection, many people might not take the risks or invest the time and money involved in devising and perfecting new products. Our society would be deprived of thousands of innovations, from the proverbial better mousetrap to new medicines, communications systems, energy sources, and so on. And without new products the economy would quickly stagnate.

But patents do more than keep creative wheels spinning. They are also a means of technological exchange. Each patent document describes a new aspect of a technology in clear and specific terms and is available for anyone to read. They are made public specifically to promote the sharing of knowledge. As such, they are vital resources for businesses, researchers, inventors, academics and others who need to keep up with developments in their fields.

Purpose of this guide

This booklet explores the two main ways patents may be important to you the inventor, business person or researcher — as a source of protection and of information. The guide is designed to be your introduction to patents and patenting procedures, and to outline how you can use the resources of the Patent Office to further your business or research venture.

It is not, however, a comprehensive text on patent laws (these are available in many libraries). Nor is it a substitute for the professional advice you may need from a registered patent agent to assist you in protecting your invention.

For more detailed information on patenting procedures, consult the *Patent Act*, *Patent Rules* and *Manual of Patent Office Practice* (MOPOP). These are now available on the Internet (www.cipo.gc.ca).

The glossary on pages 21-22 gives a definition of the terms used in this Guide.

Who we are: the Patent Office

The federal agency responsible for granting patents in Canada is the Patent Office, directed by the Commissioner of Patents.

THE ROLE OF THE PATENT OFFICE IN GRANTING PATENTS IS TO ACQUIRE AND DISSEMINATE TECHNOLOGICAL INFORMATION AND TO ENCOURAGE THE CREATION, ADOPTION AND EXPLOITATION OF INVENTIONS.

The Patent Office is part of the Canadian Intellectual Property Office (CIPO), an agency of Industry Canada. CIPO is responsible not only for patents, but for all intellectual property rights including trade-marks, copyrights, industrial designs and integrated circuit topographies.

The main functions of the Patent Office are to:

- receive and examine applications for patents and grant patents to qualifying applicants;
- record assignments of patents;
- maintain search files of Canadian and foreign patent documents and a search room for public use in researching patent documents and records; and
- publish and disseminate patent information.

The Patent Office has approximately 500 employees, about 300 of whom are examiners with extensive technical and legal training. These specialists in various fields of invention examine some 30 000 requests for examination for patent applications which are received each year.

The archives of the Patent Office constitute the largest collection of technological information in Canada. A detailed classification system helps people retrieve this information.

Visit CIPPO's Web site

CIPPO's Web site includes useful information about its product lines, services and legislative changes. The five intellectual property guides are available, as are interactive tools that explain intellectual property in an enjoyable way.

You can either do a preliminary search of patent documents via the Canadian Patents Database on the Internet or do a full search using the TechSource automated system (see pages 5-6 for more details).

Find out about the new patent electronic services now available via the Internet (see page 13 for more details).

You will also find a tutorial on writing a patent application.

Visit our Web site (www.cipo.gc.ca).

PATENT PROTECTION

What is a patent?

Through a patent, the government gives you, the inventor, the right to exclude others from making, using or selling your invention from the day the patent is granted to a maximum of 20 years after the day on which you filed your patent application.

You can use your patent to make a profit by selling it, licensing it or using it as an asset to negotiate funding.

In exchange, you are expected to provide a full description of the invention so that all Canadians can benefit from this advance in technology and knowledge.

The Patent Office will lay open your application to public inspection 18 months from the earlier of: a) your filing date in Canada; or b) your filing date abroad under an international treaty; this date is known as the “convention priority date” (see **Applying for a patent outside Canada**, page 9).

People may then read about, though not make, use or sell, your invention without your permission. Only after your patent has expired, or lapsed for non-payment of maintenance fee, may anyone freely make, use or sell your invention. The idea is to promote the sharing of technological information while giving you a monopoly on your creation.

TO SUM UP, A PATENT IS: 1) A DOCUMENT PROTECTING THE RIGHTS OF THE INVENTOR; 2) A REPOSITORY OF USEFUL TECHNICAL INFORMATION FOR THE PUBLIC.

The rights conferred by a Canadian patent extend throughout Canada, but not to foreign countries. You must apply for patent rights in other countries separately. Conversely, foreign patents do not protect an invention in Canada.

People occasionally confuse patents with trade-marks, copyrights, industrial designs and integrated circuit topographies. Like patents, these are rights granted for intellectual creativity and are forms of intellectual property.

However:

- patents cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention;
- a trade-mark is a word, symbol or design (or any combination of these features), used to distinguish the wares or services of one person or organization from those of others in the marketplace;
- copyrights provide protection for literary, artistic, dramatic or musical works (including computer programs), and three other subject-matter known as: performance, sound recording and communication signal;
- industrial designs are the visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture;
- integrated circuit topographies refer to the three-dimensional configuration of the electronic circuits embodied in integrated circuit products or layout designs.

What can you patent?

Suppose you are the proud inventor of an electric door lock. How do you know if you can obtain a patent for it? There are three basic criteria for patentability.

First, the invention must be new (first in the world). Second, it must be useful (functional and operative). Finally, it must show inventive ingenuity and not be obvious to someone skilled in that area.

The invention can be a product (a door lock), a composition (a chemical composition used in lubricants for door locks), an apparatus (a machine for making door locks), a process (a method for making door locks), or an improvement on any of these. Ninety percent of patents are, in fact, for improvements to existing patented inventions.

A patent is granted only for the physical embodiment of an idea (e.g. the description of a plausible door lock) or for a process that produces something saleable or tangible. You cannot patent a scientific principle, an abstract theorem, an idea, a method of doing business, a computer program per se, or a medical treatment.

What can you patent?

Yes

- new kind of door lock
- apparatus for building door locks
- process for lubricating door locks
- method of making door locks
- improvements on any of these

No

- $E = MC^2$
- *Romeo and Juliet*
- a business plan

Novelty, Utility, Ingenuity

A Novelty

To be granted a patent you must be the original inventor of your door lock (or the assignee of the inventor). And it must be the first such door lock in the world.

What's more, you cannot obtain a valid patent in Canada if your invention was made public before you filed the application. There is, however, a one-year exception. If you, or someone who learned of the invention from you, discloses it publicly, you can still file in Canada within the year following that disclosure. (This applies to Canadian patents, but not necessarily to foreign ones.)

B Utility

A valid patent cannot be obtained for something that doesn't work, or that has no useful function. If your door lock does not work, it will fail the utility test.

