

HF3226

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1963 Pt. 3

PATENTS, COPYRIGHTS AND TRADE MARKS

IN CANADA

Prepared by

INDUSTRIAL PROMOTION BRANCH

DOMESTIC COMMERCE SERVICE

DEPARTMENT OF TRADE AND COMMERCE, OTTAWA

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Date of Revision - March, 1963.

F O R E W O R D

The information in this text deals with patents, copyrights, designs, timber marks and trade marks. Every effort has been made to accurately reflect the legislation in force at the time of preparing the material. It is believed that the text will prove to be a useful guide.

It should be appreciated, however, that many of the laws contain a considerable amount of detail. Since the text does not do more than refer to basic principles, it is suggested that an enquirer should consult with relevant authorities or solicitors of his choice or both when seeking precise and detailed advice on a given problem at a specific time.

PATENTS, COPYRIGHTS AND TRADE MARKS IN CANADAPATENTS

A patent is a right granted by the government to an inventor to exclude others from using his invention in Canada. The term of a patent is seventeen years, after which time anyone may use the invention. Patents are granted to encourage inventions by giving inventors protection against infringers for a limited time. They are also granted to encourage disclosure of inventions, since a patentee must give a full description of his invention, which is published, so that others may use it when the patent expires. The publication of inventions stimulates others to make similar inventions or further improvements, and prevents the loss of inventions which might otherwise be kept secret and die with the inventor or never become generally available. It is the patentee who must protect his interest in the invention against infringers. The patent permits him to resort to the courts to collect damages and to obtain injunctions against further infringement. In this manner he may prevent others from carrying out his invention in Canada or importing it from abroad.

Patents are granted for inventions, not for workshop improvements or simple alterations and changes to what has gone before. An invention is some technological development or improvement which would not have been obvious beforehand to specialists in the technology being considered. An invention involves some unobvious and unexpected result, the product of inventive ingenuity. It may be a new machine, article, process, chemical compound, or composition of matter. Patents are not granted for literary or artistic works (which may be copyrighted), nor for designs (which may be registered under the Industrial Designs Act).

To obtain a patent for his invention, the inventor (or his assignee) must file an application with the Commissioner of Patents, Ottawa, Canada. The application must meet all the requirements of the Patent Act and the Patent Rules. For example, no patent may be allowed if the invention was published anywhere in the world more than two years before the application was filed in Canada, and would be invalid if it were granted. The application will also be refused if the invention has been used publically or sold in Canada more than two years before the application is filed. Consequently it is important to file early. Other provisions and formalities must also be satisfied. There is a filing fee of \$30, and a further fee on allowance of a patent of \$30. In some instances other incidental fees are required during prosecution of the application. To obtain a filing date it is necessary to submit a petition, a full description (with claims) of the invention, the filing fee, and any drawings referred to in the description. Drawings are usually required where the invention can be graphically illustrated. Other documents necessary to complete the application must be supplied within one year of the filing date if they are not submitted at the time of filing.

While an application may be filed and prosecuted by an inventor or his legal representative, it is usually advisable to employ the services of a Registered Patent Agent. Such agents are trained and qualified by examination to represent inventors. A register of such agents is maintained at the Patent Office, and lists of those entitled to practice in the various regions of Canada may be obtained free of charge. These agents are trained to search technical literature and

patents to determine if the invention is already known and therefore unpatentable, in preparing specifications and claims which satisfy the requirements of the Patent Act and which provide adequate protection for the invention, and in handling the prosecution of the application before the Patent Office. They provide information and advice with respect to filing in foreign countries, whose patent laws differ in many aspects from our own. A Canadian patent gives protection in Canada only, and it may be desirable to file abroad to obtain fuller protection. The patent agent's skill in drafting the description of the invention and the claims is particularly valuable, since the value of the patent will depend, to a large extent, upon how they are drawn. The description of the invention must be such that any person skilled in the subject can understand it and receive sufficient information to carry out the invention without recourse to the inventor. The claims do not, as is sometimes supposed, list the advantages of the invention. Instead they provide concise statements of what the invention is, so phrased as to avoid claiming what is already known, while still encompassing everything in which the inventor is entitled to patent prosecution.

Once filed, applications are examined by one or more of the 150 scientists and engineers employed in the Patent Office as a Patent Examiner. The examiner determines whether the invention is new and useful, and whether inventive ingenuity was required in making it. Prior patents and technical literature are searched to check for novelty. The application is also examined for conformity to legal requirements and formalities. In the event that others have also filed for the same invention, conflict proceedings must be conducted to determine who is the first inventor. Examination, in some instances, may carry on over several years, particularly where the prosecution is involved. The applicant is given the opportunity to amend his application if it is not acceptable, or to try to persuade the examiner to change his views. Rejections may be appealed to the Exchequer and Supreme Courts. The examiner does not test an invention to determine how practical it may be, and the grant is not an official endorsement of the invention. Many inventions do not prove as useful or practical as the inventor had hoped. Some times patents are declared invalid by the courts, usually upon fresh evidence not available during prosecution before the Patent Office.

