

Rules Respecting the Patent Act (SOR/96-423)

Enabling Statute: Patent Act

Regulation current to January 25th, 2011

Attention: See coming into force provision and notes, where applicable.

Patent Rules

SOR/96-423

Registration August 28, 1996

PATENT ACT

Patent Rules

P.C. 1996-1350 August 28, 1996

His Excellency the Governor General in Council, on the recommendation of the Minister of Industry and the Treasury Board, pursuant to sections 10 and 12^a, subsections 20(18), 27(2) and 28(1), sections 35, 46 and 48 and subsections 73(1) and (2) of the *Patent Act* as it read immediately before October 1, 1989, and sections 8.1^b, 10^c and 12^d, subsection 27(2)^e, section 27.1^f, subsections 28(1), 28.4(2) and (3)^g, 35(1)^h and 38.1(1)ⁱ, sections 46^j and 48^k and subsections 73(1) and (2)^l of the *Patent Act*, hereby makes the annexed *Rules respecting the Patent Act*.

a R.S., c. 33 (3rd Supp.), s. 3

b S.C. 1993, c. 15, s. 27

c S.C. 1993, c. 15, s. 28

d S.C. 1993, c. 15, s. 29

e S.C. 1993, c. 15, s. 31

f S.C. 1993, c. 15, s. 32

g S.C. 1993, c. 15, s. 33

h R.S., c. 33 (3rd Supp.), s. 12

i S.C. 1993, c. 15, s. 41

j S.C. 1993, c. 15, s. 43

k S.C. 1993, c. 15, s. 44

l S.C. 1993, c. 15, s. 52

RULES RESPECTING THE PATENT ACT

SHORT TITLE

1. These Rules may be cited as the *Patent Rules*.

INTERPRETATION

2. In these Rules,

"Act" means the *Patent Act*; (*Loi*)

"amino acid sequence" has the same meaning as in the PCT sequence listing standard; (*séquence d'acides aminés*)

"amino acids" [Repealed, SOR/2007-90, s. 1]

"application" means, except as otherwise provided by these Rules, an application for a patent, but does not include an application for the reissue of a patent; (*demande*)

"associate patent agent" means a patent agent appointed by another patent agent in accordance with section 21; (*coagent*)

"authorized correspondent" means, in respect of an application,
(a) where the application was filed by the inventor, where no transfer of the inventor's right to the patent or of the whole interest in the invention has been registered in the Patent Office and where no patent agent has been appointed
(i) the sole inventor,
(ii) one of two or more joint inventors authorized by all such inventors to act on their joint behalf, or
(iii) where there are two or more joint inventors and no inventor has been authorized in accordance with subparagraph (ii), the first inventor named in the petition or, in the case of PCT national phase applications, the first inventor named in the international application,
(b) where an associate patent agent has been appointed or is required to be appointed pursuant to section 21, the associate patent agent, or
(c) where paragraphs (a) and (b) do not apply, a patent agent appointed pursuant to section 20; (*correspondant autorisé*)

"Budapest Treaty" means the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, done at Budapest on April 28, 1977, to which Canada is a party; (*Traité de Budapest*)

"Canadian Patent Office Record" means the *Canadian Patent Office Record* referred to in subsection 78(3) of the Act; (*Gazette du Bureau des brevets*)

"claims" means claims referred to in subsection 27(4) of the Act or in subsection 34(2) of the Act as it read immediately before October 1, 1989; (*revendications*)

"description" means the part of a specification other than the claims; (*description*)

"divisional application" means an application filed in accordance with subsection 36(2) or (2.1) of the Act; (*demande complémentaire*)

"international application" means an application filed under the Patent Cooperation Treaty; (*demande internationale*)

"international depositary authority" means an international depositary authority within the meaning of Article 2(viii) of the Budapest Treaty; (*autorité de dépôt internationale*)

"nucleotide sequence" has the same meaning as in the PCT sequence listing standard; (*séquence de nucléotides*)

"nucleotides" [Repealed, SOR/2007-90, s. 1]

"patent agent" means any person or firm whose name is entered on the register of patent agents pursuant to section 15; (*agent de brevets*)

"Patent Cooperation Treaty" means the *Patent Cooperation Treaty*, done at Washington on June 19, 1970, including any amendments, modifications and revisions made from time to time to which Canada is a party; (*Traité de coopération en matière de brevets*)

"Patent Office" means the Patent Office established by section 3 of the Act; (*Bureau des brevets*)

"PCT national phase application" means an international application in respect of which the applicant has complied with the requirements of subsection 58(1) and, where applicable, subsection 58(2); (*demande PCT à la phase nationale*)

"PCT sequence listing standard" means the Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in International Patent Applications under the PCT provided for in the Administrative Instructions under the Patent Cooperation Treaty; (*Norme PCT de listages des séquences*)

"period of grace" means a period of grace within the meaning of Article 5^{bis}(1) of the *Paris Convention for the Protection of Industrial Property*, made on March 20, 1883 and any amendments and revisions to which Canada is a party. (*délai de grâce*)

"petition" means a petition referred to in section 27 of the Act; (*pétition*)

"Regulations under the Budapest Treaty" means the *Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*; (*Règlement d'exécution du Traité de Budapest*)

"Regulations under the PCT" means the *Regulations under the Patent Cooperation Treaty*; (*Règlement d'exécution du PCT*)

"sequence listing" has the same meaning as in the PCT sequence listing standard; (*listage des séquences*)

"small entity" [Repealed, SOR/2007-90, s. 1]

"specification" means a specification of an invention in accordance with subsections 27(3) and (4) of the Act; (*mémoire descriptif*)

"the Act as it read immediately before October 1, 1989" means the provisions of the *Patent Act* as it read immediately before October 1, 1989 subject, where applicable, to any amendments to the *Patent Act* coming into force

(a) after October 1, 1989 and before October 1, 1996, or

(b) after October 1, 1996; (*Loi dans sa version antérieure au 1^{er} octobre 1989*)

"transfer" means a change in ownership of a patent, of an application or of an interest in an invention and includes an assignment. (*transfert*)

SOR/99-291, s. 1; SOR/2003-208, s. 1; SOR/2007-90, s. 1; SOR/2009-319, s. 1.

PART I RULES OF GENERAL APPLICATION

Fees

3. (1) If a person takes any proceeding or requests that any service be rendered by the Commissioner or by the Patent Office, the person shall pay to the Commissioner the appropriate fee, if any, set out in Schedule II for that proceeding or service.

(2) The appropriate fee on filing an application under subsection 27(2) of the Act is

(a) if a small entity declaration is filed in accordance with section 3.01, the small entity fee set out in item 1 of Schedule II; and

(b) in any other case, the standard fee set out in that item.

(3) The appropriate fee on requesting examination of an application under subsection 35(1) of the Act is

(a) if before the expiry of the applicable time prescribed by section 96 a small entity declaration is filed in respect of the application in accordance with section 3.01, the applicable small entity fee set out in item 3 of Schedule II; and

(b) in any other case, the applicable standard fee set out in that item.

(4) In respect of a final fee under subsection 30(1) or (5), the appropriate basic fee is

(a) if before the expiry of the time prescribed by subsection 30(1) or (5) a small entity declaration is filed in respect of the application in accordance with section 3.01, the applicable small entity fee set out in item 6 of Schedule II; and

- (b) in any other case, the applicable standard fee set out in that item.
- (5) The appropriate basic national fee under paragraph 58(1)(c) is
 - (a) if before the expiry of the time prescribed by subsection 58(3) a small entity declaration is filed in accordance with section 3.01, the small entity fee set out in item 10 of Schedule II; and
 - (b) in any other case, the standard fee set out in that item.
- (6) The appropriate fee on requesting re-examination of a claim or claims in a patent under subsection 48.1(1) of the Act is
 - (a) the small entity fee set out in item 14 of Schedule II if
 - (i) the person requesting re-examination is the patentee and a small entity declaration is filed in respect of the patent, or the application on which the patent is based, in accordance with section 3.01, or
 - (ii) the person requesting re-examination is not the patentee and they file a small entity declaration in accordance with section 3.02; and
 - (b) in any other case, the standard fee set out in that item.
- (7) In respect of a fee to maintain in effect under sections 99 and 154 an application filed on or after October 1, 1989, the appropriate fee is
 - (a) if before the expiry of the time prescribed for payment of the fee a small entity declaration is filed in accordance with section 3.01, the applicable small entity fee set out in item 30 of Schedule II; and
 - (b) in any other case, the applicable standard fee set out in that item.
- (8) In respect of a fee to maintain under sections 100, 101, 155 and 156 the rights accorded by a patent issued on the basis of an application filed on or after October 1, 1989, the appropriate fee is
 - (a) if before the expiry of the time prescribed for payment of the fee a small entity declaration is filed in accordance with section 3.01, the applicable small entity fee set out in item 31 of Schedule II; and
 - (b) in any other case, the applicable standard fee set out in that item.
- (9) In respect of a fee to maintain under subsections 182(1) and (3) the rights accorded by a patent issued on or after October 1, 1989 on the basis of an application filed before that date, the appropriate fee is
 - (a) if before the expiry of the time prescribed for payment of the fee a small entity declaration is filed in accordance with section 3.01, the applicable small entity fee set out in item 32 of Schedule II; and
 - (b) in any other case, the applicable standard fee set out in that item.

SOR/2007-90, s. 2.

3.01 (1) Subject to section 3.02, a small entity declaration

- (a) shall be filed with the Commissioner by the authorized correspondent, in the case of an application, or by the patentee, in the case of a patent;
 - (b) may be filed as part of the petition or as a separate document;
 - (c) shall, if not filed as part of the petition, identify the application or patent to which it relates;
 - (d) shall contain a statement to the effect that the applicant or patentee believes that in accordance with subsection (2) they are entitled to pay fees at the small entity level in respect of that application or patent;
 - (e) shall be signed by the applicant or patentee or by a patent agent appointed by the applicant or patentee; and
 - (f) shall indicate the name of the applicant or patentee and, if applicable, the name of the patent agent signing the declaration.
- (2) An applicant or patentee may pay fees at the small entity level in respect of an application or patent if
- (a) in respect of an application other than a PCT national phase application or a patent issued on the basis of such an application, on the filing date of the application the applicant originally identified in the petition is a small entity in respect of the invention to which the application or patent relates; and

(b) in respect of a PCT national phase application or a patent issued on the basis of such an application, on the date when the requirements of subsection 58(1) and, if applicable, subsection 58(2) are complied with, the applicant who complies with those requirements is a small entity in respect of the invention to which the application or patent relates.

(3) For the purposes of subsection (2), "small entity", in respect of an invention, means an entity that employs 50 or fewer employees or that is a university, but does not include an entity that

(a) is controlled directly or indirectly by an entity, other than a university, that employs more than 50 employees; or

(b) has transferred or licensed or has an obligation, other than a contingent obligation, to transfer or license any right in the invention to an entity, other than a university, that employs more than 50 employees.

(4) For greater certainty, for the purposes of this section,

(a) a divisional application is considered to have the same filing date as the original application;

(b) a small entity declaration filed in respect of an original application on a date that is on or before the actual date of filing of a divisional application shall be considered to have also been filed on that date in respect of the divisional application; and

(c) a reissued patent is considered to be issued on the basis of the original application.

SOR/2007-90, s. 2.

3.02 (1) A small entity declaration by a person, other than the patentee, requesting re-examination shall

(a) contain a statement to the effect that the person believes that, at the time of the request for re-examination, they are a small entity;

(b) be signed by the person or by a patent agent appointed by that person; and

(c) indicate the name of the person and, if applicable, the name of the patent agent signing the declaration.

(2) For the purposes of subsection (1), "small entity" means an entity that employs 50 or fewer employees or that is a university, but does not include an entity that is controlled directly or indirectly by an entity, other than a university, that employs more than 50 employees.

SOR/2007-90, s. 2.

3.1 (1) Subject to subsection 6(1), if, before the expiry of a time limit for paying a fee set out in Schedule II, the Commissioner receives a communication in accordance with which a clear but unsuccessful attempt is made to pay the fee, the fee shall be considered to have been paid before the expiry of the time limit if

(a) the amount of the fee that was missing is paid before the expiry of the time limit;

(b) if a notice is sent in accordance with subsection (2), the amount of the fee that was missing, together with the late payment fee set out in item 22.1 of Schedule II, are paid before the expiry of the two-month period after the date of the notice; or

(c) if a notice is not sent, the amount of the fee that was missing, together with the late payment fee set out in item 22.1 of Schedule II, are paid before the expiry of the two-month period after the day on which the communication was received by the Commissioner.

(2) Subject to subsection 6(1) and unless the person making the communication did not provide information that would allow them to be contacted, if the Commissioner has received a communication in the circumstances referred to in subsection (1), the Commissioner shall, by notice to the person who made the communication, request payment of the amount of the fee that was missing together, if applicable, with the late payment fee referred to in subsection (1).