C Ingenuity

To be patentable, your invention must be a development or an improvement that would not have been obvious beforehand to workers of average skill in the technology involved. You can't offer an electric door lock that's merely a bit faster or stronger

than others and that any door lock designer could easily come up with. Your door lock must elicit a "why-didn't-I-think-of-that" reaction from other designers in the field.

You may obtain a patent for an improvement to an existing patented invention, but keep in mind that the original patent may still be in force. Hence, manufacturing or marketing the product with your improvement would probably be an infringement. This situation is often resolved by agreement between the patentees to grant licences to each other.

Registered patent agents

Preparing and prosecuting—following through on—a patent application is a complex task. Prosecution involves corresponding with the Patent Office, making any necessary amendments to the application, and fixing the legal scope of the patent protection. All this requires broad knowledge of patent law and Patent Office practice—knowledge that you can expect from a specialist known as a registered patent agent. A trained patent agent will ensure

that your application is properly drafted so that your invention is adequately protected. Hiring such an agent is not mandatory but is highly recommended, and most inventors do so.

Registered patent agents must pass rigorous examinations in patent law and practice before they may represent inventors before the Patent Office. Beware of unregistered patent agents; they are not authorized to represent applicants in the presentation and prosecution of applications for patents or in other business before the Patent Office.

Patent agents' fees are not regulated by the Patent Office. You and your agent should agree on fees before work on your application begins.

Once you've appointed a patent agent, the Patent Office will correspond with no one else about the prosecution of your application. You may, however, change patent agents at any time.

The Patent Office can provide you with a list of registered patent agents, but cannot recommend any particular one to you.

When to apply for a patent

In Canada, patents are given to the first inventor to file an application. Therefore, it's wise to file as soon as possible after completing your invention, in case someone else is on a similar track. Even if you can prove that you were the first to conceive of the invention, you lose the race if a competing inventor files before you do.

On the other hand, filing too soon, while you're still developing your invention, may mean omitting essential features from the application. You may then have to reapply, adding to your expenses and risking possible patent disputes.

It's imperative, also, not to advertise, display or publish information on your invention too soon. Public disclosure of your invention before filing will make it impossible to obtain a valid patent. There is an exception in Canada if the disclosure was made by the inventor, or someone who learned of the invention from the inventor, less than one year before filing. Most other countries require filing before use or written disclosure anywhere.

The first steps towards patent protection

The preliminary search

The first step your agent will likely recommend is a preliminary search of existing patents. This will determine if your door

lock, or a similar one, has ever been patented before. If so, there's no point in proceeding further, and knowing this beforehand can save you much time and money. Obtaining the information, however, is not as simple as it may sound. You must compare your invention to others and weigh similarities and differences. That's where you are wise to rely on the expertise of your patent agent.

Preliminary searches are not always successful. That is, sometimes the patent examiner finds prior patents or literature that did not turn up in the preliminary search. So don't count on obtaining the patent until it's actually in hand.

Canadian Patents Database on-line

You can now do a preliminary search of patent bibliographical information and have access to descriptions and image documents on issued patents in Canada since 1920. Applications published in Canada are also available since October 1989. Searches can be conducted using key words in the title, the name of the inventor, owner or applicant, the international or Canadian Patent Classification, the PCT information, the abstract or claims text. It is also possible to search specific documents like PCT documents, non-PCT documents or licence availability. Visit the Canadian Patents Database via CIPO's Web site (www.cipo.gc.ca) or via *Strategis* (www.strategis/patents).

Searching at the Patent Office

The only way to conduct a patentability or infringement search on your own, without a patent agent, is by visiting the Patent Office in person.

However, you are strongly advised to engage the services of a patent agent or searching firm for this important work. Patent Office staff can direct you and give you useful information but will not do the search for you.

The Patent Office in Place du Portage I, Gatineau, Quebec, holds over 1.5 million Canadian patents. Patent documents filed prior to October 1, 1989, are classified according to the Canadian Patent Classification system. Patent documents filed on or after October 1, 1989, are classified and searchable according to the International Patent Classification (IPC) system. These documents can be consulted on the World Intellectual Property Organization Web site (www.wipo.int/classifications).

In addition, there are about six million American patents classified according to the United States Patent Classification system that are accessible electronically in the Patent Office. As a first-time visitor, you may feel overwhelmed by the prospect of a search through so many patents. However, Intellectual Property Search Information Officers are available to help you with your search. The Patent Search Room in the Client Service Centre, is open from 8:30 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on legal holidays.

Full searching of patent documents using TechSource

TechSource is an electronic patent system which holds the scanned image of over 1.5 million patent documents dating back to 1920 and the text version of the documents from 1978. The imaging system enables users to view all parts of a patent document from work stations. TechSource includes a search and retrieval component, called Inquire/Text which allows the searching of the patent database. This image and text retrieval capability is currently available at the Patent Search Room in Gatineau.

Searching at a public library

Some public libraries offer Internet access to the Canadian Patents Database through CIPO's Web site (www.cipo.gc.ca).

Preparing a patent application

A patent application consists of an abstract, a specification and often drawings.

The abstract is a brief summary of the contents of the specification.

The specification comprises:

- A** a clear and complete description of the invention and its usefulness;
- B** claims which define the boundaries of patent protection.

Your specification must be so clear and complete that it will enable anyone with average skill in the technology to make or use the invention.

Information you specify as protected by your claims cannot be used freely (copied, manufactured or sold) by others until the patent expires. Information not protected by your claims can be used immediately by anyone.

The challenge is to draft the claims so that your invention is defined broadly enough to provide maximum protection against potential infringers, while at the same time being sufficiently specific to identify your invention and distinguish it from all prior inventions.

Appendix I shows an example of a patent application.

Assisting your patent agent

You can assist your agent to obtain the strongest possible patent and avoid unnecessary costs by providing him or her with the right information.

Carefully prepare a statement covering the following points:

- 1** Subject-matter of the invention.
- 2** A broad description of the invention.
- 3** Objectives of the invention — its main practical advantages over existing practices or products.
- 4** The “preferred practice,” that is, the most appropriate use of your invention, giving details of at least one practical application. (For example, if you invented a new knitting machine, you should specify what items, such as stockings, sweaters, bags, etc., the machine makes best. You should also mention normal variations to be expected, e.g., how many stockings in a batch of 10 000 knitted by your

machine will be defective.)

5 Features of the invention that are new and distinguish it from what has come before. State these features regardless of whether they may be patented.