Some 25,000 applications are filed each year in Canada, and 22,000 patents granted. Since the first Canadian patent was granted in 1791, over 650,000 have issued. Every year 7,000 patents fall into the public domain.

In Canada no annual fees are required (as they are in most European countries) to keep a patent in force. However, patented inventions must be worked in this country within three years of patenting. If a patentee does not work his invention in Canada, or hinders manufacture in Canada by importation from abroad, if he refuses to grant a licence contrary to public interest, or unfairly prejudices any industry in Canada, then the Commissioner of Patents may grant licences to use the invention to others, or, in some cases, revoke the patent. Compulsory licences can also be obtained for all inventions intended for use in foods or drugs as soon as the patent issues. Licences are set so as to secure a reasonable financial reimbursement for the patentee while safeguarding the public interest.

Foreign patents do not provide protection in Canada, though foreign inventors can obtain Canadian patents. Similarly, Canadian patents are valid in Canada only, and Canadians may patent abroad. Each country in the world has developed its own patent system based upon the same essential concept, but differing in details so as to suit its own economic conditions and requirements. A patentee is not entitled to use his patented invention if it infringes a prior unexpired patent. On the other hand, he may sell all or a part of his rights in the invention to others. He cannot prevent

others from using his invention while his application is pending, but in cases of infringement the Patent Rules provide for special action to speed up prosecution.

Before manufacturing new products it is important for Canadian manufacturers to ascertain if any patents will be infringed, and if possible to arrange to license those that will. At other times, a manufacturer may be threatened with infringement suits. In both these situations the advice of a Patent Agent is important. In all cases of possible infringement it is necessary to consider whether the patent is valid, and whether it will actually be infringed.

The existing patent literature holds the answers to many of the technical problems facing industry today. Many research programs have duplicated work already reported in patent specifications of one country or another. Even if a specific problem does not require solution, a systematic program for reviewing the patent literature will frequently show ways to improve existing processes and techniques, or will generate further ideas. The Patent Office facilities are available to Canadian industry to find such information. Copies of all Canadian Patents issued are stored at the Patent Office in Ottawa, classified by subject matter to simplify searching. While applications are kept secret, all issued Canadian patents are available for public search, free of charge. Printed copies of each patent issued since 1948 may be purchased for \$1. Photocopies of earlier patents may be ordered at 25¢ a page. Most foreign patents are on file, and may be studied in the Public Search Room of the Patent Office Library, or photocopies ordered. The Canadian Patent Record is published every Tuesday, listing all inventions patented during the week. Copies of the Record are available at most provincial, university, and large municipal libraries across Canada. Single copies sell for \$1, and annual subscriptions for \$40. Foreign Patent Offices publish similar gazettes, copies of which are on file in the Patent Office library. Single copies of the Patent Act and of the Patent Rules are provided free of charge; extra copies are 35¢ each. Enquiries and orders should be addressed to:

The Commissioner of Patents,
Ottawa, Canada.

Money orders should be made payable to the Receiver General of Canada.

Canadian patents owned by foreigners are frequently licensed to manufacturers in this country. An increasing number of foreign principals wish to enter the Canadian market by licence and royalty agreements. Under such arrangements the facilities of Canadian firms are used for production and distributions, with payments made to the foreign principals based on a percentage of sales or upon a fixed charge for each unit made. The Industrial Promotion Branch of the Department of Trade and Commerce provides a service designed to bring the principals together. Foreign residents may submit their proposals to the nearest Canadian government Trade Commission, or to the Industrial Promotion Branch in Ottawa. Details should be provided as to the nature of the product in question, production costs, and the financial arrangements desired. The Industrial Promotion Branch will contact Canadian manufacturers directly and provide nation-wide publicity in its monthly Industrial Promotion Bulletin. Patent protection in Canada is important, since without a patent it is very difficult to arouse interest in license and royalty arrangements. Without a patent, Canadian manufacturers have no protection against others who may manufacture the article in question, either by copying it directly, or by resorting to foreign patent literature for such information as they need to produce it.

For Canadians who hold foreign patents, the Industrial Promotion Branch will provide assistance, through its various Trade Commissioners, in licensing their patents abroad. It publishes a bi-monthly publication, "Licensing Opportunities Abroad", to publicize these opportunities to foreign manufacturers.

INDUSTRIAL DESIGNS

Industrial designs for the ornamentation of any article of manufacture may be registered in Canada, if the design is not identical or similar to others registered. The design must be registered within one year of publication in this country. Registration provides an exclusive right to the design for a period of five years. Action in the courts may be taken against infringers. The registration may be renewed for a further five year term, but no longer. The registration fee is five dollars, and the renewal fee ten dollars. To register a design, a drawing and description must be filed with the Commissioner of Patents, Ottawa. A search will be made of earlier designs to determine if the design is novel. A Register of Designs is kept in the Copyright Division of the Patent Office in Ottawa, and is available to the public for searching.