(3) Subsections (1) and (2) do not apply in respect of the fees set out in items 9 to 9.4 and 22.1 of Schedule II.

SOR/2003-208, s. 2.

- 4.** (1) The Commissioner shall, on request, refund fees in accordance with subsections (2) to (16).
- (2) If an application does not meet the requirements of section 28 of the Act entitling it to a filing date, the fee paid shall be refunded, less \$25.
- (3) Where an application is submitted to the Commissioner by mistake and the Commissioner is notified before the application has been assigned a number that the application is to be withdrawn, the fee paid on the withdrawn application shall be refunded, less \$25.
- (4) Where, through inadvertence, more than one application is filed for the same invention, by or on behalf of the same person, and where any one of such applications is withdrawn before examination, any fee paid on the withdrawn application shall be refunded, less one-half of the filing fee.
- (5) Where the Commissioner sends a notice to the applicant pursuant to subsection 94(1) and the applicant does not comply with the requisition set out in that notice, any fee paid pursuant to that subsection shall be refunded, less \$25.
- (6) If a person pays a standard fee set out in an item of Schedule II, no refund shall be made solely for the reason that the appropriate fee is in fact the small entity fee set out in that item.
- (7) Where a fee to register any document relating to a patent or an application is received and the document is not submitted, the fee paid shall be refunded.
- (8) Where a request for the reinstatement of an abandoned application is received and the applicant does not comply with the requirements for reinstatement, any fee paid for reinstatement shall be refunded, less one-half of the reinstatement fee.
- (9) Where a request for the reinstatement of an abandoned application is refused, any fee paid for reinstatement shall be refunded.
- (10) A final fee referred to in subsection 30(1) or (5) shall be refunded if
- (a) it is received during the prosecution of an application and the application is subsequently refused or abandoned;
- (b) a request for its return is received before the start of technical preparations for issue; or
- (c) it is submitted by a person who is not the authorized correspondent.
- (11) Where a candidate for the Patent Agents' Examination withdraws the candidate's name by written notice to the Commissioner received
- (a) before March 1 of the year of the examination, the fee paid shall be refunded; or
- (b) on or after March 1 of the year of the examination and before the date of the examination, the fee paid shall be refunded, less \$25.
- (12) When the fee received with a request for a copy of a document is insufficient and the request is cancelled, the fee paid shall be refunded.
- (13) When an application referred to in section 68 of the Act and presented under subsection 65(1) of the Act is not advertised in the *Canadian Patent Office Record*, any fee paid for advertising the application shall be refunded.
- (14) Subject to subsections (2) to (13) and (15), any fee paid by mistake for copies of a document that the Patent Office does not have or paid in excess of the fee prescribed shall be refunded.
- (15) No refund shall be made if the amount of the refund amounts to less than \$1 or if the refund results from the exchange on foreign currency.
- (16) No refund shall be made unless the request is made before the expiry of three years after the day on which the payment was made.
- SOR/2007-90, s. 3; SOR/2009-319, s. 2.

Communications

- 5.** (1) Correspondence intended for the Commissioner or the Patent Office shall be addressed to the "Commissioner of Patents".

(2) Correspondence addressed to the Commissioner may be physically delivered to the Patent Office during ordinary business hours of the Office and shall be considered to be received by the Commissioner on the day of the delivery.

(3) For the purposes of subsection (2), where correspondence addressed to the Commissioner is physically delivered to the Patent Office outside of its ordinary business hours, it shall be considered to have been delivered to the Office during ordinary business hours on the day when the Office is next open for business.

(4) Correspondence addressed to the Commissioner may be physically delivered 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, during ordinary business hours of that establishment, and

(a) where the delivery is made to the establishment on a day that the Patent Office is open for business, the correspondence shall be considered to be received by the Commissioner on that day; and

(b) where the delivery is made to the establishment on a day that the Patent Office is closed for business, the correspondence shall be considered to be received by the Commissioner on the day when the Office is next open for business.

(5) For the purposes of subsection (4), where correspondence addressed to the Commissioner is physically delivered to an establishment outside of ordinary business hours of the establishment, it shall be considered to have been delivered to that establishment during ordinary business hours on the day when the establishment is next open for business.

(6) Correspondence addressed to the Commissioner may be sent at any time by electronic or other means of transmission specified by the Commissioner in the *Canadian Patent Office Record*.

(7) For the purposes of subsection (6), where, according to the local time of the place where the Patent Office is located, the correspondence is delivered on a day when the Office is open for business, it shall be considered to be received by the Commissioner on that day.

(8) For the purposes of subsection (6), where, according to the local time of the place where the Patent Office is located, the correspondence is delivered on a day when the Office is closed for business, it shall be considered to be received by the Commissioner on the day when the Office is next open for business.

SOR/99-291, s. 2.

6. (1) Except as provided by the Act or these Rules, for the purpose of prosecuting or maintaining an application the Commissioner shall only communicate with, and shall only have regard to communications from, the authorized correspondent.

(2) For the purpose of appointing, in respect of an application, a patent agent or an associate patent agent or of revoking the appointment of a patent agent or an associate patent agent, the Commissioner shall have regard to communications from any of the applicant, the patent agent and the associate patent agent.

(3) Interviews with members of the Patent Office staff in respect of an application may be held during the business hours of the Patent Office by

(a) the authorized correspondent;

(b) the applicant, with the permission of the authorized correspondent; or

(c) an appointed non-resident patent agent, with the permission of the associate patent agent.

7. Communications addressed to the Commissioner in relation to an application shall include

(a) the name of the applicant or inventor;

(b) the application number, if one has been assigned by the Patent Office; and

(c) the title of the invention.

8. (1) Subject to subsection (2), communications addressed to the Commissioner in relation to an application or a patent shall relate to one application or patent only.

(2) Subsection (1) does not apply in respect of communications relating to
(a) a transfer, a licence or a security interest;
(b) a change in the name or address of an applicant, a patentee, a patent agent, an associate patent agent or a representative for service; or
(c) fees to maintain an application in effect or to maintain the rights accorded by a patent.

9. An authorized correspondent shall provide the Commissioner with its complete address and any communication sent by the Commissioner or by the Patent Office to the authorized correspondent at that address shall be considered to be sent on the date that it bears.

10. Communications addressed to the Commissioner pursuant to section 34.1 of the Act and communications addressed to the Commissioner with the stated or apparent intention of protesting against the granting of a patent shall be acknowledged, but, subject to section 10 of the Act or of the Act as it read immediately before October 1, 1989, no information shall be given as to the action taken.

11. Except as provided by section 11 of the Act, the Commissioner and the Patent Office shall not provide any information respecting an application that is not open to public inspection to any person other than the authorized correspondent, the applicant or a person authorized by the authorized correspondent or the applicant to receive the information.

Entry of Patent Agents on Register of Patent Agents

12. (1) Subject to subsection 14(2), for the purpose of having their name entered on the register of patent agents, a person is eligible to sit for the qualifying examination for patent agents referred to in section 14 if, on March 31 of the year in which the person proposes to sit for the examination,

(a) the person resides in Canada and has been employed for a period of at least 12 months on the examining staff of the Patent Office; or

(b) the person resides in Canada and has worked in Canada in the area of Canadian patent law and practice, including the preparation and prosecution of applications, for a period of at least 12 months.

(2) A person referred to in paragraph (1)(b) shall file with the Commissioner an affidavit or statutory declaration setting out the person's experience and responsibilities in the area of patent law and practice.

13. (1) An Examining Board is hereby established for the purpose of preparing, administering and marking the qualifying examination for patent agents referred to in section 14.

(2) The members of the Examining Board shall be appointed by the Commissioner, and the chairperson and at least three other members shall be employees of the Patent Office and at least five members shall be patent agents nominated by the Intellectual Property Institute of Canada.

SOR/2003-208, s. 3.

14. (1) The Examining Board shall administer a qualifying examination for patent agents every year in the month of April.

(2) The Commissioner shall give notice in the *Canadian Patent Office Record* of the date of the qualifying examination and shall indicate in the notice that any person who proposes to sit for the examination shall, within the time specified in the notice, notify the Commissioner in writing and pay the fee set out in item 34 of Schedule II.

(3) The Commissioner shall designate the place or places where the qualifying examination is to be held and shall notify by registered mail, at least two weeks before the date of the examination, every person who has complied with the requirements set out in subsection (2).

15. The Commissioner shall enter on the register of patent agents, on payment of the fee set out in item 33 of Schedule II, the name of

- (a) any resident of Canada who has demonstrated a good knowledge of Canadian patent law and practice by passing the qualifying examination for patent agents relating to patent law and practice;
- (b) any resident of a country other than Canada who is registered and in good standing with the patent office of that country or with a regional patent office for that country; and
- (c) any firm, if the name of at least one member of the firm is entered on the register.

16. (1) During the period beginning on January 1 and ending on March 31 in every year

- (a) every person who is a resident of Canada and whose name is entered on the register of patent agents shall pay the fee set out in item 35 of Schedule II in order to maintain the person's name on the register;
- (b) every person who is a resident of another country and whose name is entered on the register of patent agents shall, in order to maintain the person's name on the register, file a statement, signed by the person, indicating the person's country of residence and stating that the person is registered and in good standing with the patent office of that country or with a regional patent office for that country; and
- (c) every firm whose name is entered on the register of patent agents shall, in order to maintain its name on the register, file a statement indicating each member of the firm whose name is entered on the register, signed by a duly authorized member of the firm whose own name is entered on the register.

(2) The Commissioner shall send to every patent agent who fails to comply with subsection (1) a notice requiring compliance within the three-month period after the date of the notice.

(3) The Commissioner shall remove from the register of patent agents the name of any patent agent who

- (a) fails to comply with a notice sent pursuant to subsection (2); or
- (b) no longer meets the requirements by virtue of which the name of the patent agent was entered on the register.

(4) [Repealed, SOR/2009-319, s. 3]

SOR/2009-319, s. 3.

17. Where the name of a patent agent has been removed from the register of patent agents pursuant to subsection 16(3), it may be reinstated on the register if the patent agent

- (a) applies to the Commissioner, in writing, for reinstatement within the one-year period after the date on which the name of the patent agent was removed from the register;
- (b) pays the fee set out in item 36 of Schedule II for applying for reinstatement on the register;
- (c) pays the fee referred to in paragraph 16(1)(a) for maintaining the name of the patent agent on the register or files the statement referred to in paragraph 16(1)(b) or (c), as the case may be; and
- (d) meets the requirements referred to in section 15 for entry of the name of the patent agent on the register.

18. Any decision of the Commissioner under section 16 of the Act to refuse to recognize a person as a patent agent and any decision of the Commissioner under subsection 16(3) to remove the name of a person from the register of patent agents shall be without delay entered in the register of patent agents and published in the *Canadian Patent Office Record* and a copy shall be sent by registered mail to the person referred to in the decision.

SOR/2009-319, s. 4.

19. (1) If the Commissioner makes a decision under section 16 of the Act that a person be refused recognition as a patent agent or makes a decision under subsection 16(3) to remove the name of a person from the register of patent agents,

any correspondence respecting an application sent by the Commissioner or by the Patent Office to that person within the six-month period before the date of the decision and to which no reply has been made by that date is deemed not to have been sent to the applicant.

(2) An application filed by a person who has been refused recognition as a patent agent by the Commissioner or whose name has been removed from the register of patent agents or an application that includes an appointment of such a person as patent agent of the applicant or as associate patent agent shall be treated by the Commissioner as an application filed by the applicant or by the patent agent who appointed the associate patent agent.

SOR/2009-319, s. 4.

Appointment of Patent Agents

20. (1) An applicant who is not an inventor shall appoint a patent agent to prosecute the application for the applicant.

(2) The appointment of a patent agent shall be made in the petition or by submitting to the Commissioner a notice signed by the applicant.

(3) The appointment of a patent agent may be revoked by submitting to the Commissioner a notice of revocation signed by the applicant or that patent agent.

21. (1) Every patent agent who does not reside in Canada and who is appointed as the patent agent for an applicant in respect of an application shall appoint as the associate patent agent in respect of the application a patent agent who resides in Canada.

(2) Every patent agent who resides in Canada and who is appointed as the patent agent for an applicant in respect of an application may appoint as the associate patent agent in respect of the application a patent agent who resides in Canada.

(3) The appointment of an associate patent agent shall be made in the petition or by submitting to the Commissioner a notice signed by the patent agent who appointed the associate patent agent.

(4) The appointment of an associate patent agent may be revoked by submitting to the Commissioner a notice of revocation signed by the associate patent agent or the patent agent who appointed the associate patent agent.

22. Any act by or in relation to a patent agent or an associate patent agent shall have the effect of an act by or in relation to the applicant.