6 The scope of the invention — the materials, compositions, conditions, etc., used to obtain good results.

7 Limitations. Can one obtain satisfactory results throughout the given range of the invention, or are there exceptions?

8 Results of laboratory or commercial tests illustrating both preferred practice and the conditions under which one could expect unfavourable or hazardous results.

9 Lists of relevant patents or technical articles you've already found in any literature search, including full details such as name of inventor, number of patent, country and date of issue, or name of periodical and date. Indicate the similarities and differences of practices or products relevant to your invention.

10 An indication of any disclosure you have made.

11 Your name, address and citizenship.

12 All countries in which you would like to file for a patent.

Filing your application

Filing a patent application means preparing a formal application and asking the Commissioner of Patents to grant you a patent.

To receive an official filing date in Canada, you must submit no less than the following:

- 1** statement that a patent is sought;
- 2** document describing an invention;
- 3** name of the applicant;
- 4** address of the applicant or the applicant's patent agent; and
- 5** prescribed filing fee.

If you do not supply a proper description of the invention, the Patent Office will not give you a filing date and will return the papers you have submitted and refund the filing fee, less \$25.

Bear in mind that a complete patent application further includes the following:

- A** formal petition;
- B** abstract of the invention;
- C** claim or claims to the invention;
- D** any drawings mentioned in the description;
- E** paper and computer-readable copies of nucleotide sequence listings, if applicable;
- F** appointment of a patent agent or representative when required.

It is in your best interest to file as full a description of your invention and as complete an application as possible right at the outset. Any of items **A** to **F** not supplied at the time of filing may be submitted, without

charge, within 15 months after the priority date (see **Convention priority** on page 10), or the filing date if there is no priority date. However, if your application is still incomplete after 15 months, you will be notified by the Office, and you will then have to pay a completion fee and complete the application within a prescribed time which will be indicated in the notice.

Don't submit models or specimens of the invention unless the Commissioner requests them.

Once accepted for filing, your application is assigned a number and filing date, and you will be informed of these. This is no guarantee of a patent. It simply means your application is pending. The application will be laid open to public inspection 18 months after the filing date or priority date.

You may request to have your application laid open earlier, if you wish.

Requesting examination

Your application will not automatically be examined simply because you've filed it. You must formally request examination and attach the examination request fee. This request must be made within five years of the Canadian filing date, otherwise your application will be considered as abandoned. If this happens, you may request reinstatement through a letter to the Commissioner of Patents and the payment of the prescribed fee.

Why would you file an application and not automatically request examination? Perhaps you need time to assess the feasibility or marketability of your invention. Filing gives you some protection for your invention without having to fully commit yourself to the patent procedures. Your competitors will likely be wary of infringing on your invention after your application is published because you could seek retroactive compensation in the event that you are granted a patent.

However, if you do not request examination within the five-year period, anyone will be able to freely make, use or sell the products or processes described in your application.

Once you've requested examination, you'll probably be eager to see results quickly. Remember that the Patent Office receives some 30 000 requests for examination a year, and that patent examiners consider cases in the order in which they are received. The examination process may take two to three years.

Filing prior art and protests

Patent applications are made public 18 months after their Canadian filing date, or an earlier foreign filing date, if applicable. Anyone else may raise questions about the patentability of your invention or one of its claims by filing what is known as "prior art" — information that might cause the patent examiner to object to one or more of your claims. The prior art can be patents, patent applications which have been

open to public inspection, and published material that has a bearing on the case. An explanation of how the information is pertinent is also required.

Anyone may also file a protest against the granting of a patent. Such protests will be made public.

Special order examination

Perhaps you have special reasons for wanting an early examination of your application. You expect imminent competition or you hope to establish a business once you've received protection for the invention. If your case is exceptional in this way, you may ask for advanced examination by means of a "Special Order" request. A "Special Order" request no longer requires an affidavit. Anyone may ask for advanced examination by means of a "Special Order" request accompanied by a fee.

Note, however, that a "Special Order" request will not be considered unless the application has been laid open to public inspection and a request for examination has been made.

Next steps: the prosecution

The examiner's task

The patent examiner will assess your application to determine whether it's in the proper format. The next step is a study of the claims and a search among prior patents and other technical literature to find what is most closely

related to the features covered in your claims. The examiner will object to what is old, obvious or improper in your claims through a report to you or your agent.

Patent Office letter of objection

The examiner's search often results in the objection to some claims. This is the result of patent agents drafting broad claims in an attempt to obtain the fullest possible protection. The examiner may discover previous patents or publications which show every feature of one or more claims in your application. Or the examiner may judge some claims to be obvious to a person having ordinary skill in the field. The examiner's objection will be in a report or letter called a "Patent Office Action." The Action may object to your whole application or only some claims, or it may request other changes in your application.

Responding to examiner's objections

If the examiner objects to some of your claims, don't despair. You may respond to the objections as long as you do so within the period specified in the Patent Office Action. Your patent agent must send the response, called the "amendment letter," to the Commissioner of Patents.

The response may ask the Commissioner to amend your application by changing or cancelling some claims, or adding new claims. You must meet or overcome each objection

raised by the examiner.

Helping your agent with amendments

Your agent will carefully study the Patent Office Action to help you decide whether to abandon your application now, thus avoiding further expense. If you decide to continue, you may be able to help prepare the amendment letter. You are in the best position to know the practical details of your invention, and can point out its novel features and advantages, as compared with others cited in the Patent Office Action. If you want to make changes to your invention, inform your agent promptly. He or she may recommend filing a new application, in accordance with Patent Office rules, to obtain the full protection you need.

Reconsideration by the examiner

On receiving your response, the examiner will study it and prepare a second Office Action. This may be a "notice of allowance" telling you that you will be granted a patent. Or it may be a call for further amendments. This exchange of Office Actions and responses may be repeated until the examiner allows your application or states that the Action is final.

Appealing

If the examiner makes a final objection to your application, you still have the right to appeal to the Commissioner of Patents by requesting that the Commissioner review the

examiner's objection. The review is conducted by the Patent Appeal Board, a special committee of senior Patent Office officials. If you wish, you can appear before this board. If the Commissioner objects to your appeal and refuses to grant a patent, you may take your case to the Federal Court of Canada, and from there to the Supreme Court of Canada.

Re-examination of a granted patent

Great! You've been granted a patent. But you still may have hurdles to overcome. After issue, the Commissioner of Patents or a third party may ask that one or more claims of your patent be re-examined. This can happen at any time during the term of your patent. The request must be based on "prior art" documents, i.e., written descriptions of the invention that are available to the public. The Commissioner of Patents may appoint a re-examination board which will issue a certificate cancelling, confirming or amending your patent claims as appropriate. You may appeal decisions that cancel or amend claims to the Federal Court of Canada. You cannot, however, appeal the Commissioner's refusal to set up a re-examination board.

