

Chapter 5

Filing and completion requirements

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Chapter 5

Filing and completion requirements

5.00 Scope of chapter

This chapter applies to applications other than PCT national phase applications.

For applications filed under the provisions of the Patent Cooperation Treaty (PCT), see Chapter 22 of this Manual.

5.01 Filing of applications

An application for a patent shall be addressed to "The Commissioner of Patents" and shall be considered to be received by the Commissioner (i.e. filed) on the day that it is delivered to the Canadian Patent Office or to an establishment that is designated by the Commissioner in the *Canadian Patent Office Record* as an establishment to which correspondence addressed to the Commissioner may be delivered.

5.02 Requirements for a filing date

To obtain a filing date under subsection 28(1) of the *Patent Act* an application must conform to the requirements of Section 93 of the *Patent Rules*. It must include:

- (a) an indication in English or French that the granting of a Canadian patent is sought;
- (b) the name of the applicant;
- (c) the address of the applicant or of a patent agent of the applicant;
- (d) a document, in English or French, that on its face appears to describe an invention; and

- (e) the application fee referred to in subsection 27(2) of the *Patent Act* and set out in Item 1 of Schedule II of the *Patent Rules*.

5.03 Completing the application

Subsection 27(2) of the *Patent Act* requires that an application be filed in accordance with the Regulations. Section 93 of the *Patent Rules* specifies the items required to be given a filing date. However, section 94 of the *Patent Rules* provides that even though an application has been given a filing date under section 93 of the *Patent Rules* it is incomplete unless it meets the requirements of sections 68, 69, 70 and subsection 94(1) of the *Patent Rules* at the time of filing.

Sections 68, 69 and 70 of the *Patent Rules* set forth the requirements for the presentation of documents and include items such as paper size, margins, line spacing and text character size.

Subsection 94(1) of the *Patent Rules* requires that certain information and documents, if not supplied at the time of filing, be supplied in order to complete the application. The information and documents required are as follows:

- (a) a petition complying with section 77 of the *Patent Rules*;
- (b) an abstract;
- (c) a sequence listing, where required by paragraph 111(a) of the *Patent Rules*;
- (d) a copy of a sequence listing in computer readable form, where required by paragraph 111(b) of the *Patent Rules*;
- (e) a claim or claims;
- (f) any drawing referred to in the description;

- (g) an appointment of a patent agent, where required by section 20 of the *Patent Rules*;
- (h) an appointment of an associate patent agent, where required by section 21 of the *Patent Rules*;
- (i) an appointment of a representative, where required by section 29 of the *Patent Act*.

In all cases of incomplete applications, the office will make every effort to inform the applicant of the reasons for noncompliance by means of a courtesy letter. The letter will specify a time limit prior to which the application can be completed free. The time limit will be a date fifteen months from the filing date, or from the date of the earliest previously regularly filed application on which a request for priority is based, if any. The purpose of not requiring a fee for completing an application during the above period is to encourage applicants to provide the Patent Office with electronically scannable pages for TECHSOURCE and to ensure that all documents listed in (a) to (i) in the previous paragraph arrive at the Patent Office in a timely manner for laying open to public inspection under section 10 of the *Patent Act*.

If at the expiration of a time period of fifteen months from the filing date, or the priority date, if any, the application is still not complete, a Commissioner's Notice will be sent under subsection 94(1) of the *Patent Rules*. The Notice will requisition the applicant to complete the application within a period ending the later of three months after the date of the notice and twelve months after the filing date of the application. Completing the application after the notice has been received will require the payment of the completion fee specified in Item 2 of Schedule II of the *Patent Rules*. Failure to complete the application or to pay the fee within the time period specified in the notice will result in abandonment of the application.

5.03.01 Completing applications filed prior to October 1, 1996

Section 148 of the *Patent Rules* specifies that where an application other than a PCT national phase application did not, on the filing date of the application, contain the information and documents listed below, the application shall, for the purposes of section 73(2) of the *Patent Act*, be deemed to be abandoned if, after the expiry of the

twelve-month period after the filing date, the applicant has not paid the fee set out in item 2 of Schedule II and filed the following information and documents:

- (a) an abstract;
- (b) an appointment of a patent agent, where required by section 20 of the *Patent Rules*;
- (c) an appointment of an associated patent agent where required by section 21 of the *Patent Rules*; and
- (d) an appointment of a representative, where required by section 29 of the *Patent Act*.

The reinstatement procedures set forth in subsection 16(4) of the Patent Cooperation Treaty Regulations as they read immediately before October 1, 1996 apply to an international application that was, before that date, deemed to be abandoned pursuant to subsection 16(3) of these Regulations.

5.04 Jurisprudence

The following decisions of the courts are of importance in considering the subject matter of this chapter:

filing date (extension of time)

Alexander v Canada	31 CPR (2d)	24	1976
Chinoir v Canada	31 CPR (2d)	32	1976
Didier-Werke v Canada	42 CPR (2d)	69	1978
Re: Procter & Gamble Co.	39 CPR (2d)	269	1979