23. Where an applicant is not the inventor and no patent agent residing in Canada has been appointed or any such appointment has been revoked, the Commissioner shall by notice requisition either that the applicant appoint a patent agent residing in Canada or, where a non-resident patent agent has been appointed, that the non-resident patent agent appoint an associate patent agent, within the three-month period after the date of the notice.

24. Where a patent agent withdraws from practice, any patent agent who is the successor to that patent agent and who has so established to the Commissioner, shall be considered to be the appointed patent agent until another patent agent is appointed, in respect of any application in which the patent agent who has withdrawn from practice has been appointed.

Time

25. Except where other times are provided by the Act or these Rules, the time within which action must be taken by an applicant where the Commissioner, by notice, requisitions the applicant to take any action necessary for compliance with the Act or these Rules is the three-month period after the requisition is made.

26. (1) Subject to subsection (2) and any other provision of these Rules, except in respect of Part V, the Commissioner is authorized to extend the time fixed by these Rules or by the Commissioner under the Act for doing anything, subject to both the extension being applied for and the fee set out in item 22 of Schedule II being paid

before the expiry of that time, where the Commissioner is satisfied that the circumstances justify the extension.

(2) Where, for the purposes of paragraph 73(1)(a) of the Act, the Commissioner establishes a shorter period for replying in good faith to any requisition made by an examiner in connection with an examination, the Commissioner is not authorized to extend the time for replying beyond six months after the requisition is made.

(3) Except in respect of Part V, if the appropriate fee under subsection 3(3), (5), (7), (8) or (9) in respect of a proceeding or service is either a small entity fee or a standard fee, and if, after the coming into force of this subsection, a person pays the small entity fee but the applicant or patentee later becomes aware that the standard fee should have been paid, the Commissioner is authorized to extend the time fixed by these Rules for payment of the appropriate fee if the Commissioner is satisfied that the circumstances justify the extension.

(4) An extension may be authorized under subsection (3) only if the following conditions are satisfied:

(a) the applicant or patentee files a statement that, to the best of their knowledge, the small entity fee was paid in good faith and the subject application for the extension is being filed without undue delay after the applicant or patentee became aware that the standard fee should have been paid;

(b) the applicant or patentee pays the difference between the amount of the small entity fee that was paid and the standard fee as set out in Schedule II to the *Patent Rules* as they read at the time the small entity fee was paid; and

(c) the applicant or patentee pays the fee set out in item 22 of Schedule II in respect of each fee that is the subject of an application for such an extension.

SOR/2007-90, s. 4.

26.1 (1) If, after the coming into force of this subsection, an applicant fails to comply with a notice of allowance requisitioning payment of the applicable final fee set out in paragraph 6(a) of Schedule II only because they paid in error the small entity fee instead of the standard fee referred to in paragraph 3(4)(b), the Commissioner is authorized to extend the 12-month period prescribed by section 98 or 152 to make a request for reinstatement in respect of that failure if the Commissioner is satisfied that the circumstances justify the extension.

(2) An extension may be authorized under subsection (1) only if the following conditions are satisfied:

(a) the applicant or patentee files a statement that, to the best of their knowledge, the small entity fee was paid in good faith and the subject application for the extension is being filed without undue delay after the applicant or patentee became aware that the standard fee should have been paid; and

(b) the applicant or patentee pays the difference between the amount of the small entity fee that was paid and the standard fee as set out in subparagraph 6(a)(i) of Schedule II to the *Patent Rules* as they read at the time the small entity fee was paid.

SOR/2007-90, s. 5.

26.2 For greater certainty, if a time is fixed for doing anything by a provision of these Rules, the time fixed for doing that thing is the time that is fixed by that provision as extended by the Commissioner under section 26 or 26.1.

SOR/2007-90, s. 5.

27. Except in respect of Part V, the Commissioner is authorized to extend the time fixed by subsection 18(2) of the Act if the fee set out in item 22 of Schedule II has been paid and the Commissioner is satisfied that the circumstances justify the extension.

SOR/2007-90, s. 6.

Filing Date

27.1. (1) The documents, information and fees prescribed for the purposes of subsection 28(1) of the Act are

(a) if paragraphs (b) and (c) do not apply and one or more of the following has been received by the Commissioner on or after June 2, 2007,

(i) an indication, in English or French, that the granting of a Canadian patent is sought,

(ii) the applicant's name,

(iii) the applicant's address or that of their patent agent,

(iv) a document, in English or French, that on its face appears to describe an invention, and

(v) either

(A) a small entity declaration in accordance with section 3.01 and the small entity fee set out in item 1 of Schedule II as it read at the time of receipt, or

(B) the standard fee set out in that item;

(b) if one or more of the following has been received by the Commissioner on or after October 1, 1996 and all of the following have been received before June 2, 2007,

(i) an indication in English or French that the granting of a Canadian patent is sought,

(ii) the applicant's name,

(iii) the applicant's address or that of their patent agent,

(iv) a document, in English or French, that on its face appears to describe an invention, and

(v) the fee set out in item 1 of Schedule II as it read at the time of receipt;

(c) if all of the following have been received by the Commissioner before October 1, 1996,

(i) a petition executed by the applicant or a patent agent on the applicant's behalf,

(ii) a specification, including claims,

(iii) any drawing referred to in the specification,

(iv) an abstract of the description, which may be inserted at the beginning of the specification, and

(v) the fee set out in item 1 of Schedule II as it read at the time of receipt.

(2) Subject to subsection 36(4) of the Act as it read immediately before October 1, 1989, the filing date of an application in Canada filed before October 1, 1989 is the date on which the fee for filing it has been paid and the following documents relating to it have been filed:

(a) a statement that the granting of a patent is sought, executed by the applicant or a patent agent on the applicant's behalf;

(b) a specification, including claims;

(c) any drawing referred to in the specification; and

(d) an abstract of the description, which may be inserted at the beginning of the specification.

SOR/2009-319, s. 5.

Examination

28. (1) Subject to subsection (2), the Commissioner may advance an application for examination out of its routine order upon the request of any person who pays the fee set out in item 4 of Schedule II, where the Commissioner determines that failure to advance the application is likely to prejudice that person's rights.

(2) In respect of an application filed on or after October 1, 1989, subsection (1) only applies if the application is open to public inspection under section 10 of the Act and a request for examination has been made pursuant to subsection 35(1) of the Act.

29. (1) Where an examiner examining an application in accordance with section 35 of the Act or the Act as it read immediately before October 1, 1989 has reasonable

grounds to believe that an application for a patent describing the same invention has been filed, in or for any country, on behalf of the applicant or on behalf of any other person claiming under an inventor named in the application being examined, the examiner may requisition from the applicant any of the following information and a copy of any related document:

- (a) an identification of any prior art cited in respect of the applications;
- (b) the application numbers, filing dates and, if granted, the patent numbers;
- (c) particulars of conflict, opposition, re-examination or similar proceedings; and
- (d) where a document is not in either English or French, a translation of the document, or a part of the document, into English or French.

(2) Where an examiner examining an application in accordance with section 35 of the Act or the Act as it read immediately before October 1, 1989 has reasonable grounds to believe that an invention disclosed in the application was, before the filing date of the application, published or the subject of a patent, the examiner may requisition the applicant to identify the first publication of or patent for that invention.

(3) Subsections (1) and (2) do not apply to any information or document that is not available or known to the applicant, provided that the applicant states the reasons why the information or document is not available or known.

30. (1) Where an examiner, after examining an application, has reasonable grounds to believe that the application complies with the Act and these Rules, the Commissioner shall notify the applicant that the application has been found allowable and shall requisition the payment of the applicable final fee set out in paragraph 6(a) or (b) of Schedule II within the six-month period after the date of the notice.

(2) Where an examiner examining an application in accordance with section 35 of the Act or the Act as it read immediately before October 1, 1989 has reasonable grounds to believe that an application does not comply with the Act or these Rules, the examiner shall inform the applicant of the application's defects and shall requisition the applicant to amend the application in order to comply or to provide arguments as to why the application does comply, within the six-month period after the requisition is made or, except in respect of Part V, within any shorter period established by the Commissioner in accordance with paragraph 73(1)(a) of the Act.

(3) Where an applicant has replied in good faith to a requisition referred to in subsection (2) within the time provided but the examiner has reasonable grounds to believe that the application still does not comply with the Act or these Rules in respect of one or more of the defects referred to in the requisition and that the applicant will not amend the application to comply with the Act and these Rules, the examiner may reject the application.

(4) Where an examiner rejects an application, the notice shall bear the notation "Final Action" or "Décision finale", shall indicate the outstanding defects and shall requisition the applicant to amend the application in order to comply with the Act and these Rules or to provide arguments as to why the application does comply, within the six-month period after the requisition is made or, except in respect of Part V, within any shorter period established by the Commissioner in accordance with paragraph 73(1)(a) of the Act.

(5) Where in accordance with subsection 30(4) the applicant amends the application or provides arguments and the examiner has reasonable grounds to believe that the application complies with the Act and these Rules, the Commissioner shall notify the applicant that the rejection is withdrawn and that the application has been found allowable and shall requisition the payment of the applicable final fee set out in paragraph 6(a) or (b) of Schedule II within the six-month period after the date of the notice.

(6) Where the rejection is not withdrawn pursuant to subsection (5), the rejection shall be reviewed by the Commissioner and the applicant shall be given an opportunity to be heard.

(7) If after a notice is sent in accordance with subsection (1) or (5) but before a patent is issued the Commissioner has reasonable grounds to believe that the application does not comply with the Act or these Rules, the Commissioner shall

(a) notify the applicant of that fact;

(b) notify the applicant that the notice is withdrawn;

(c) return the application to the examiner for further examination; and

(d) if the final fee has been paid, refund it.

(8) Subsection (7) does not apply in respect of an application that has been deemed to be abandoned under section 73 of the Act unless the application has been reinstated in respect of each failure to take an action referred to in subsection 73(1) of the Act or section 97 or 151 of these Rules.

(9) After a notice is sent to the applicant in accordance with subsection (7),

(a) the notice that was sent in accordance with subsection (1) or (5) is deemed never to have been sent; and

(b) sections 32 and 33 do not apply unless a further notice is sent to the applicant in accordance with subsection (1) or (5).

(10) If an application has been abandoned under paragraph 73(1)(f) of the Act and reinstated,

(a) for the purposes of this section and section 32, any previous notice that was sent in accordance with subsection (1) or (5) is deemed never to have been sent; and

(b) if the final fee has already been paid and has not been refunded, any further notice sent in accordance with subsection (1) or (5) shall not requisition payment of the final fee.

(11) Subsection 26(1) does not apply in respect of the times set out in subsections (1) and (5).

SOR/2007-90, s. 7.

Amendments

31. An application that has been rejected by an examiner shall not be amended after the expiry of the time for responding to the examiner's requisition, made pursuant to subsection 30(4), except

(a) where the rejection is withdrawn in accordance with subsection 30(5);

(b) where the Commissioner is satisfied after review that the rejection is not justified and the applicant has been so informed;

(c) where the Commissioner has informed the applicant that the amendment is necessary for compliance with the Act and these Rules; or

(d) by order of the Federal Court or the Supreme Court of Canada.

32. (1) Except as otherwise provided by the Act or these Rules, after the applicant is sent a notice pursuant to subsection 30(1) or (5), no amendment, other than an amendment to correct a clerical error that is obvious on the face of the application, may be made to the application unless the fee set out in item 5 of Schedule II is paid.

(2) Except as otherwise provided by the Act or these Rules, after the applicant is sent a notice pursuant to subsection 30(1) or (5), no amendment may be made to the application that would necessitate a further search by the examiner in respect of the application or that would make the application not comply with the Act or these Rules.

33. (1) Except as otherwise provided by the Act or these Rules, no amendment may be made to an application after payment of the final fee referred to in subsection 30(1) or (5).

(2) If an application has been abandoned under paragraph 73(1)(f) of the Act and reinstated,

(a) subsection (1) does not apply; and
(b) no amendment may be made to an application after a new notice is sent in accordance with subsection 30(1) or (5).

SOR/2007-90, s. 8.

34. Amendments to an application shall be made by inserting new pages in place of the pages altered by the amendments and shall be accompanied by a statement explaining their nature and purpose.

35. Clerical errors in any document relating to an application, other than a specification, a drawing or a document effecting a transfer or a change of name, which are due to the fact that something other than what was obviously intended was written, may be corrected by the applicant.

Unity of Invention

36. For the purposes of section 36 of the Act or of the Act as it read immediately before October 1, 1989, an application does not claim more than one invention if the subject-matters defined by the claims are so linked as to form a single general inventive concept.

Inventors and Entitlement

37. (1) If the applicant is the inventor, the application must contain a statement to that effect.