Reissue and disclaimer

If you own a patent that inadvertently contains omissions or mistakes, you may apply to have it reissued within four years of its issue to broaden or amend its claims, or you may apply for a disclaimer any time after issue to

narrow the scope of some or all of the claims of your patent.

Summary of steps to obtain a patent in Canada

- 1** Find a patent agent.
- 2** Do a preliminary search. (If there's an existing patent, consider ending the process now.)
- 3** Help your agent prepare a patent application.
- 4** File your application.
- 5** Request examination.
- 6** Examiner does search for prior patents and studies claims.
- 7** Examiner either approves or objects to the claims.
- 8** Respond to examiner's objections and requirements.
- 9** Examiner reconsiders and either approves or calls for further amendments.
- 10** If final decision is objected to, you may appeal.

Non-resident applicants

An applicant for a patent who does not appear to reside or carry on business at a specified address in Canada shall, on the filing date of the application, appoint as a representative a person or firm residing or carrying on business at a specified address in Canada.

Applying for a patent outside Canada

Obtaining a Canadian patent does not protect your invention in another country. If you wish such protection, you will have

to apply for foreign patents. Suppose, for example, you've invented a mountain-climbing snowmobile and hope to corner the market in countries where the machine may be in demand. You'll probably want a patent not only in Canada, but also in the United States, Austria, Germany, and so on, wherever a mountain-climbing snowmobile could be used. You might also want a patent in Japan, where many snowmobiles are manufactured. Otherwise, someone in one of those countries might copy your invention and market it in competition with you.

You may apply for a foreign patent either within Canada, via the Patent Office under the Patent Cooperation Treaty (PCT), or directly to the patent office of the foreign country concerned. But no matter how you apply, you will have to abide by the patent laws of that country. Bear in mind that these laws may differ from Canadian laws.

In some countries, for example, you lose the right to a patent if your invention is disclosed before the filing date. (Remember, in Canada and in the United States there is an exception. This is not the case in most other countries.)

Many countries require that your patented invention be manufactured or otherwise worked in that country within a certain period, usually three years. In some places you may have to allow some other company or individual to manufacture your invention. (This is called

granting a compulsory licence.)

Convention priority

Many countries, like Canada, belong to the Paris Convention for the Protection of Industrial Property, a treaty that allows you to invoke what is called “convention priority.” This means that your filing date in one member country will be recognized by all the others provided you file in those countries within a year of first filing. For example, if you filed in Canada on January 1, 2004, you could file up to one year later in most countries (January 1, 2005) and still be accorded the same rights as if you had filed there in 2004.

Under the Paris Convention, you can file an application abroad, and then in Canada. The Patent Office will recognize the earlier filing date as your convention date if you claim “convention priority” within four months of the Canadian filing date. The Canadian filing date must be within 12 months of the convention date. However, your application will be published 18 months after your convention date, not your filing date in Canada.

Note that being granted a patent in one country may bar you from obtaining one in another if you delay too long in filing for the second patent. That is, if your invention is patented and therefore public in Sweden, it will not be considered “new” in Canada, and vice versa. You must file your various applications all within one year in

order to receive the benefits of “convention priority” in the other countries.

Under the current Act it is now possible to claim priority based on an earlier filed Canadian application.

For addresses of foreign patent offices write to Canada’s Commissioner of Patents. The Commissioner’s staff will supply you with any addresses that are available.

The Patent Cooperation Treaty

Application for a foreign patent within Canada is made possible through a treaty called the Patent Cooperation Treaty (PCT), administered by the World Intellectual Property Organization, in Geneva. It provides a standardized international filing procedure, which is shared by our principal trading partners, including the United States, Japan, and most of the European Community.

Under the PCT, you may file for a patent in as many as 123 member countries through a single application filed in Canada. This procedure is simpler than filing separate applications and enables you to defer costs. For example, instead of filing in the language of each country and paying, within a year of first filing, all translation, filing and agent’s fees, you can file in one language and have up to 30 months to pay some of these fees. This gives you more time to raise capital, conduct market studies, etc.

When you file under the PCT, you will receive an international search report, which checks your international application against other applications and patents, and an initial opinion on the patentability of your invention. You then have the option to engage into a dialogue with an examiner with the possibility of amending the application, and ultimately receive an international preliminary report on patentability. This is no guarantee of a patent. Local patent offices in the countries to which you apply reserve the right to conduct their own examinations, but they often accept the international examination report. This means you will receive a fairly reliable indication of whether it’s worthwhile to seek multiple patents in foreign countries before fees are due.

Your application for foreign patents filed under the PCT through the Patent Office must be in English or French. You may also be required to provide for translation into the languages of the designated countries if you choose to continue in those countries. Eighteen months after filing, your application will be made available to the public.

Only nationals and residents of Canada can file under the PCT in Canada.

Your application made in Canada under the PCT automatically qualifies for a normal national filing for a Canadian patent if you have designated Canada.

What does “protection” mean?

Patent infringement

Patent infringement would occur if someone made, used or sold your patented door lock without your permission in a country that has granted you a patent, during the term of the patent.

If you believe your patent is infringed, you may sue for damages in the appropriate court. The defendant may argue that infringement did not occur, or may attack the validity of your patent. The court will determine who is right, basing its decision largely on the language of the claims. If what the defendant is doing is not within the wording of any of the claims of your patent, or if the patent is declared to be invalid for any reason, there is no infringement.

Protection before grant

When you obtain a patent in Canada, you will be able to sue infringers for all damages sustained after the grant of your patent. Also after grant, you may sue for reasonable compensation for infringements that occurred in Canada from the date your application was made available for public inspection (18 months after filing) to the date of grant.

Trade secrets

You may be tempted to protect your creation by simply keeping its information secret and selling it to a willing buyer. The information is then known as a trade secret. You will run into

problems, however, if another person independently invents or discovers the subject matter of the trade secret. There is nothing to prevent that person from using it, applying for a patent or publishing the information.

Patent marking and “patent pending”

The *Patent Act* does not require that patents be marked as “Patented.” However, marking an article as patented in Canada when it isn’t is against the law.

You may wish to mark your invention “Patent Applied For” or “Patent Pending” after you have filed your application. These phrases have no legal effect but may serve as warnings to others that you’ll be able to enforce the exclusive right to manufacture the invention once a patent is granted.