Ornamental designs for apparel, textile fabrics, bottles, tires, automobile bodies, floor coverings, furniture, games, toys, household articles, jewellery, tools, packages, and many other articles are registrable. However, functional and utility features of an article are not registrable, nor is a mode or principle of construction. Single copies of the Industrial Design Act and Rules are provided free on request. Address enquiries to:

The Commissioner of Patents,
Ottawa, Canada.

TIMBER MARKS

Persons engaged in lumbering in Ontario, Quebec, and New Brunswick must register marks used to distinguish their logs and timber within one month of engaging in the business. A register of such marks is kept in the Copyright Division of the Patent Office in Ottawa, and is available there for searching by the public. An application for registration, together with a drawing or impression and description of the mark, and a filing fee of two dollars, must be sent to the Commissioner of Patents, Ottawa. It will be examined for novelty. There is no time limit to its term. Single copies of the Timber Mark Act and Rules are provided free of charge on request. Address enquiries to:

The Commissioner of Patents,
Ottawa, Canada.

COPYRIGHTS

The Canadian Copyright Act recognizes the exclusive right of an author to reproduce every original literary, musical, dramatic and artistic work he creates provided the author was a British subject or a citizen of a country which adheres to the International Copyright Convention when he produced the work. The author may protect this right by suing those who copy his work for damages in the Exchequer Court. The author's right are recognized as existing once he has

produced the work. While it is not a statutory requirement to register a copyright, it is advantageous to do so because it provides prima face evidence of copyright ownership before the courts. This exclusive right lasts for the life of the author and fifty years after his death. In the case of records, discs, and photographs, however, the term of protection is fifty years. Examples of works subject to copyright protection are paintings, drawings, sculptures, engravings, photographs, books, maps, charts, films, encyclopedias, newspapers, reviews, magazines, lectures delivered mechanically (e.g. tape recorded), plays, architectural plans, etc.

To register a copyright, an applicant must send his application to the Commissioner of Patents, Ottawa, on the form prescribed in the Copyright Rules, giving his name, the title of the work, and submit a registration fee of three dollars payable to the Receiver General of Canada. Copies of the copyright work are not required, and will be returned if supplied. However, two copies of the first printing of every book printed in Canada must be sent to the National Library of Canada, Public Archives Building, Sussex Drive, Ottawa 2. Single copies of the Copyright Act and Rules are supplied free of charge upon request.

If an artistic work is multiplied by an industrial process in quantities more than fifty in number, it loses its copyright protection. This applies, for example, to designs for printed paper hangings, textile goods, figurines, etc. These works may then be registered under the Industrial Design Act, provided such registration is made within one year of publication of the design in Canada.

On August 10, 1962, Canada ratified the Universal Copyright Convention, and consequently adheres to both the Universal and International Conventions. The Universal Copyright Convention affords protection automatically in U.C.C. countries to unpublished works, without notice or other formalities. Adherence to the Universal Convention is of particular value to Canada since the United States of America also subscribes to it (though not to the International Convention). An original work published in Canada now receives copyright protection in the United States and other U.C.C. countries provided all copies bear the symbol (c), accompanied by the name of the proprietor of the copyright and the year of publication. This means that more works will be published in Canada, and is of particular benefit to our printing trade. Address enquiries to:

The Commissioner of Patents,
Ottawa, Canada.

TRADE MARKS

The Trade Marks Act, which came into force on July 1, 1954, governs trade mark registration in Canada and provides for the registration of trade marks used in association with services or wares. Registration, although advisable, is not compulsory, except with regard to articles containing precious metals.

The Act prohibits the use of certain symbols as trade marks, e.g., the national flag, arms or crest of Canada or of any other country. Other types of marks which may be used, but not registrable except under special circumstances, are marks clearly descriptive or deceptive of the character of the wares or services or of their place of origin. Marks which are confusingly similar to trade marks already registered are not registrable. The name or surname of an individual is not registrable except under special circumstances. A trade mark endures for fifteen years and may be renewed.

In accordance with International Convention for the Protection of Industrial Property, Canada permits the registration of marks otherwise unregistrable, with certain reservations, if the applicant is the owner of a similar registration in the country of origin. Proof of such registration is required.

An application must be advertised at a fee of \$15.00, for opposition purposes before the trade mark may be registered, and application for registration must be accompanied by a statutory fee of \$25.00. The application may be submitted by the owner of the trade mark or his duly authorized agent.

An agent must be qualified to practise before the Trade Marks Office and must have his name registered in the Register of Trade Marks Agents maintained by the Trade Marks Office. The annual fee payable for registering the name of a firm or individual is \$5.00.

Further information concerning trade mark registration may be obtained from the Registrar of Trade Marks, Secretary of State Department, Ottawa.

HF3226/.A3
Canada. Dept. of Industry,
Doing business in Canada
(Canada. Dept. of
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