(2) If the applicant is not the inventor, the application must contain a statement indicating the name and address of the inventor and,

(a) in respect of an application other than a PCT national phase application, a declaration that the applicant is the legal representative of the inventor; and

(b) in respect of a PCT national phase application, either

(i) a declaration that the applicant is the legal representative of the inventor, or

(ii) a declaration as to the applicant's entitlement, as at the filing date, to apply for and be granted a patent, in accordance with Rule 4.17 of the Regulations under the PCT.

(3) A statement or declaration required by subsection (1) or (2) shall be included in the petition or be submitted in a separate document.

(4) If an application does not comply with the requirements of subsections (1) to (3), the Commissioner shall, by notice to the applicant, requisition the applicant to comply with those requirements before the later of the expiry of the 3-month period after the date of the notice and the expiry of the 12-month period after the filing date of the application.

SOR/2009-319, s. 6.

Transfers and Changes of Name

38. No transfer of a patent or an application to a new owner shall be recognized by the Commissioner unless a copy of the document effecting the transfer from the currently recognized owner to the new owner has been registered in the Patent Office in respect of that patent or application.

39. No change in the name of the owner of a patent or an application shall be recognized by the Commissioner unless evidence of the change in the name of the owner, by way of affidavit, statutory declaration or a copy of a document effecting the change, has been registered in the Patent Office in respect of that patent or application.

40. Registration of a transfer shall not of itself operate as a revocation of an appointment of a patent agent or as an appointment of a representative.

41. A patent shall not be granted to a transferee of an application unless the request for registration of the transfer is filed on or before the date on which the final fee is paid in accordance with subsection 30(1) or (5) or, if the final fee is refunded in

accordance with subsection 30(7), on or before the date on which the final fee is paid again in accordance with subsection 30(1) or (5).

Registration of Documents

42. Subject to sections 49 and 50 of the Act, the Commissioner shall, upon request and on payment of the fee set out in item 21 of Schedule II, register in the Patent Office any document relating to a patent or an application.

Reissue

43. An application for reissue pursuant to section 47 of the Act shall follow the form and the instructions for its completion set out in Form 1 of Schedule I to the extent that the provisions of the form and the instructions are applicable.

Disclaimer

44. A disclaimer pursuant to section 48 of the Act or of the Act as it read immediately before October 1, 1989 shall follow the form and the instructions for its completion set out in Form 2 of Schedule I to the extent that the provisions of the form and the instructions are applicable.

Re-Examination

45. Except when made by the patentee, a request pursuant to section 48.1 of the Act for a re-examination of any claim of a patent, and the prior art, shall be filed in duplicate.

Secret Applications and Patents

46. Where the Minister of National Defence gives a certificate in accordance with subsection 20(7) of the Act in relation to an application, all entries in any way concerning the application that may appear in any ordinary register maintained in the Patent Office are wholly obliterated, and no further entry concerning the application or any patent granted on the basis of the application shall be made in any such register until that Minister waives the benefits of that section with respect to such application or patent.

47. Where the Governor in Council orders under subsection 20(17) of the Act that an invention described in an application shall be treated for the purposes of section 20 of the Act as if it had been assigned or agreed to be assigned to the Minister of National Defence, the Commissioner shall, as soon as the Commissioner is informed of the order, notify the applicant by registered mail.

48. The Commissioner shall permit any public servant authorized in writing by the Minister of National Defence, or any officer of Her Majesty's Canadian Forces authorized in writing by the Minister of National Defence, to inspect any pending application that relates to any instrument or munition of war and to obtain a copy of any such application.

Abuse of Rights under Patents

49. (1) In this section, "application" means an application referred to in section 68 of the Act presented to the Commissioner under subsection 65(1) of the Act.

(2) Every application shall be accompanied by the fee set out in item 16 of Schedule II.

(3) For the purposes of subsection 69(1) of the Act, the prescribed time is the four-month period after

(a) the date on which the person or the patentee has been served with copies of the application and declarations referred to in subsection 68(1) of the Act; or

(b) where the person or the patentee has not been so served, the later of the date on which the application is advertised in the *Canada Gazette* and the date on which the application is advertised in the *Canadian Patent Office Record*.

PART II PATENT COOPERATION TREATY

Definition

50. In this Part, “priority date” has the same meaning as in Article 2(xi) of the Patent Cooperation Treaty. (*date de priorité*)

Application of Treaty

51. Subject to subsection 58(8), the provisions of the Patent Cooperation Treaty and the Regulations under the PCT shall apply in respect of

- (a) an international application filed with the Commissioner;
- (b) an international application in which Canada is designated in accordance with the Patent Cooperation Treaty; and
- (c) an international application in which Canada is designated and elected in accordance with the Patent Cooperation Treaty.

SOR/99-291, s. 3.

International Phase

[SOR/2003-208, s. 4]

52. Where an international application is filed with the Commissioner and the applicant or, where there is more than one applicant, at least one of the applicants is a national or resident of Canada, the Commissioner shall act as a receiving Office as defined in Article 2(xv) of the Patent Cooperation Treaty.

53. An international application, in order to be filed with the Commissioner, shall be written in either English or French.

53.1 The Commissioner shall act as an International Searching Authority and an International Preliminary Examining Authority in accordance with the Patent Cooperation Treaty and the Regulations under the PCT.

SOR/2003-208, s. 5.

54. (1) Correspondence addressed to the Commissioner in respect of an international application may be physically delivered to the Patent Office during ordinary business hours of the Office and shall be considered to be received by the Commissioner on the day of the delivery.

(2) For the purposes of subsection (1), where correspondence addressed to the Commissioner in respect of an international application is physically delivered to the Patent Office outside of its ordinary business hours, it shall be considered to have been delivered to the Office during ordinary business hours on the day when the Office is next open for business.

(3) Correspondence addressed to the Commissioner in respect of an international application may be physically delivered 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, during ordinary business hours of that establishment, and

(a) where the delivery is made to the establishment on a day that the Patent Office is open for business, the correspondence shall be considered to be received by the Commissioner on that day; and

(b) where the delivery is made to the establishment on a day that the Patent Office is closed for business, the correspondence shall be considered to be received by the Commissioner on the day when the Office is next open for business.

(4) For the purposes of subsection (3), where correspondence addressed to the Commissioner in respect of an international application is physically delivered to an establishment outside of ordinary business hours of the establishment, it shall be considered to have been delivered to that establishment during ordinary business hours on the day when the establishment is next open for business.

(5) Correspondence addressed to the Commissioner in respect of an international application may be sent at any time by electronic or other means of transmission specified by the Commissioner in the *Canadian Patent Office Record*.

(6) For the purposes of subsection (5), where, according to the local time of the place where the Patent Office is located, the correspondence is delivered on a day when the Office is open for business, it shall be considered to be received by the Commissioner on that day.

(7) For the purposes of subsection (5), where, according to the local time of the place where the Patent Office is located, the correspondence is delivered on a day when the Office is closed for business, it shall be considered to be received by the Commissioner on the day when the Office is next open for business.

SOR/99-291, s. 4.

55. (1) Fees payable pursuant to Rules 15 and 57 of the Regulations under the PCT shall be paid in Canadian currency.

(2) Money received under Rules 15 and 57 of the Regulations under the PCT shall be deposited in the account entitled the Patent Cooperation Treaty Fund within the account entitled the Canadian Intellectual Property Office Revolving Fund and shall be paid out of that account for purposes in accordance with those Rules.

SOR/2003-208, s. 6.

National Phase

[SOR/2003-208, s. 7]

56. Where an international application in which Canada is designated is filed, the Commissioner shall act as the designated Office as defined in Article 2(xiii) of the Patent Cooperation Treaty.

57. Where an international application in which Canada is designated is filed and the applicant has elected Canada as a country in respect of which the international preliminary examination report referred to in Article 35 of the Patent Cooperation Treaty shall be established, the Commissioner shall act as an elected Office as defined in Article 2(xiv) of the Patent Cooperation Treaty.

58. (1) An applicant who designates Canada, or who designates and elects Canada, in an international application shall, within the time prescribed by subsection (3),

(a) where the International Bureau of the World Intellectual Property Organization has not published the international application, provide the Commissioner with a copy of the international application;

(b) where the international application is not in English or French, provide the Commissioner with a translation of the international application into either English or French; and

(c) pay the appropriate basic national fee prescribed by subsection 3(5).

(2) An applicant who complies with the requirements of subsection (1) after the second anniversary of the international filing date shall, within the time prescribed by subsection (3), pay any fee set out in item 30 of Schedule II that would have been payable in accordance with section 99 or 154 had the international application been filed in Canada as a Canadian application on the international filing date.

(3) An applicant shall comply with the requirements of subsection (1) and, where applicable, subsection (2) not later than on the expiry of

(a) the 30-month period after the priority date; or

(b) if the applicant pays the additional fee for late payment set out in item 11 of Schedule II before the expiry of the 42-month period after the priority date, the 42-month period after the priority date.

(4) If the applicant provides a translation of the international application into either English or French in accordance with paragraph (1)(b) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or

(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.

(5) Where the applicant who complies with the requirements of subsection (1) is not the applicant originally identified in the international application, the Commissioner shall requisition evidence that the applicant who complies with the requirements of that subsection is the legal representative of the originally identified applicant where the documents already in the Patent Office do not provide such evidence.

(5.1) Where the applicant who complies with the requirements of subsection (1) does not comply with a requisition made by the Commissioner pursuant to subsection (5) within three months after the requisition is made, that applicant shall be deemed never to have complied with the requirements of subsection (1).

(5.2) The Commissioner is not authorized under subsection 26(1) to extend the time prescribed by subsection (5.1) beyond the later of the expiry of the 6-month period after the requisition is made and the expiry of the 42-month period after the priority date.

(6) For the purposes of subsection (2), "international filing date" means the date accorded to an international application by a receiving Office pursuant to Article 11 of the Patent Cooperation Treaty.

(7) Subsection 26(1) does not apply in respect of the times specified in subsection (3).

(8) Article 48(2) of the Patent Cooperation Treaty does not apply in respect of the times specified in subsection (3) of this section or in respect of any time limit applicable to a PCT national phase application.

(9) An international application may not become a PCT national phase application where:

(a) before April 1, 2002, the 32-month period after the priority date has expired;

(b) the applicant had not complied with the requirements of subsection (1) and, where applicable, subsection (2) before the expiry of that period; and

(c) an election of Canada was not made before the expiry of the nineteenth month after the priority date.

(10) Once an international application becomes a PCT national phase application, it may not become a further PCT national phase application unless the earlier PCT national phase application has been withdrawn.

SOR/99-291, s. 5; SOR/2002-120, s. 1; SOR/2007-90, s. 10.

Application of Canadian Legislation

59. When an international application becomes a PCT national phase application, the application shall thereafter be deemed to be an application filed in Canada and the Act and these Rules shall thereafter apply in respect of that application.

59.1 For greater certainty, for the purpose of section 8 of the Act, an international application is deemed to be an instrument of record in the Patent Office only when it becomes a PCT national phase application.

SOR/99-291, s. 6.

59.2 (1) For greater certainty, in respect of an international application that has become a PCT national phase application, for the purposes of the Act and these Rules,

(a) information or notices included in the international application as filed shall be considered to have been received by the Commissioner on the filing date accorded to the application by a receiving Office pursuant to Article 11 of the Patent Cooperation Treaty; and

(b) information or notices furnished in accordance with the requirements of the Patent Cooperation Treaty before the application has become a PCT national phase

application shall be considered to have been received by the Commissioner on the date that they were so furnished.

(2) Paragraph (1)(b) does not apply in respect of sequence listings that do not form part of the international application.

SOR/99-291, s. 6; SOR/2007-90, s. 11.

60. For the purposes of section 11 of the Act, an international application in which Canada is designated is deemed to be pending in Canada only when it becomes a PCT national phase application.

61. The requirement in subsection 27(2) of the Act that an application contain a petition does not apply to PCT national phase applications.

62. [Repealed, SOR/2007-90, s. 12]

63. An international application in which Canada is designated, or in which Canada is designated and elected, shall not be considered to be an application mentioned in paragraph 28.2(1)(c) of the Act or to be a co-pending application mentioned in paragraph 28.2(1)(d) of the Act unless it has become a PCT national phase application.

64. (1) Section 28 of the Act does not apply to a PCT national phase application.

(2) The filing date of a PCT national phase application shall be considered to be the date accorded by a receiving Office pursuant to Article 11 of the Patent Cooperation Treaty.

65. In respect of a PCT national phase application, the applicant may substitute the requirements of Rule 4.10 of the Regulations under the PCT as it read immediately before July 1, 1998 for the requirements of section 142.

SOR/99-291, s. 7.

66. Where the applicant complies with the requirements of subsection 58(1) and, where applicable, subsection 58(2) on or after the date of the publication of the application in English or French by the International Bureau of the World Intellectual Property Organization in accordance with Article 21 of the Patent Cooperation Treaty, the application is deemed to be open to public inspection under section 10 of the Act on and after the date of that publication.