Fees

There are three kinds of fees you must pay to obtain a patent: filing fees, examination fees and grant of patent fees. Yearly maintenance fees are required to maintain an application or a patent in force.

Maintenance fees encourage applicants and patent holders to re-evaluate the economic value of their applications and patents on a yearly basis. Owners of valuable patents who are benefiting from the patent system must pay these fees or their patent rights will expire before the maximum 20 years. On the other hand, owners of inactive patents

may choose not to pay maintenance fees, thus letting the patents lapse and enabling others to use freely, at an earlier date, the technology described in those patents.

For applications filed after October 1, 1989, and for patents issued on these applications, maintenance fees are payable starting on or before the second anniversary of the application filing date; but for patents issued after October 1, 1989, as a result of applications filed before October 1, 1989, maintenance fees are payable starting on or before the second anniversary of the patent issue date.

In all cases, maintenance fees must now be paid on or before the starting date of the period covered, rather than before the expiry date of the period as was the practice prior to October 1, 1996. Failure to do so, will result in the abandonment of an application. However, reinstatement of the application is possible. For a patent, on the other hand, maintenance fees may be paid late within a one-year grace period, subject to a late payment charge, but failing this the patent will lapse with no possibility of revival.

You’ll find more details about fees on the sheet enclosed with this booklet and by consulting the “Tariff of Fees,” Schedule II of the *Patent Rules*.

Please note that payment may be made by credit card (VISA, MasterCard or American Express), direct payment,

deposit account, postal money order or cheque payable in Canadian dollars to the Receiver General for Canada. Do not add federal and provincial taxes.

Marketing and licensing

Marketing your invention

Now that you've taken steps to protect your brainchild, you'll want to decide the best way to market it and turn a profit. You have a number of options including going into business yourself, licensing the invention or selling your patent.

Setting up your own business allows you to retain full control of your invention, but means you assume all the risks.

With a licence, you grant one or more companies or individuals the right to manufacture and sell your invention in exchange for royalties. The licence can apply nationally or to only a specific geographic region. However, if you have not obtained protection in a certain country, your invention can be used freely by anyone there, even if you're protected elsewhere.

By selling your patent, you give up all rights as inventor, but you could gain an immediate lump sum of money without having to worry about whether the product is a commercial success.

It is important to keep your invention secret until your first patent application is filed, in order to preserve your rights to file later in most foreign countries.

Help with marketing

The Patent Office cannot help you with marketing, but you can receive assistance from other federal or provincial agencies.

Names of Canadian manufacturers who might be interested in a new invention are available from a number of sources, including the *Canadian Trade Index*, issued by the Canadian Manufacturers' Association. Other sources of names are *Fraser's Canadian Trade Directory* and *The Thomas Register of American Manufacturers*. These publications are usually available in public libraries.

If you wish to make your patent available for sale or licensing, you can publicize your intentions through the *Canadian Patent Office Record (CPOR)* and the Canadian Patents Database on the Internet. This is a good way of reaching potential investors, since many business people, researchers and others consult this publication to keep in touch with new technology. You may place a sale/licence notice in the *CPOR* and the Canadian Patents Database on the Internet free of charge, if you make your request when you pay your fee on the grant of your patent. At any other time, you must pay a fee for this notice.

The Patent Office has no control over private organizations that promote inventions, and cannot advise you about them. Seek guidance from the

Better Business Bureau of the city in which the organization is located, from your registered patent agent, or from the provincial department responsible for industry or consumer affairs.

Abuse of patent rights

Compulsory licences may be granted to remedy what is called "abuse of patent rights." Such abuse can be considered only three years after grant.

Hindering trade and industry is considered as an abuse. Abuse situations include:

- not meeting demand in Canada;
- hindering trade or industry in Canada by refusing to grant a licence (if such a licence is in the public interest), or by attaching unreasonable conditions to such a licence;
- using a process patent to unfairly prejudice production of a non-patented product, or allowing the patent on such a product to unfairly prejudice its manufacture, use or sale.

If someone applies for a compulsory licence because they believe that an abuse situation exists, you may be required to prove that you are not abusing your patent. In making a decision about such a situation, the Commissioner tries to ensure the widest possible use of inventions in Canada, maximum advantage to the patentee, and equality among licensees.

You may appeal decisions by the Commissioner on abuse to the Federal Court of Canada.

Corresponding with the Patent Office

Business with the Patent Office is normally done in writing. Address all correspondence to:

Patent Office
Canadian Intellectual
Property Office
Industry Canada
Place du Portage I
50 Victoria Street
Gatineau QC K1A 0C9

General enquiries:
(819) 997-1936

Any correspondence addressed to the Commissioner of Patents and delivered:

1 During business hours to CIPO Headquarters in Gatineau, will be accorded the date of receipt that day.

2 During business hours to Industry Canada Headquarters or to one of its regional offices, designated by the Commissioner in the *Canadian Patent Office Record* (CPOR), will be accorded the date of receipt in that office*.

3 At any time by electronic means of transmission specified in the CPOR, including by facsimile, will be considered to be received on the day that it is transmitted if received before midnight, local time, at CIPO Headquarters*.

4 Through the Registered Mail Service of the Canada Post Corporation (CPC), will be considered to be received on the date stamped on the envelope by the CPC*.

* Only if it is also a day on which CIPO Headquarters in Gatineau is open, if not, it will

be considered to be received on the next working day.

If you are enquiring about the status of your pending application, give its serial number, your name and the title of the invention. If you've hired a patent agent, conduct all correspondence through that agent.

Arrange any personal interviews with patent examiners by appointment. This gives them time to review your application before seeing you.

The Office will respond to all general enquiries. The Office cannot, however:

- advise you whether to file an application;
- tell you whether your invention meets patentability criteria prior to your filing an application;
- tell you whether or to whom a patent for any alleged invention has been granted;
- advise you as to possible infringement of a patent;
- act in any way as an interpreter of patent law, or as a counsellor, other than in matters directly related to processing your application.

New electronic services

With the latest additions to our electronic service delivery for patents, you can now, through a simple on-line transaction, file a patent application, register documents, pay various fees, exchange correspondence or request national entry for a PCT application. To perform one of these transactions via our Web

site, simply fill out and send the appropriate form. You will also find instructions on use and even a tutorial about writing a patent application.

Wealth of technical know-how

In today's world of rapid-fire technological change, the company with the competitive edge is usually the one tapped into the latest developments in a given field. Many people tend to think that only large firms with sophisticated research and development departments can afford to stay abreast of new technology. They are unaware of the gold mine of inexpensive, readily available technical know-how waiting to be used at the Patent Office.

