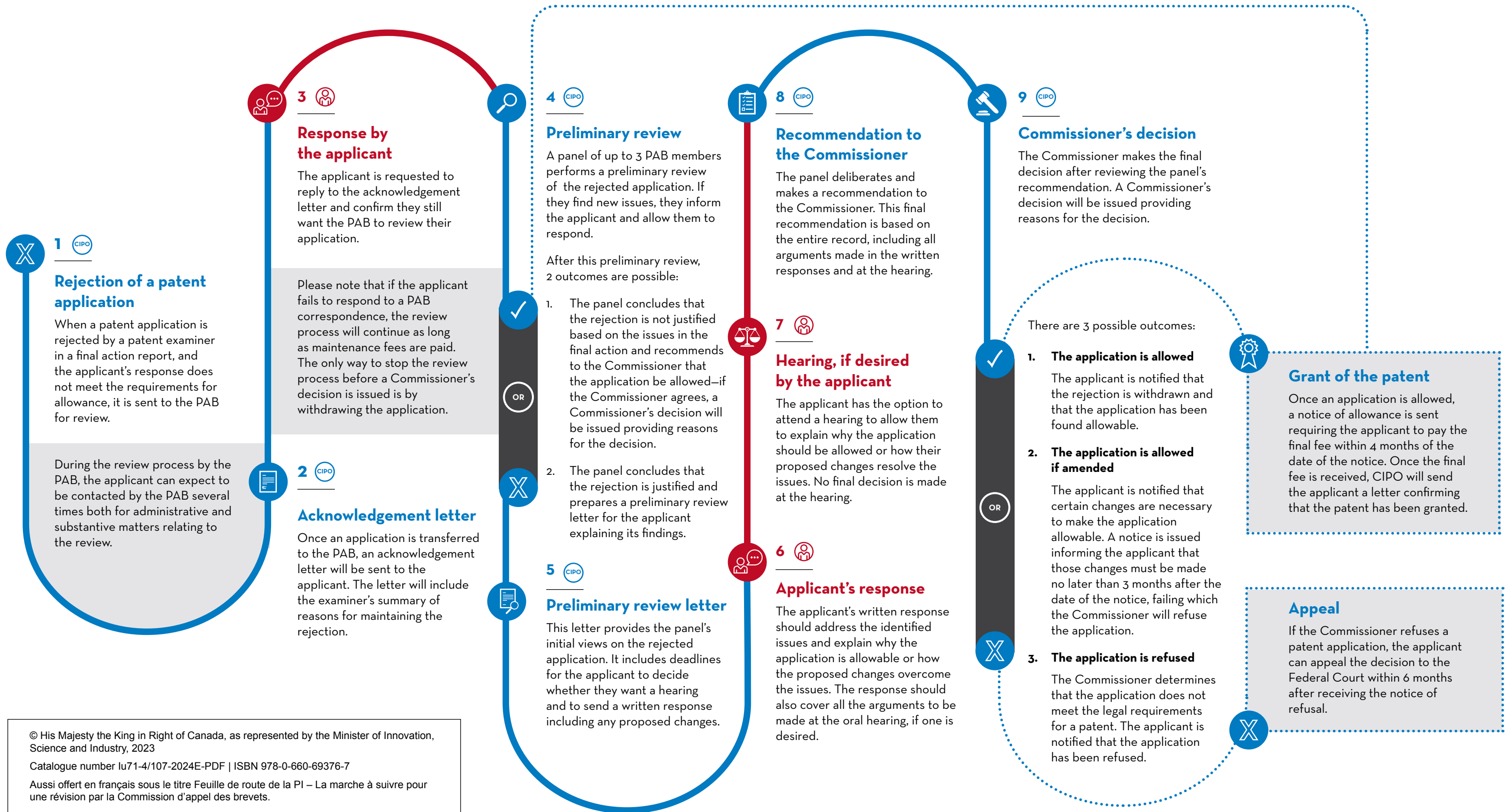


IP roadmap - Your path to a review by the Patent Appeal Board

The Patent Appeal Board (PAB) reviews rejected patent applications and makes recommendations on whether the application should be allowed as is, allowed with changes or refused by the Commissioner of Patents.



1 Rejection of a patent application

When a patent application is rejected by a patent examiner in a final action report, and the applicant's response does not meet the requirements for allowance, it is sent to the PAB for review.

During the review process by the PAB, the applicant can expect to be contacted by the PAB several times both for administrative and substantive matters relating to the review.

3 Response by the applicant

The applicant is requested to reply to the acknowledgement letter and confirm they still want the PAB to review their application.

Please note that if the applicant fails to respond to a PAB correspondence, the review process will continue as long as maintenance fees are paid. The only way to stop the review process before a Commissioner's decision is issued is by withdrawing the application.

2 Acknowledgement letter

Once an application is transferred to the PAB, an acknowledgement letter will be sent to the applicant. The letter will include the examiner's summary of reasons for maintaining the rejection.

4 Preliminary review

A panel of up to 3 PAB members performs a preliminary review of the rejected application. If they find new issues, they inform the applicant and allow them to respond.

After this preliminary review, 2 outcomes are possible:

1. The panel concludes that the rejection is not justified based on the issues in the final action and recommends to the Commissioner that the application be allowed—if the Commissioner agrees, a Commissioner's decision will be issued providing reasons for the decision.
2. The panel concludes that the rejection is justified and prepares a preliminary review letter for the applicant explaining its findings.

5 Preliminary review letter

This letter provides the panel's initial views on the rejected application. It includes deadlines for the applicant to decide whether they want a hearing and to send a written response including any proposed changes.

8 Recommendation to the Commissioner

The panel deliberates and makes a recommendation to the Commissioner. This final recommendation is based on the entire record, including all arguments made in the written responses and at the hearing.

7 Hearing, if desired by the applicant

The applicant has the option to attend a hearing to allow them to explain why the application should be allowed or how their proposed changes resolve the issues. No final decision is made at the hearing.

6 Applicant's response

The applicant's written response should address the identified issues and explain why the application is allowable or how the proposed changes overcome the issues. The response should also cover all the arguments to be made at the oral hearing, if one is desired.

9 Commissioner's decision

The Commissioner makes the final decision after reviewing the panel's recommendation. A Commissioner's decision will be issued providing reasons for the decision.

There are 3 possible outcomes:

1. **The application is allowed**
The applicant is notified that the rejection is withdrawn and that the application has been found allowable.
2. **The application is allowed if amended**
The applicant is notified that certain changes are necessary to make the application allowable. A notice is issued informing the applicant that those changes must be made no later than 3 months after the date of the notice, failing which the Commissioner will refuse the application.
3. **The application is refused**
The Commissioner determines that the application does not meet the legal requirements for a patent. The applicant is notified that the application has been refused.

Grant of the patent

Once an application is allowed, a notice of allowance is sent requiring the applicant to pay the final fee within 4 months of the date of the notice. Once the final fee is received, CIPO will send the applicant a letter confirming that the patent has been granted.

Appeal

If the Commissioner refuses a patent application, the applicant can appeal the decision to the Federal Court within 6 months after receiving the notice of refusal.

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 Aussi offert en français sous le titre Feuille de route de la PI – La marche à suivre pour une révision par la Commission d'appel des brevets.