PART III

APPLICATIONS HAVING A FILING DATE ON OR AFTER OCTOBER 1, 1996

Application

67. (1) This Part applies to applications having a filing date on or after October 1, 1996 and to patents issued on the basis of such applications.

(2) For greater certainty, for the purposes of subsection (1) a reissued patent is considered to be issued on the basis of the original application.

SOR/2009-319, s. 7.

Presentation of Documents

68. (1) Subject to subsection (2), documents filed in paper form in connection with patents and applications shall

(a) be on sheets of good quality white paper that are free of creases and folds and that are 21.6 cm x 27.9 cm or 21 cm x 29.7 cm (A4 format);

(b) be so presented as to permit direct reproduction by photography, electrostatic processes, photo offset, and microfilming, in any number of copies; and

(c) be free from interlineations, cancellations or corrections.

(2) Transfer documents, other documents concerning ownership, and certified copies of documents may be submitted on sheets of paper that are no larger than 21.6 cm x 35.6 cm.

(3) Documents filed in electronic form in connection with patents and applications shall be in an electronic format specified by the Commissioner in the *Canadian Patent Office Record*.

(4) If a document is initially filed in an electronic format not specified in the *Canadian Patent Office Record*, it shall be replaced by a document in a specified format and a statement shall be filed to the effect that the replacement document is the same as the document initially filed.

SOR/2007-90, s. 13.

69. (1) The minimum margins of pages containing the description, the claims and the abstract referred to in section 79 shall be as follows:

- top 2 cm
- left side 2.5 cm
- right side 2 cm
- bottom 2 cm

(2) The minimum margins of pages containing the drawings referred to in section 37 of the Act shall be as follows:

- top 2.5 cm
- left side 2.5 cm
- right side 1.5 cm
- bottom 1 cm

(3) Subject to subsections (4) and (5) and except as otherwise provided by these Rules, the margins of the pages referred to in subsections (1) and (2) must be completely blank.

(4) The top margin may contain in either corner an indication of the applicant's file reference.

(5) The lines of each page of the description and of the claims may be numbered in the left margin.

SOR/2007-90, s. 14.

70. (1) With the exception of sequence listings, tables and chemical and mathematical formulae, all text matter in documents forming part of the description or the claims shall be at least 1 1/2 line spaced.

(2) All text matter shall be in characters the capital letters of which are not less than 0.21 cm high.

71. (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

- (a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or
- (b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.

(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.

SOR/2007-90, s. 15.

72. The petition, the abstract, the description, the drawings and the claims shall each commence on a new page.

73. (1) The pages of the description and the claims shall be numbered consecutively.

(2) The page numbers shall be centered at the top or bottom of the sheet, but shall not be placed in the margin.

74. (1) The petition, the abstract, the description and the claims shall not contain drawings.

(2) The abstract, the description and the claims may contain chemical or mathematical formulae or the like.

75. (1) Subject to subsection (2), each page of a document shall be used upright.
(2) Where it aids in presentation, drawings, tables and chemical or mathematical formulae may be presented sideways with the top of the drawings, tables or formulae at the left side of the sheet.

76. Any trade-mark mentioned in the application shall be identified as such.

Petitions

77. The petition shall follow the form and the instructions for its completion set out in Form 3 of Schedule I to the extent that the provisions of the form and the instructions are applicable.

SOR/2007-90, s. 16; SOR/2009-319, s. 8.

Appointments of Representative

78. For the purposes of section 29 of the Act, an appointment of a representative in Canada shall be included in the petition in accordance with section 5 of Form 3 of Schedule I or in a separate document.

SOR/2007-90, s. 17(E).

78.1 [Repealed, SOR/2009-319, s. 9]

Abstracts

79. (1) An application shall contain an abstract that provides technical information and that cannot be taken into account for the purpose of interpreting the scope of protection sought or obtained.

(2) The abstract shall contain a concise summary of the matter contained in the application and, where applicable, the chemical formula that, among all the formulae included in the application, best characterizes the invention.

(3) The abstract shall specify the technical field to which the invention relates.

(4) The abstract shall be drafted in a way that allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention.

(5) The abstract shall be so drafted that it can efficiently serve as a scanning tool for purposes of searching in the particular art.

(6) The abstract shall not contain more than 150 words.

(7) Each main technical feature mentioned in the abstract and illustrated by a drawing in the application may be followed by a reference character placed between parentheses.

Descriptions

80. (1) The description shall

(a) state the title of the invention, which shall be short and precise and shall not include a trade-mark, coined word or personal name;

(b) specify the technical field to which the invention relates;

(c) describe the background art that, as far as is known to the applicant, can be regarded as important for the understanding, searching and examination of the invention;

(d) describe the invention in terms that allow the understanding of the technical problem, even if not expressly stated as such, and its solution;

(e) briefly describe the figures in the drawings, if any;

(f) set forth at least one mode contemplated by the inventor for carrying out the invention in terms of examples, where appropriate, and with reference to the drawings, if any; and

(g) contain a sequence listing where required by subsection 111(1).

(2) The description shall be presented in the manner and order specified in subsection (1) unless, because of the nature of the invention, a different manner or

a different order would afford a better understanding or a more economical presentation.

SOR/2007-90, s. 19.

81. (1) The description shall not incorporate by reference another document.

(2) The description shall not refer to a document that does not form part of the application unless the document is available to the public.

(3) Any document referred to in the description shall be fully identified.

SOR/99-291, s. 8.

Drawings

82. (1) Drawings shall be in black, sufficiently dense and dark, well-defined lines to permit satisfactory reproduction and shall be without colourings.

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

(3) All numbers, letters and lead lines shall be simple and clear.

(4) Elements of the same figure shall be in proportion to each other unless a difference in proportion is indispensable for the clarity of the figure.

(5) The height of the numbers and letters in a drawing shall not be less than 0.32 cm.

(6) The same page of drawings may contain several figures.

(7) 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.

(8) The different figures shall be numbered consecutively.

(9) Reference characters not mentioned in the description shall not appear in the drawings, and vice versa.

(10) The same features, when denoted by reference characters, shall, throughout the application, be denoted by the same characters.

(11) The drawings shall not contain text matter except to the extent required for the understanding of the drawings.

Photographs

83. In any case in which an invention does not admit of illustration by means of drawings but does admit of illustration by means of photographs, the applicant may, as part of the application, furnish photographs, or reproductions of photographs, that illustrate the invention.

Claims

84. The claims shall be clear and concise and shall be fully supported by the description independently of any document referred to in the description.

85. If there are several claims, they shall be numbered consecutively in Arabic numerals beginning with the number "1".

86. (1) Subject to subsections (2) and (3), claims shall not, except where necessary, rely, in respect of the features of the invention, on references to the description or drawings and, in particular, they shall not rely on such references as: "as described in Part ... of the description", or "as illustrated in figure ... of the drawings".

(2) Where the application contains drawings, the features mentioned in the claims may be followed by the reference characters, placed between parentheses, appearing in the drawings and relating to such features.

(3) If the application contains a sequence listing, the claims may refer to sequences represented in the sequence listing by the sequence identifier and preceded by "SEQ ID NO: ".

(3.1) For the purposes of subsection (3), "sequence identifier" has the same meaning as in the PCT sequence listing standard.

(4) Where the specification refers to a deposit of biological material, the claims may refer to that deposit.

SOR/2007-90, s. 20.

87. (1) Subject to subsection (2), any claim that includes all the features of one or more other claims (in this section referred to as a "dependent claim") shall refer by number to the other claim or claims and shall state the additional features claimed.

(2) A dependent claim may only refer to a preceding claim or claims.

(3) Any dependent claim shall be understood as including all the limitations contained in the claim to which it refers or, if the dependent claim refers to more than one other claim, all the limitations contained in the particular claim or claims in relation to which it is considered.

Priority Claims

88. (1) For the purposes of subsection 28.4(2) of the Act,

(a) a request for priority may be made in the petition or in a separate document;

(b) where a request for priority is based on one previously regularly filed application, the request must be made, and the applicant must inform the Commissioner of the filing date, country of filing and application number of the previously regularly filed application, before the expiry of the sixteen-month period after the date of filing of that application; and

(c) where a request for priority is based on two or more previously regularly filed applications,

(i) the request must be made, and the applicant must inform the Commissioner of the filing date and country of filing of each previously regularly filed application on which the request for priority is based, before the expiry of the sixteen-month period after the earliest date of filing of those applications, and

(ii) the applicant must, for each previously regularly filed application on which the request for priority is based, inform the Commissioner of its application number before the expiry of the twelve-month period after its date of filing or before the expiry of the period referred to in subparagraph (i), whichever is later.

(2) Where a request for priority on the basis of a particular previously regularly filed application is withdrawn before the expiry of the sixteen-month period after the date of filing of that application, the times prescribed in subsection (1) shall be computed as if the request for priority had never been made based on that application.

(3) For the purposes of subsection (1), if the previously regularly filed application is for a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one country, the applicant may provide the Commissioner with the name of the authority with which the application was filed instead of the country of filing.

(4) For the purposes of subsection (1), if the previously regularly filed application is an international application, the applicant may provide the Commissioner with the name of the receiving Office with which the application was filed instead of the country of filing.

(5) Subsection 26(1) does not apply in respect of the times specified in subsection (1).

SOR/99-291, s. 9; SOR/2003-208, s. 9; SOR/2007-90, s. 38.

89. Where a previously regularly filed application on the basis of which a request for priority is based is taken into account by an examiner pursuant to sections 28.1 to 28.4 of the Act, the examiner may requisition the applicant to file a certified copy of the previously regularly filed application and a certification from the patent office in which the application was filed indicating the actual date of its filing.

90. (1) For the purposes of subsection 28.4(3) of the Act, an applicant may withdraw a request for priority, either entirely or with respect to one or more previously regularly filed applications, by filing a request with the Commissioner and

the Commissioner shall send a notice to the applicant advising that the request for priority has been withdrawn.

(2) The effective date of the withdrawal of a request for priority pursuant to subsection (1) shall be the date the request for withdrawal is received by the Commissioner.

Effect of Withdrawals on Public Inspection

91. For the purposes of subsection 10(4) of the Act, where a request for priority with respect to a particular previously regularly filed application is withdrawn in accordance with section 90, the prescribed date is the date on which a period of sixteen months after the filing date of that previously regularly filed application expires, or, where the Commissioner is able to stop technical preparations to open the application to public inspection at a subsequent date preceding the expiry of the confidentiality period referred to in subsection 10(2) of the Act, that subsequent date.

92. For the purposes of subsection 10(5) of the Act, the prescribed date is the day that is two months before the date of expiry of the confidentiality period referred to in subsection 10(2) of the Act or, if the Commissioner is able to stop technical preparations to open the application to public inspection at a subsequent date before the expiry of the confidentiality period, that subsequent date.

SOR/2009-319, s. 10.

93. [Repealed, SOR/2009-319, s. 11]

Completing the Application

94. (1) If on the expiry of the applicable time prescribed under subsection (2) or (3) an application does not comply with the applicable requirements set out in subsection (2) or (3), the Commissioner shall, by notice to the applicant, requisition the applicant to comply with those requirements, and to pay the fee set out in item 2 of Schedule II, before the expiry of the later of the 3-month period after the date of the notice and the 12-month period after the filing date of the application.

(2) In respect of an application other than a PCT national phase application, for the purposes of subsection (1),

(a) the time is the 15-month period after the filing date of the application or, if a request for priority has been made in respect of the application, the 15-month period after the earliest filing date of any previously regularly filed application on which the request for priority is based; and

(b) the requirements are that

(i) the abstract, the description, the claims and the drawings comply with sections 68 to 70, and

(ii) the application contain the information and documents listed below:

(A) a petition complying with section 77,

(B) [Repealed, SOR/2009-319, s. 12]

(C) an abstract,

(D) a sequence listing complying with subsection 111(1) if a sequence listing is required by that subsection,

(E) a claim or claims,

(F) any drawing referred to in the description,

(G) an appointment of a patent agent if required by section 20,

(H) an appointment of an associate patent agent if required by section 21, and

(I) an appointment of a representative if required by section 29 of the Act.

(3) In respect of a PCT national phase application, for the purposes of subsection (1),

(a) the time is the 3-month period after the applicant complies with the requirements of subsection 58(1) and if applicable, subsection 58(2); and

(b) the requirements are that the application contain the information or documents listed below:

(i) and (ii) [Repealed, SOR/2009-319, s. 13]

(iii) a sequence listing complying with subsection 111(1) if a sequence listing is required by that subsection,

(iv) an appointment of a patent agent if required by section 20,

(v) an appointment of an associate patent agent if required by section 21, and

(vi) an appointment of a representative if required by section 29 of the Act.

(4) Subsection 26(1) does not apply in respect of the times set out in subsections (2) and (3).