Patents and patent applications can serve as resource materials—much like trade or research journals. They contain a thorough explanation of a particular technology in language that anyone in the field can understand. The patent document provides a wealth of information: a capsule description of a particular technology; background history of a problem; how the new invention overcomes these problems; a complete description for making the invention; and any conditions under which the invention will not work.

Thus, protection for the inventor is only one part of the patent story. By providing information, patents also promote research and development, stimulate the economy and increase the overall level of knowledge of our population.

Your research and development partner

With so much information stored in each patent, it's not surprising that the Patent Office has the largest collection in Canada of current technological know-how from around the world. The CIPO library contains over 1.7 million Canadian patent publications (grants and laid-open applications), most of which are searchable on the Web site or by doing a search in the CIPO Client Service Centre (CSC). One can also search the more than 6 million American patent publications in the CSC via the U.S. Patent database. Patent publications from most industrialized countries are also available. It receives more than 40 000 applications annually, covering technologies ranging from biotechnology to disposable diapers.

Some of these patents are merely for "end-of-the-line" improvements, but many are important, pioneer inventions that open up whole new fields in technology. Electronics, for example, started with a patent on a vacuum tube.

The information in these patents not only covers every conceivable field, but may very well be the most up-to-date information available. That is because patent applications are now generally made public long before patents are granted or refused. Indeed, about 70 percent of the information contained in patents does not appear in any trade journal for at least five years after the patent has been

granted. At least 50 percent of this information is never published in mainstream technical literature.

An historic example of how patent documents tend to be more current than other publications concerns Hollerith's punched card for computers. A patent was issued on this important invention in 1889, but no other publication told the story until 1914, 25 years later.

A prime goal of the Patent Office is to make patent information available to Canadian industries, universities and research centres, to help them keep abreast of innovations. The resources of the Patent Office are especially useful to small and medium-sized businesses which may be unable to conduct their own research and development.

In fact, ignoring Patent Office resources could cost you time and money, especially if you end up "reinventing the wheel." Some 10 percent of all research and development in Canada does just that, by duplicating patented technology. A search of the patent literature may prevent this kind of wasted effort.

Learning the existing solutions to certain technical problems can also give you ideas for better inventions. In almost any field, some work has already been done somewhere. It makes sense to attack a problem with all the available knowledge at hand. Perhaps the solution to the problem exists in a foreign patent, and you may be able to use it without restriction here in Canada.

Patent documents can also reveal trends and sources of new products, show what the competition is doing at home and abroad, and help you find new suppliers, markets or know-how that you can use under licence.

Keep in mind that Canada is a net importer of intellectual property, including patents. Of the more than 30 million patents in the world, approximately 1.5 million are Canadian and all are available. Most of the state-of-the-art technology from highly industrialized countries such as the United States, Japan, or Germany comes to Canada via the patent system.

Summary of benefits of a patent search

If you are a business person, researcher, engineer or student, a search through patent documents can help you:

- identify trends and developments in a specified field of technology;
- discover new product lines which you can license from the patentee or use without needing a licence;
- find information that prevents duplication of research;
- identify unproductive avenues of enquiry by reading about the current state of the art;
- keep track of the work of a particular individual or company by seeing what patents they have been granted;
- find a solution to a technical problem;
- gain new ideas for research in a particular field.

Your competitors may be using the information in patent documents to their advantage. Can anyone afford to ignore it?

General enquiries

The CIPO Client Service Centre supplies information on a variety of subjects such as:

- procedures for filing patent applications and for registering trade-marks, copyrights, industrial designs and integrated circuit topographies.

Information Officers provide information on:

- methods of searching Canadian and American patents or patents from other countries;
- locating patents on a given subject using the Office's subject-matter index to identify the general category and the specific section under which desired technology might be classified (class and subclass);
- descriptions of the subject-matter in a given class or subclass;
- classes and subclasses in the American or International Patent Classification systems that correspond to Canadian classes and subclasses.

APPENDIX I - FORMAT OF THE APPLICATION

A patent document is simply the final approved application. An example of the form of the application is reproduced below. This should give you an idea of what your abstract, specification and drawings should look like.

In addition, a tutorial on writing a patent application is available on CIPO's Web site.

Abstract

"In a tool for driving posts, it is known to have a guide depending from the hammer to freely embrace the post and slide longitudinally on it. In this invention, handles are secured to the guide such that they extend lengthwise along the outside of it. The tool with the handles may have a lighter hammer and thus may be manually operated, since the handles enable the operator to use his or her own strength to bring the hammer down on the post and hold it against rebound. The guide may have filling pieces secured to the inside to adapt its cross section to the cross section of the post being driven."

Specification

The specification shall begin immediately following the abstract or at the top of a new page and shall consist of unnumbered paragraphs in which the following matters shall be dealt with in approximately the following order:

1 The general character of the class of article or the kind of process to which the invention (i.e. the inventive idea) relates.

"This invention relates to a manually operable tool for driving posts into the ground."

2 The nature in general terms of the articles or processes previously known or used which are intended to be improved or replaced by resort to the invention and of the difficulties and inconveniences which they involve.

"It is common in devices for driving piles and posts to pull up a weight or hammer, e.g., by a cable and overhead pulley arrangement, and drop it into the end of the pile or post. It is, of course, necessary that the hammer strike the pile or post squarely, and it has been proposed to provide the hammer with a depending guide which freely embraces and may slide up and down on the post to be driven. Tools of this type are, however, inefficient because the rebound of the hammer results in a loss of energy and a tendency to split the end of the post. They are, moreover, unsatisfactory for manual operation, because the

hammer must be heavy to be effective, and the power of the operator is used only in raising the heavy hammer."

3 The inventive idea which the new article or process embodies, and the way in which resort to it overcomes the difficulties and inconveniences of previous practices or proposals.

"I have found that these disadvantages may be overcome by providing a number of handles secured to the guide and extending lengthwise along the outside of it. Such handles permit the use of a lighter hammer and the elimination of the overhead arrangement, secure a greater effect for the same amount of energy, and reduce splitting of the post, since the power of the operator of the device is used not only to raise the hammer but also to bring it down on the post or hold it against rebound."

4 A full description of the best way of using or putting into operation the inventive idea. If there are drawings, the description should be preceded by a list of these drawings and should be related to them by the use of the numerals which appear upon them.

The form of the list and the description is illustrated by the following:

“In drawings which illustrate embodiments of the invention, Figure 1 is an elevation partly in section of one embodiment, Figure 2 is a top view of this embodiment, Figure 3 is a section of the line III-III of Figure 1, and Figure 4 is a plan view of another embodiment having only two handles.”