SOR/2007-90, s. 22; SOR/2009-319, ss. 12, 13.

Requests for Examination

95. For the purposes of subsection 35(1) of the Act, a request for examination of an application shall contain the following information:

(a) the name and address of the person making the request;

(b) if the person making the request is not the applicant, the name of the applicant; and

(c) information, such as the application number, sufficient to identify the application.

96. (1) Subject to subsection (2), for the purposes of paragraph 73(1)(d) of the Act, a request for the examination of an application shall be made and the fee set out in item 3 of Schedule II shall be paid before the expiry of the five-year period after the filing date of the application.

(2) A request for the examination of a divisional application shall be made and the fee set out in item 3 of Schedule II shall be paid before the expiry of the later of

(a) the five-year period after the filing date of the original application; and

(b) the six-month period after the date on which the divisional application is actually filed in accordance with subsection 36(2) or (2.1) of the Act.

(3) Subsection 26(1) does not apply in respect of the times prescribed in subsections (1) and (2).

SOR/2007-90, s. 38.

Abandonment and Reinstatement

97. For the purposes of subsection 73(2) of the Act, an application is deemed to be abandoned if the applicant does not reply in good faith to any requisition of the Commissioner referred to in section 23, 25, 37 or 94 within the time provided in that section.

SOR/99-291, s. 10; SOR/2009-319, s. 14.

98. (1) For an application deemed to be abandoned under section 73 of the Act to be reinstated, the applicant shall, in respect of each failure to take an action referred to in subsection 73(1) of the Act or section 97, make a request for reinstatement to the Commissioner, take the action that should have been taken in order to avoid the abandonment and pay the fee set out in item 7 of Schedule II, before the expiry of the 12-month period after the date on which the application is deemed to be abandoned as a result of that failure.

(2) For the purposes of subsection (1), if an application is deemed to be abandoned for failure to pay a fee referred to in subsection 3(3), (4) or (7), for the applicant to take the action that should have been taken in order to avoid the abandonment, the applicant shall, before the expiry of the time prescribed by subsection (1), either

(a) pay the applicable standard fee, or

(b) file a small entity declaration in respect of the application in accordance with section 3.01 and pay the applicable small entity fee.

SOR/2007-90, s. 23.

Maintenance Fees

99. (1) For the purposes of subsection 27.1(1) and paragraph 73(1)(c) of the Act, to maintain an application in effect, the applicable fee set out in item 30 of Schedule II shall be paid in respect of the periods set out in that item before the expiry of the times provided in that item.

(2) Where a divisional application is filed, any fee set out in item 30 of Schedule II, that would have been payable pursuant to subsection 27.1(1) of the Act had the divisional application been filed on the filing date of the original application, shall be paid when the divisional application is actually filed in accordance with subsection 36(2) or (2.1) of the Act.

100. (1) Subject to subsections (2) and (3), for the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a patent, set out in item 31 of Schedule II, shall be paid in respect of the periods set out in that item before the expiry of the times, including periods of grace, provided in that item.

(2) In subsection (1), "patent" does not include a reissued patent.

(3) No fee to maintain the rights accorded by a patent shall be payable in respect of any period for which a fee to maintain the application for that patent was paid.

101. (1) Subject to subsection (2), for the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a reissued patent, set out in item 31 of Schedule II, shall be paid in respect of the same periods and before the expiry of the same times as for the original patent.

(2) No fee to maintain the rights accorded by a reissued patent shall be payable in respect of any period for which a fee was paid to maintain the rights accorded by the original patent or to maintain the application for the original patent.

102. Subsection 26(1) does not apply in respect of the times set out in sections 99, 100 and 101.

SOR/2007-90, s. 38.

Deposits of Biological Material

103. For the purposes of subsection 38.1(1) of the Act, where a specification in an application filed in Canada, or in a patent issued on the basis of such an application, refers to a deposit of biological material, the deposit shall be considered to be in accordance with these regulations if sections 104 to 106 are complied with.

104. (1) The deposit of the biological material shall be made by the applicant with an international depositary authority on or before the filing date of the application.

(2) The applicant shall inform the Commissioner of the name of the international depositary authority and the accession number given by the international depositary authority to the deposit, before the application is open to public inspection under section 10 of the Act.

(3) The information required by subsection (2) must be included in the description.

(4) Before the application is open to public inspection under section 10 of the Act, the applicant may file a notice with the Commissioner stating the applicant's wish that, until either a patent has been issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, the Commissioner only authorize the furnishing of a sample of the deposited biological material to an independent expert nominated by the Commissioner in accordance with section 109.

(5) Subsection 26(1) does not apply to the times set out in this section.

SOR/99-291, s. 11; SOR/2007-90, s. 38.

104.1 Where a deposit of biological material with an international depositary authority is referred to in a specification and is taken into account by an examiner pursuant to subsections 27(3) and 38.1(1) of the Act, the examiner shall requisition the applicant to include in the description the date of the original deposit with the international depositary authority.

SOR/99-291, s. 12.

105. Where, pursuant to Rule 5 of the Regulations under the Budapest Treaty, samples of biological material are transferred to a substitute international depositary authority for the reason that the original international depositary authority has discontinued the performance of functions, the applicant or the patentee must inform the Commissioner of the name of the substitute international depositary authority and of the new accession number given to the deposit by the substitute international depositary authority before the expiry of the three-month period after the date of issuance of a receipt by the substitute international depositary authority.

106. (1) Where a new deposit is made with another international depositary authority pursuant to Article 4(1)(b)(i) or (ii) of the Budapest Treaty, the applicant or the patentee must inform the Commissioner of the name of that authority and of the new accession number given to the deposit by that authority before the expiry of the three-month period after the date of issuance of a receipt by that authority.

(2) Where, pursuant to Article 4 of the Budapest Treaty, the depositor is notified of the inability of the international depositary authority to furnish samples and no new deposit is made in accordance with that Article, the application or patent shall, for the purposes of any proceedings in respect of that application or patent, be treated as if the deposit had never been made.

107. (1) The Commissioner shall publish in the *Canadian Patent Office Record* a form for making a request for the furnishing of a sample of a deposit, the contents of which shall be the same as the contents of the form referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty.

(2) Subject to sections 108 and 110, where a specification in a Canadian patent or in an application filed in Canada that is open to public inspection pursuant to section 10 of the Act refers to a deposit of biological material by the applicant, and where a person files with the Commissioner a request made on the form referred to in subsection (1), the Commissioner shall make the certification referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty in respect of that person.

(3) Except where subsection 110(2) applies, where the Commissioner makes a certification pursuant to subsection (2), the Commissioner shall send a copy of the request together with the certification to the person who filed the request.

108. Until either a patent has been issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, the Commissioner shall not make the certification referred to in subsection 107(2) in respect of a person, including an independent expert, unless the Commissioner has received an undertaking by that person to the applicant (a) not to make any sample of biological material furnished by the international depositary authority or any culture derived from such sample available to any other person before either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn; and

(b) to use the sample of biological material furnished by the international depositary authority and any culture derived from such sample only for the purpose of experiments that relate to the subject-matter of the application until either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn.

109. (1) Where a notice has been filed with the Commissioner pursuant to subsection 104(4) in respect of an application, the Commissioner, upon the request of any person that an independent expert be nominated and with the agreement of the applicant, shall within a reasonable time nominate a person as an independent expert for the purposes of that application.

(2) If the Commissioner and the applicant cannot agree on the nomination of an independent expert within a reasonable time after the request is made, the notice of the applicant referred to in subsection 104(4) is deemed never to have been filed.

110. (1) Where a notice has been filed with the Commissioner pursuant to subsection 104(4) in respect of an application, until a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, a request pursuant to section 107 may only be filed by an independent expert nominated by the Commissioner in accordance with section 109.

(2) Where the Commissioner makes a certification pursuant to subsection 107(2) in respect of an independent expert nominated by the Commissioner, the Commissioner shall send a copy of the request together with the certification to the applicant and to the person who requested the nomination of the independent expert.

Sequence Listings

111. (1) If an application contains disclosure of a nucleotide or amino acid sequence other than a sequence identified as forming a part of the prior art, the description shall contain, in respect of that sequence, a sequence listing in electronic form, and both the sequence listing and the electronic form shall comply with the PCT sequence listing standard.

(2) If an application originally filed without a sequence listing is amended to include a sequence listing, the applicant shall file a statement to the effect that the listing does not go beyond the disclosure in the application as filed.

(3) If a sequence listing initially filed in paper form or in an electronic form that does not comply with the PCT sequence listing standard is replaced by a sequence listing in an electronic form that does comply with that standard, the applicant shall file a statement to the effect that the replacement listing does not go beyond the disclosure in the application as filed.

SOR/2007-90, s. 24.

112. [Repealed, SOR/2007-90, s. 24]

113. [Repealed, SOR/2007-90, s. 24]

114. [Repealed, SOR/2007-90, s. 24]

115. [Repealed, SOR/2007-90, s. 24]

116. [Repealed, SOR/2007-90, s. 24]

117. [Repealed, SOR/2007-90, s. 24]

118. [Repealed, SOR/2007-90, s. 24]

119. [Repealed, SOR/2007-90, s. 24]

120. [Repealed, SOR/2007-90, s. 24]

121. [Repealed, SOR/2007-90, s. 24]

122. [Repealed, SOR/2007-90, s. 24]

123. [Repealed, SOR/2007-90, s. 24]

124. [Repealed, SOR/2007-90, s. 24]

125. [Repealed, SOR/2007-90, s. 24]

126. [Repealed, SOR/2007-90, s. 24]

127. [Repealed, SOR/2007-90, s. 24]

128. [Repealed, SOR/2007-90, s. 24]

129. [Repealed, SOR/2007-90, s. 24]

130. [Repealed, SOR/2007-90, s. 24]

131. [Repealed, SOR/2007-90, s. 24]

PART IV

APPLICATIONS HAVING A FILING DATE IN THE PERIOD BEGINNING ON OCTOBER 1, 1989 AND ENDING ON SEPTEMBER 30, 1996

Application

132. (1) This Part applies to applications having a filing date in the period beginning on October 1, 1989 and ending on September 30, 1996 and to patents issued on the basis of such applications.

(2) For greater certainty, for the purposes of subsection (1) a reissued patent is considered to be issued on the basis of the original application.

SOR/2009-319, s. 15.

Form and Contents of Applications

133. Every document filed in connection with a patent or an application shall be presented clearly and legibly on sheets of good quality white paper, which shall not, except in the case of transfer documents, other documents concerning ownership and certified copies of documents, be more than 21.6 cm x 33 cm (8 1/2 inches x 13 inches).

134. The title of an application shall be accurate and concise, and shall not include any trade-mark, coined word or personal name.

135. (1) The specification shall be in undefaced type not smaller than 12 pitch, free from interlineations, cancellations or corrections and at least 1 1/2 line spaced and on each page there shall be a top margin of approximately 3.3 cm (1 1/4 inches), left-hand and bottom margins of approximately 2.5 cm (1 inch) and a right-hand margin of approximately 1.3 cm (1/2 inch).

(2) A shorter side of the sheet shall be the bottom, but for tables, charts and the like that cannot satisfactorily be accommodated within the width of the sheet, the right-hand longer side of the sheet shall be the bottom and if a table, chart or the like is longer than the length of the sheet, it may be divided between two or more sheets.

(3) No drawing or sketch, other than a graphic chemical formula or the like, may appear in the specification.

(4) The pages of the description shall be numbered consecutively at the bottom.

(5) Claims shall be numbered consecutively.

136. (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or

(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.

(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.

SOR/99-291, s. 13; SOR/2007-90, s. 25.

137. (1) The description shall not incorporate by reference another document.

(2) The description shall not refer to a document that does not form part of the application unless the document is available to the public.

(3) Any document referred to in the description shall be fully identified.

SOR/99-291, s. 14.

138. (1) Claims must be complete independently of any document referred to in the description.

(2) Every claim must be fully supported by the description.

(3) Reference may be made in a claim to a preceding claim or claims.

139. (1) An application shall contain an abstract that provides technical information and that cannot be taken into account for the purpose of interpreting the scope of the protection sought or obtained.

(2) The abstract shall consist of a brief technical statement of the description indicative of the utility of the invention and the manner in which the invention is distinguishable from other inventions.