“The tool illustrated comprises a guide 1 which is adapted freely to embrace and slide up and down on a post A which is to be driven. It may be of any suitable cross section, but, in the form shown, is a cylinder open at the bottom and closed by a plug 2 at the top which may be the top of the device. The plug 2, which acts as a hammer, fits within the cylinder 1 and is flanged at its edge so as to lie flush with the outer wall of the cylinder. Extending lengthwise of the guide 1 are handles 3 which may be formed from metal tubes, as shown or may, if designed, be made from rods or bars covered with wood facings.”

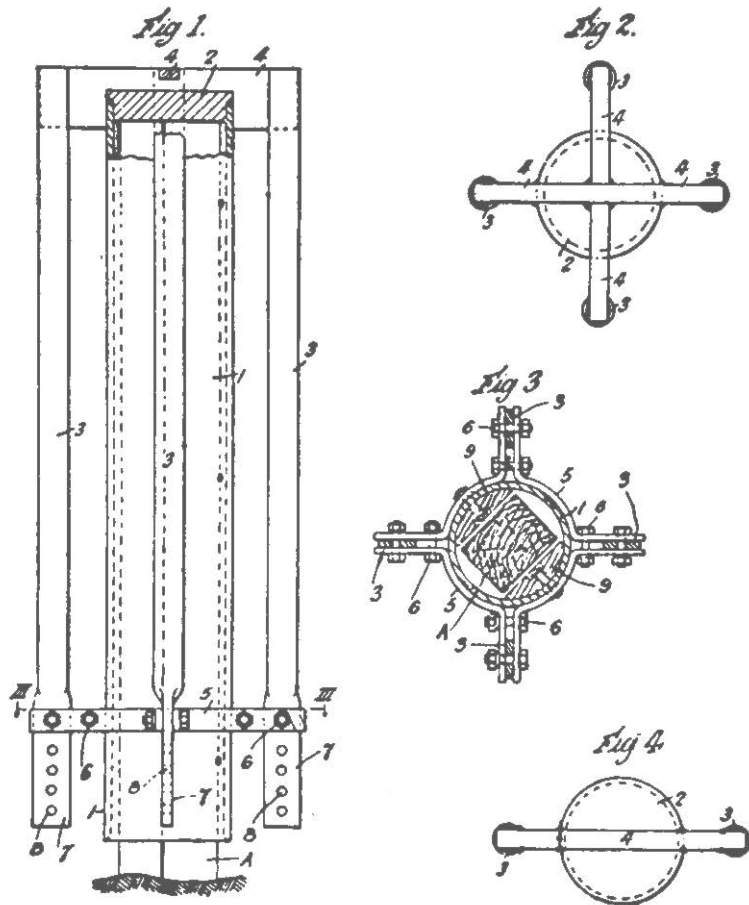
“The handles 3 are secured at their upper ends to bridge pieces 4, e.g., by welding, and the bridge pieces 4 are secured as by welding to the plug 2. At their lower ends the handles 3 are flattened for engagement between two arms of a sectional clamping ring 5 fitting around the guide 1 and clamped to it by bolts 6. The lower ends of the handles are extended below the clamping ring, as indicated at 7,

for the attachment of extension members (not shown) and, for this purpose, bolt holes 8 are provided in the extensions 7.”

“In order to adapt a guide of circular internal cross section to a square post, segmental filling pieces 9 having their flat faces facing inwards may be secured inside it, the distance between opposed flat faces being slightly greater than the thickness of the post. Two filling pieces may be used as shown in Figure 3, but four may be used if desired.”

“In the embodiment shown in

Figure 4 there are only two lateral extending handles instead of four as in Figures 1-3, but otherwise the construction may be the same as that described above.”



5 If desired, other ways in which the inventive idea may be used or put into operation.

Claims

There should then follow an introduction to the claims in these words appearing at the top of a new page:

The embodiments of the invention in which an exclusive property or privilege is claimed are defined as follows.

The claims should begin on the same page immediately following this introduction. The following examples illustrate the general form which the claims should take:

A In the case of an apparatus—

1 A manually operable tool for driving posts into the ground, comprising a hammer, a depending guide adapted freely to embrace and slide up and down on the post to be driven, and handles extending lengthwise outside of the guide and rigidly secured thereto.

2 A tool as defined in claim 1, in which the guide is a cylinder closed at the top by the hammer.

3 A tool as defined in claim 1 or claim 2, in which the guide has filling pieces secured to it in order to adapt its internal cross section to the cross section of the post to be driven into the ground.

B In the case of a process—

1 A process for cleaning the surface of a metal, which comprises converting contaminating matter by chemical attack to a residual

film which is readily removable by anodic treatment, and removing the formed film by connecting the metal as an anode in an electrolytic system.

2 A process as defined in claim 1, in which the metal to be cleaned is iron or steel and the chemical attack consists of treatment of the metal surface with a strongly oxidizing acid.

3 A process as claimed in claim 2, in which the residual film is removed in an electrolyte comprising one or more acids or salts thereof.

C In the case of an article—

1 An insulated electric conductor comprising a metal sheath, at least one conducting core and, between the core and the sheath, highly compacted mineral insulation constituted by a mixture of two or more pulverulent mineral insulating materials at least one of which will, on exposure to the atmosphere, cause the formation, over the exposed area, of a skin or layer which is substantially impermeable to moisture.

2 An insulated electric conductor as defined in claim 1, in which the insulating materials are calcium oxide and magnesia.

3 An insulated electric conductor as claimed in claim 2, in which the proportion of calcium oxide in the mixture is between 25 and 40 percent.

4 An insulated electric conductor as defined in claim 1, 2 or 3, in which the insulation resistance is not less than 250 000 ohms for an insulation thickness of 1.5 mm.

Drawings

Your application must include a drawing whenever the invention can be shown by one. This would include almost all inventions except chemical compositions or processes. But even these can sometimes be illustrated by a drawing.

If an invention cannot be illustrated with drawings but can be with photographs, you may include, as part of your application, photographs, or copies of photographs, that shows the invention.

Your drawing must show every feature of the invention defined by the claims. There are detailed, specific standards for such things as page size and quality of paper, so that issued patents are uniform in style and easy to read and understand. Drawings must meet the following requirements:

A Every sheet shall be 21.6 cm wide and 27.9 cm long and shall have a clear margin of at least 2.5 cm on the top and left side, 1.5 cm on the right side, and 1 cm on the bottom.