140. Any trade-mark that is mentioned in the application shall be identified as such.

Drawings

141. (1) Drawings shall comply with the following requirements:

(a) every sheet shall have a clear margin of at least 2.5 cm (1 inch) on all sides;

(b) every drawing shall be prepared with clear black lines;

(c) all views on the same sheet shall stand in the same direction and, if possible, stand so that a shorter side of the sheet is the bottom but if a view longer than the width of a sheet is necessary, it may stand so that the right-hand longer side of the sheet becomes the bottom, and if a view longer than the length of a sheet is necessary, it may be divided between two or more sheets;

(d) all views shall be on a sufficiently large scale so as to be easily read and shall be separated by sufficient spaces to keep them distinct but shall not be on a larger scale or separated by greater spaces than is necessary for such purposes;

(e) section lines, lines for effect and shading lines shall be as few as possible and shall not be closely drawn;

(f) reference characters shall be clear and distinct and not less than 0.3 cm (1/8 inch) in height;

(g) the same reference character shall be used for the same part in different views and shall not be used to designate different parts;

(h) a reference character should not be placed on a shaded surface, but if it is so placed a blank space shall be left in the shading where it appears;

(i) the views shall be numbered consecutively throughout without regard to the number of sheets; and

(j) nothing shall appear on a sheet except the drawings and the reference characters and legends pertaining to the drawings.

(2) Drawings shall be delivered to the Commissioner free of folds, breaks, creases or other imperfections.

Priority Claims

142. (1) Subject to section 65, for the purposes of subsection 28.4(2) of the Act in respect of an application (in this subsection referred to as the "subject application"),

(a) a request for priority may be made in the petition or in a separate document;

(b) a request for priority must be made before the expiry of the six-month period after the filing date of the subject application; and

(c) the applicant shall provide the Commissioner with the date and country of filing and the application number of each previously regularly filed application on which the request for priority is based, before the expiry of the six-month period after the filing date of the subject application.

(2) Subsection 26(1) does not apply in respect of the times prescribed in subsection (1).

SOR/2007-90, s. 38.

143. Where a previously regularly filed application on the basis of which a request for priority is based is taken into account by an examiner pursuant to sections 28.1 to 28.4 of the Act, the examiner may requisition the applicant to file a certified copy of the previously regularly filed application and a certification from the patent office in which the application was filed indicating the actual date of its filing.

144. (1) For the purposes of subsection 28.4(3) of the Act, an applicant may withdraw a request for priority, either entirely or with respect to one or more

previously regularly filed applications, by filing a request with the Commissioner and the Commissioner shall send a notice to the applicant advising that the request for priority has been withdrawn.

(2) The effective date of the withdrawal of a request for priority pursuant to subsection (1) shall be the date the request for withdrawal is received by the Commissioner.

Effect of Withdrawals on Public Inspection

145. For the purposes of subsection 10(4) of the Act, where a request for priority with respect to a particular previously regularly filed application is withdrawn in accordance with section 144, the prescribed date is the date that is sixteen months after the filing date of that previously regularly filed application, or, where the Commissioner is able to stop technical preparations to open the application to public inspection at a subsequent date preceding the expiry of the confidentiality period referred to in subsection 10(2) of the Act, that subsequent date.

146. For the purposes of subsection 10(5) of the Act, the prescribed date is the day that is two months before the date of expiry of the confidentiality period referred to in subsection 10(2) of the Act or, if the Commissioner is able to stop technical preparations to open the application to public inspection at a subsequent date before the expiry of the confidentiality period, that subsequent date.

SOR/2009-319, s. 16.

147. [Repealed, SOR/2009-319, s. 17]

Deemed Abandonment

148. (1) 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 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;

(c) an appointment of an associate patent agent, where required by section 21; and

(d) an appointment of a representative, where required by section 29 of the Act.

(2) Subsection 26(1) does not apply in respect of the time set out in subsection (1).

SOR/2007-90, s. 38.

Requests for Examination

149. For the purposes of subsection 35(1) of the Act, a request for examination of an application shall contain the following information:

(a) the name and address of the person making the request;

(b) if the person making the request is not the applicant, the name of the applicant; and

(c) information, such as the application number, sufficient to identify the application.

150. (1) Subject to subsection (2), for the purposes of paragraph 73(1)(d) of the Act, a request for the examination of an application shall be made and the fee set out in item 3 of Schedule II shall be paid before the expiry of the seven-year period after the filing date of the application.

(2) A request for the examination of a divisional application shall be made and the fee set out in item 3 of Schedule II shall be paid before the expiry of the later of

(a) the seven-year period after the filing date of the original application; and

(b) the six-month period after the date on which the divisional application is actually filed in accordance with subsections 36(2) or (2.1) of the Act.

(3) Subsection 26(1) does not apply in respect of the times prescribed in subsections (1) and (2).

Abandonment and Reinstatement

151. For the purposes of subsection 73(2) of the Act, an application is deemed to be abandoned if the applicant does not reply in good faith to any requisition of the Commissioner referred to in section 23 or 25 within the time provided in that section. SOR/99-291, s. 15.

152. (1) For an application deemed to be abandoned under section 73 of the Act to be reinstated, the applicant must, in respect of each failure to take an action referred to in subsection 73(1) of the Act or section 151, make a request for reinstatement to the Commissioner, take the action that should have been taken in order to avoid the abandonment and pay the fee set out in item 7 of Schedule II, before the expiry of the 12-month period after the date on which the application is deemed to be abandoned as a result of that failure.

(2) For the purposes of subsection (1), if an application is deemed to be abandoned for failure to pay a fee referred to in subsection 3(4) or (7), for the applicant to take the action that should have been taken in order to avoid the abandonment, the applicant must, before the expiry of the time prescribed by subsection (1), either

- (a) pay the applicable standard fee, or
- (b) file a small entity declaration in respect of the application in accordance with section 3.01 and pay the applicable small entity fee.

SOR/2007-90, s. 26.

153. (1) Where, before October 1, 1996, an application was forfeited pursuant to subsection 73(1) of the Act as it read immediately before that date and was not restored, the application is deemed to have been abandoned pursuant to paragraph 73(1)(f) of the Act on the same date as the forfeiture and may be reinstated in accordance with subsection 73(3) of the Act.

(2) Subject to subsection (3), where, before October 1, 1996, an application was deemed to have been abandoned pursuant to the Act or the *Patent Rules* as they read before that date and was not reinstated, the application is deemed to have been abandoned pursuant to subsection 73(2) of the Act on the same date as the earlier deemed abandonment and may be reinstated in accordance with subsection 73(3) of the Act.

(3) Where an application was, before April 1, 1996, deemed to have been abandoned pursuant to subsection 27.1(2) of the Act as it read immediately before that date, the application may not be reinstated in accordance with subsection 73(3) of the Act.

(4) Subsection 16(4) of the *Patent Cooperation Treaty Regulations* as they read immediately before October 1, 1996 applies to an international application that was, before that date, deemed to be abandoned pursuant to subsection 16(3) of those Regulations.

Maintenance Fees

154. (1) For the purposes of subsection 27.1(1) and paragraph 73(1)(c) of the Act, the applicable fee to maintain an application in effect, set out in item 30 of Schedule II, shall be paid in respect of the periods set out in that item before the expiry of the times provided in that item.

(2) Where a divisional application is filed, any fee set out in item 30 of Schedule II, that would have been payable pursuant to subsection 27.1(1) of the Act had the divisional application been filed on the filing date of the original application, shall be paid when the divisional application is actually filed in accordance with subsection 36(2) or (2.1) of the Act.

155. (1) Subject to subsections (2) and (3), for the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a patent, set out in item 31 of Schedule II, shall be paid in respect of the periods set out in that item before the expiry of the times, including periods of grace, provided in that item.

(2) In subsection (1), "patent" does not include a reissued patent.

(3) No fee to maintain the rights accorded by a patent shall be payable in respect of any period for which a fee to maintain the application for that patent was paid.

156. (1) Subject to subsection (2), for the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a reissued patent, set out in item 31 of Schedule II, shall be paid in respect of the same periods and before the expiry of the same times as for the original patent.

(2) No fee to maintain the rights accorded by a reissued patent is payable in respect of any period for which a fee was paid to maintain the rights accorded by the original patent or to maintain the application for the original patent.

157. Subsection 26(1) does not apply in respect of the times set out in sections 154, 155 and 156.

SOR/2007-90, s. 38.

158. (1) Where, before October 1, 1996, a fee to maintain in effect an application or the rights accorded by a patent was paid under section 76.1 or 80.1 of the *Patent Rules* as they read immediately before that date for a one-year period commencing immediately after a particular anniversary, for the purposes of section 154, 155 or 156, that fee shall be considered to have been paid for the one-year period commencing immediately after the subsequent anniversary.

(2) In subsection (1), "anniversary" means the anniversary of the date of filing of the application.

Deposits of Biological Material

159. For the purposes of subsection 38.1(1) of the Act, where a specification in an application filed in Canada, or in a patent issued on the basis of such an application, refers to a deposit of biological material, the deposit shall be considered to be in accordance with these regulations if sections 160 to 162 are complied with.

160. (1) Subject to subsection (2), the deposit of the biological material shall be made by the applicant with an international depositary authority on or before the filing date of the application.

(2) The deposit with an international depositary authority may be made by the applicant after the filing date of the application provided that

(a) a deposit was made by the applicant in a depositary other than an international depositary authority on or before the filing date of the application in a manner so that, after the application is open to public inspection under section 10 of the Act, samples of the deposit are made available to the public;

(b) the applicant informs the Commissioner of the name of the depositary referred to in paragraph (a) and the date of making of the deposit before the application is open to public inspection under section 10 of the Act or on or before January 1, 1998, whichever is the later; and

(c) the deposit with the international depositary authority is made on or before October 1, 1997.

(3) The applicant must inform the Commissioner of the name of the international depositary authority, the date of the original deposit with the international depositary authority and the accession number given by the international depositary authority to the deposit, before the application is open to public inspection under section 10 of the Act or on or before January 1, 1998, whichever is the later.

(4) The applicant may, before the application is open to public inspection under section 10 of the Act or on or before January 1, 1998, whichever is the later, file a notice with the Commissioner stating the applicant's wish that, until either a patent has issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, the Commissioner only authorize the furnishing of a sample of the deposited biological material to an independent expert nominated by the Commissioner in accordance with section 165.

(5) Subsection 26(1) does not apply to the times set out in this section.
SOR/2007-90, s. 38.

161. Where, pursuant to Rule 5 of the Regulations under the Budapest Treaty, samples of biological material are transferred to a substitute international depositary authority for the reason that the original international depositary authority has discontinued the performance of functions, the applicant or the patentee must inform the Commissioner of the name of the substitute international depositary authority and of the new accession number given to the deposit by the substitute international depositary authority on or before the later of January 1, 1998 and the expiry of the three-month period after the date of issuance of a receipt by the substitute international depositary authority.

162. (1) Where a new deposit is made with another international depositary authority pursuant to Article 4(1)(b)(i) or (ii) of the Budapest Treaty, the applicant or the patentee must inform the Commissioner of the name of that authority and of the new accession number given to the deposit by that authority on or before the later of January 1, 1998 and the expiry of the three-month period after the date of issuance of a receipt by that authority.

(2) Where, pursuant to Article 4 of the Budapest Treaty, the depositor is notified of the inability of the international depositary authority to furnish samples and no new deposit is made in accordance with that Article, the application or patent shall, for the purposes of any proceedings in respect of that application or patent, be treated as if the deposit had never been made.

163. (1) The Commissioner shall publish in the *Canadian Patent Office Record* a form for making a request for the furnishing of a sample of a deposit, the contents of which shall be the same as the contents of the form referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty.

(2) Subject to sections 164 and 166, where a specification in a Canadian patent or in an application filed in Canada that is open to public inspection pursuant to section 10 of the Act refers to a deposit of biological material by the applicant, and where a person files with the Commissioner a request made on the form referred to in subsection (1), the Commissioner shall make the certification referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty in respect of that person.

(3) Except where subsection 166(2) applies, where the Commissioner makes a certification pursuant to subsection (2), the Commissioner shall send a copy of the request together with the certification to the person who filed the request.

164. Until either a patent has been issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, the Commissioner shall not make the certification referred to in subsection 163(2) in respect of a person, including an independent expert, unless the Commissioner has received an undertaking by that person to the applicant (a) not to make any sample of biological material furnished by the international depositary authority or any culture derived from such sample available to any other person before either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn; and

(b) to use the sample of biological material furnished by the international depositary authority and any culture derived from such sample only for the purpose of experiments that relate to the subject-matter of the application until either a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn.

165. (1) Where a notice has been filed with the Commissioner pursuant to subsection 160(4) in respect of an application, the Commissioner, upon the request of any person that an independent expert be nominated and with the agreement of the applicant, shall within a reasonable time nominate a person as an independent expert for the purposes of that application.

(2) If the Commissioner and the applicant cannot agree on the nomination of an independent expert within a reasonable time after the request is made, the notice of the applicant referred to in subsection 160(4) is deemed never to have been filed.

166. (1) Where a notice has been filed with the Commissioner pursuant to subsection 160(4) in respect of an application, until a patent is issued on the basis of the application or the application is refused, or is abandoned and no longer subject to reinstatement, or is withdrawn, a request pursuant to section 163 may only be filed by an independent expert nominated by the Commissioner.