B Every drawing shall be prepared with black lines sufficiently dense, dark, and well defined to permit satisfactory reproduction, and shall contain no colour.

C Where figures on two or more pages are intended to form a single complete figure, the figures on the several pages shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures.

D Elements of the same figure shall be in proportion to each other unless a different proportion is indispensable for the clarity of the figure.

E Cross sections shall be indicated by hatching that does not impede the clear reading of the reference characters and lead lines.

F Reference characters shall be clear and distinct and not less than 3.2 mm in height; the same character shall be used for the same feature throughout the application.

G The views shall be numbered consecutively.

H Each sheet of drawings shall be on sheets of good quality white paper free of creases and folds, and so presented as to permit direct reproduction by photography, electrostatic processes, photo offset, and microfilming.

APPENDIX II - FILING AN APPLICATION

The Patent Office does not have blank forms for distribution. However, any forms that may be required under the *Patent Rules* should be typed according to the samples shown in Schedule I of the *Patent Rules*. Reproduced from the *Patent Rules* and shown below is the form most frequently used by applicants.

Form 3

(Subsection 27(2) of the Patent Act)

Petition for Grant of a Patent

1. The applicant, _____, whose complete address is _____, requests the grant of a patent for an invention, entitled _____, which is described and claimed in the accompanying specification.
2. This application is a division of application number _____, filed in Canada on _____.
- 3.(1) The applicant is the sole inventor.
 - (2) The inventor is _____, whose complete address is _____, and the applicant owns in Canada the whole interest in the invention.
4. The applicant requests priority in respect of the application on the basis of the following previously regularly filed application:

<i>Country of filing</i>	<i>Application number</i>	<i>Filing date</i>
_____	_____	_____
_____	_____	_____
5. The applicant appoints _____, whose complete address in Canada is _____, as the applicant's representative in Canada, pursuant to section 29 of the *Patent Act*.
6. The applicant appoints _____, whose complete address is _____, as the applicant's patent agent.
7. The applicant believes that the applicant is entitled to claim status as a "small entity" as defined under section 2 of the *Patent Rules*.
8. The applicant requests that Figure No. _____ of the drawings accompany the abstract when it is open to public inspection under section 10 of the *Patent Act* or published.

Instructions

In section 1, subsection 3(2) and sections 5 and 6, names and addresses must be presented in the following order with a clearly visible separation between the various elements: family name (in capital letters), given name(s), initials, or firm name, street name and number, city, province or state, postal code, telephone number, fax number and country.

In sections 5 and 6, appointment of representatives and appointment of patent agents may also be done in a separate document.

The applicant shall include in the petition either subsection 3(1) or (2).

Requests for priority may be done in section 4 of the petition or in a separate document.

GLOSSARY

Abstract

A brief summary of an invention.

Abuse of patent

Abusing one's patent rights by failing to make one's invention available in Canada on a commercial scale, without adequate reason.

Canadian Patents Database on-line

You can now do a preliminary search of patent bibliographical information and view images for issued patents (1920 to date) and applications made public in Canada since October 1989 via Internet.

Patent Office

Canada's patent granting authority and disseminator of patent information.

Canadian Patent Office Record

A journal published by the Patent Office.

Claims

That part of a patent which defines the boundaries of patent protection.

Compulsory licence

The right granted by the Commissioner of Patents to one or more parties to produce a patented invention. These are granted, under certain circumstances as a measure against abuse of patent rights.

Convention priority

An arrangement which allows inventors interested in applying for a foreign patent to have their filing date in one country recognized by other countries that have signed an international agreement called the Paris Convention.

Copyright

Provide protection for literary, artistic, dramatic or musical works (including computer programs), and three other subject-matter known as: performance, sound recording and communication signal.

Drawings

Part of the patent application. Technical drawings that illustrate the invention.

Examination of an application

The process by which the Patent Office determines whether a patent application warrants the granting of a patent.

Filing date

The date a patent application is received by the Patent Office.

Filing a patent application

Presenting a formal application for a patent to the Patent Office.

First to file

A patent system in which the first inventor to file a patent application for a specific invention is entitled to the patent. In Canada and in most other countries, the first person to file has priority over other people claiming rights for the same invention.

Industrial design

The visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.

Integrated circuit topography

The three-dimensional configuration of the electronic circuits embodied in integrated circuit products or layout designs.

Intellectual property

A form of creative endeavour that can be protected through a patent, trade-mark, copyright, industrial design or integrated circuit topography.

Licensing an invention

Allowing a business or individual to manufacture and sell an invention, usually in exchange for royalties.

Patent

A government grant giving the right to exclude others from making, using or selling an invention. A Canadian patent applies within Canada for 20 years from the date of filing of a patent application. The patent application is available to the public 18 months after filing.

Patent Cooperation Treaty

An international treaty providing for standardized filing procedures for foreign patents in the countries that have signed the treaty.

Patent examiner

An official with technical expertise charged with the task of classifying a patent or an application, or of determining whether a patent application fulfils the requirements for a grant of patent.

Patent infringement

Making, using or selling an invention on which a patent is in force without the inventor's permission.

Patent Office Action

An official written communication by the Patent Office on the merits of an application.

Patent pending

A label sometimes affixed to new products informing others that the inventor has applied for a patent and that legal protection from infringement (including retroactive rights) may be forthcoming.

Patent search

A review of existing patents. Patent searches are conducted to determine whether an applicant can claim rights to an invention, or whether a patent has already been issued to someone else on the same or a similar invention. Patent infringement searches are made to ascertain whether a product or process can be produced without having to get permission or pay a royalty. Patent searches are also used as a form of research to gain information on existing technology.

Preferred embodiment

An explanation, in a patent application, of the most appropriate and useful practical applications of an invention.

Prior art

The body of existing patents or patent applications or any other publication throughout the world, relevant to an application or a patent.

Prosecution

All the steps involved in following through on a patent application.

Registered patent agent

A specialist entitled to prepare and prosecute patent applications.

Small entity

An individual, a commercial concern of 50 or fewer employees, or a university.

Special order examination

A request to the Patent Office for early consideration of a patent application.

Specification

Part of the patent application. It includes a detailed description of the invention, claims specifying the aspects of the invention for which protection is sought, and the extent of the protection being sought.

TechSource

TechSource is an electronic patent system which holds the scanned image of over 1.5 million patent documents dating back to 1920 and the text version

of the documents from 1978.

Trade-mark

A word, symbol or design (or any combination of these features), used to distinguish the wares and services of one person or organization from those of others in the marketplace.

Trade secret

Information about a product or process kept secret from competitors.