(2) Where the Commissioner makes a certification pursuant to subsection 163(2) in respect of an independent expert nominated by the Commissioner, the Commissioner shall send a copy of the request together with the certification to the applicant and to the person who requested the nomination of the independent expert.

PART V

APPLICATIONS HAVING A FILING DATE BEFORE OCTOBER 1, 1989

Application

167. (1) This Part applies to applications having a filing date before October 1, 1989 and to patents issued on the basis of such applications.

(2) For greater certainty, for the purposes of subsection (1) a reissued patent is considered to be issued on the basis of the original application.

SOR/2009-319, s. 18.

Storage

168. Any paper received by the Commissioner relating to an application or to a patent shall, for the purposes of the inspection referred to in section 10 of the Act as it read immediately before October 1, 1989, be kept in its original form or be entered or recorded by any information storage device, including any system of mechanical or electronic data processing, that is capable of reproducing stored papers or information in intelligible form within a reasonable time.

Form and Contents of Applications

169. Every document filed in connection with a patent or an application shall be presented clearly and legibly on sheets of good quality white paper, which shall not, except in the case of transfer documents, other documents concerning ownership and certified copies of documents, be more than 21.6 cm × 33 cm (8 1/2 inches × 13 inches).

170. The title of an application shall be accurate and concise, and shall not include any trade-mark, coined word or personal name.

171. (1) The specification shall be in undefaced type not smaller than 12 pitch, free from interlineations, cancellations or corrections and at least 1 1/2 line spaced and on each page there shall be a top margin of approximately 3.3 cm (1 1/4 inches), left-hand and bottom margins of approximately 2.5 cm (one inch) and a right-hand margin of approximately 1.3 cm (1/2 inch).

(2) A shorter side of the sheet shall be the bottom, but for tables, charts and the like that cannot satisfactorily be accommodated within the width of the sheet, the right-hand longer side of the sheet shall be the bottom and if a table, chart or the like is longer than the length of the sheet, it may be divided between two or more sheets.

(3) No drawing or sketch, other than a graphic chemical formula or the like, may appear in the specification.

(4) The pages of the description shall be numbered consecutively at the bottom.

(5) Claims shall be numbered consecutively.

172. (1) The Commissioner shall refuse to take cognizance of any document submitted to the Commissioner that is not in the English or French language unless

the applicant submits to the Commissioner a translation of the document into one of those languages.

(2) If the applicant provides a translation of a document into either English or French in accordance with subsection (1) and the Commissioner has reasonable grounds to believe that the translation is not accurate, the Commissioner shall requisition the applicant to provide either

(a) a statement by the translator to the effect that, to the best of the translator's knowledge, the translation is complete and faithful, or

(b) a new translation together with a statement by the translator to the effect that, to the best of the translator's knowledge, the new translation is complete and faithful.

(3) The text matter of the abstract, the description, the drawings and the claims, individually and all together, shall be wholly in English or wholly in French.

SOR/99-291, s. 16; SOR/2007-90, s. 27.

173. (1) The description shall not incorporate by reference another document.

(2) The description shall not refer to a document that does not form part of the application unless the document is available to the public.

(3) Any document referred to in the description shall be fully identified.

SOR/99-291, s. 17.

174. (1) Claims must be complete independently of any document referred to in the description.

(2) Every claim must be fully supported by the description.

(3) Reference may be made in a claim to a preceding claim or claims.

175. (1) An application shall contain an abstract that provides technical information and that cannot be taken into account for the purpose of interpreting the scope of protection sought or obtained.

(2) The abstract shall consist of a brief technical statement of the description indicative of the utility of the invention and the manner in which the invention is distinguishable from other inventions.

176. Any trade-mark that is mentioned in the application shall be identified as such.

Drawings

177. (1) Drawings furnished in support of an application shall comply with the following requirements:

(a) every sheet shall have a clear margin of at least 2.5 cm (1 inch) on all sides;

(b) every drawing shall be prepared with clear black lines;

(c) all views on the same sheet shall stand in the same direction and, if possible, stand so that a shorter side of the sheet is the bottom but if a view longer than the width of a sheet is necessary, it may stand so that the right-hand longer side of the sheet becomes the bottom, and if a view longer than the length of a sheet is necessary, it may be divided between two or more sheets;

(d) all views shall be on a sufficiently large scale so as to be easily read and shall be separated by sufficient spaces to keep them distinct but shall not be on a larger scale or separated by greater spaces than is necessary for such purposes;

(e) section lines, lines for effect and shading lines shall be as few as possible and shall not be closely drawn;

(f) reference characters shall be clear and distinct and not less than 0.3 cm (1/8 inch) in height;

(g) the same reference character shall be used for the same part in different views and shall not be used to designate different parts;

(h) a reference character should not be placed on a shaded surface, but if it is so placed a blank space shall be left in the shading where it appears;

(i) the views shall be numbered consecutively throughout without regard to the number of sheets; and

(j) nothing shall appear on a sheet except the drawings and the reference characters and legends pertaining to the drawings.

(2) Drawings shall be delivered to the Commissioner free of folds, breaks, creases or other imperfections.

178. [Repealed, SOR/2009-319, s. 19]

Priority of Applications

179. For the application of Article 4D of the *Paris Convention for the Protection of Industrial Property*, made on March 20, 1883 and any amendments and revisions to which Canada is party, the protection of section 28 of the Act as it read immediately before October 1, 1989 may not be claimed in respect of an application filed in Canada unless, while the application is pending, the applicant claims the protection of that section and informs the Commissioner of the filing date and number of each application in a country other than Canada on which the applicant bases the claim.

180. Where a previously regularly filed application on the basis of which a request for priority is based is taken into account by an examiner pursuant to sections 27 and 28 of the Act as it read immediately before October 1, 1989, the examiner may requisition the applicant to file a certified copy of the previously regularly filed application and a certificate from the patent office in which the application was filed indicating the actual date of its filing.

Amendments to Add Matter

181. No person shall amend the specification or drawings to describe or add matter not reasonably to be inferred from the specification or drawings as originally filed.

Maintenance Fees

182. (1) For the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a patent issued on or after October 1, 1989, set out in item 32 of Schedule II, shall be paid in respect of the periods set out in that item before the expiry of the times provided in that item.

(2) In subsection (1), "patent" does not include a reissued patent.

(3) Subject to subsection (4), for the purposes of section 46 of the Act, the applicable fee to maintain the rights accorded by a reissued patent, set out in item 32 of Schedule II, shall be paid in respect of the same periods and before the expiry of the same times, including periods of grace, as for the original patent.

(4) No fee to maintain the rights accorded by a reissued patent is payable

(a) if the original patent was issued before October 1, 1989; or

(b) in respect of any period for which a fee was paid to maintain the rights accorded by the original patent.

(5) Where, before October 1, 1996, a fee to maintain the rights accorded by a patent was paid under section 80.1 of the *Patent Rules* as they read immediately before that date for a one-year period commencing immediately after a particular anniversary, for the purposes of this section, that fee shall be considered to have been paid for the one-year period commencing immediately after the subsequent anniversary.

(6) For the purposes of subsection (5), "anniversary" means the anniversary of the date on which the patent was issued.

SOR/2009-319, ss. 20, 21.

Deposits of Biological Material

183. For the purposes of subsection 38.1(1) of the Act, where a specification in an application filed in Canada, or in a patent issued on the basis of such an application, refers to a deposit of biological material, the deposit shall be considered to be in accordance with these regulations if sections 184 to 186 are complied with.

184. (1) Subject to subsection (2), the deposit of the biological material shall be made by the applicant with an international depositary authority on or before the filing date of the application.

(2) The deposit with an international depositary authority may be made by the applicant after the filing date of the application provided that

(a) a deposit was made by the applicant in a depositary other than an international depositary authority on or before the filing date of the application in a manner so that, after the issuance of the patent, samples of the deposit are made available to the public;

(b) the applicant informs the Commissioner of the name of the depositary referred to in paragraph (a) and the date of making of the deposit on or before January 1, 1998; and

(c) the deposit with the international depositary authority is made on or before October 1, 1997.

(3) The applicant shall inform the Commissioner of the name of the international depositary authority, the date of the original deposit with the international depositary authority and the accession number given by the international depositary authority to the deposit, on or before January 1, 1998.

185. Where, pursuant to Rule 5 of the Regulations under the Budapest Treaty, samples of biological material are transferred to a substitute international depositary authority for the reason that the original international depositary authority has discontinued the performance of functions, the applicant or the patentee must inform the Commissioner of the name of the substitute international depositary authority and of the new accession number given to the deposit by the substitute international depositary authority on or before the later of January 1, 1998 and the expiry of the three-month period after the date of issuance of a receipt by the substitute international depositary authority.

186. (1) Where a new deposit is made with another international depositary authority pursuant to Article 4(1)(b)(i) or (ii) of the Budapest Treaty, the applicant or the patentee must inform the Commissioner of the name of that authority and of the new accession number given to the deposit by that authority on or before the later of January 1, 1998 and the expiry of the three-month period after the date of issuance of a receipt by that authority.

(2) Where, pursuant to Article 4 of the Budapest Treaty, the depositor is notified of the inability of the international depositary authority to furnish samples and no new deposit is made in accordance with that Article, the application or patent shall, for the purposes of any proceedings in respect of that application or patent, be treated as if the deposit had never been made.

187. (1) The Commissioner shall publish in the *Canadian Patent Office Record* a form for making a request for the furnishing of a sample of a deposit, the contents of which shall be the same as the contents of the form referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty.

(2) Where a specification in a Canadian patent refers to a deposit of biological material by the applicant, and where a person files with the Commissioner a request made on the form referred to in subsection (1), the Commissioner shall make the certification referred to in Rule 11.3(a) of the Regulations under the Budapest Treaty in respect of that person.

(3) Where the Commissioner makes a certification pursuant to subsection (2), the Commissioner shall send a copy of the request together with the certification to the person who filed the request.

PART VI REPEALS AND COMING INTO FORCE

Repeals

188. The *Patent Rules*¹ are repealed.

1 C.R.C., c. 1250

189. The *Patent Cooperation Treaty Regulations*² are repealed.

2 SOR/89-453

Coming into Force

190. These Rules come into force on October 1, 1996.

SCHEDULE I

(Sections 43, 44, 77 and 78)

PRESCRIBED FORMS

FORM 1

(Section 47 of the Patent Act)

Application for Reissue

1. The patentee of Patent No. , granted on for an invention entitled , requests that a new patent be issued, in accordance with the accompanying amended specification, for the unexpired term for which the original patent was granted and agrees to surrender the original patent effective on the issue of a new patent.

2. The name and complete address of the patentee is _____.

3. The respects in which the patent is deemed defective or inoperative are _____.

4. The error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, in the following manner: _____.

5. The knowledge of the new facts giving rise to the application were obtained by the patentee on or about in the following manner: _____.

6. The patentee appoints , whose complete address in Canada is , as the patentee's representative in Canada pursuant to section 29 of the *Patent Act*.

7. The patentee appoints , whose complete address is , as the patentee's patent agent.

Instructions

In sections 2, 6 and 7, 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.

FORM 2

(Section 48 of the Patent Act or the Act as it read immediately before October 1, 1989)

Disclaimer

1. The patentee of Patent No. , granted on for an invention entitled , has, by mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public,

(a) made the specification too broad, claiming more than that of which the patentee or the person through whom the patentee claims was the (first) inventor; or

(b) in the specification, claimed that the patentee or the person through whom the patentee claims was the (first) inventor of any material or substantial part of the invention patented of which the patentee was not the (first) inventor, and to which the patentee had no lawful right.

2. The name and complete address of the patentee is _____.

3.

(1) The patentee disclaims the entirety of claim _____.

(2) The patentee disclaims the entirety of claim with the exception of the following: _____.

Instructions

In section 1, the word "first" may be included only for patents issued on the basis of an application filed before October 1, 1989.

In section 2, the name and address 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, street name and number, city, province or state, postal code, telephone number, fax number and country.

With respect to each claim covered by the disclaimer, the patentee shall include in the disclaimer either subsection 3(1) or (2).

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 is the legal representative of the inventor.

4. The applicant requests priority in respect of the application on the basis of the following previously regularly filed application:

Country of filing

Application number

Filing date

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 in accordance with the *Patent Rules* they are entitled to pay fees at the small entity level in respect of this application and in respect of any patent issued on the basis of this application.

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.

(signature)

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.

Sections 2 and 8 should be deleted if they do not apply.

The contents of sections 3 to 7 may be included in the petition or submitted in a separate document.

In section 3, in accordance with section 37 of the *Patent Rules*, only subsection 3(1) or subsection 3(2) should be included.

In general, the inclusion of a signature in the petition is optional. However, in accordance with paragraph 3.01(1)(e) of the *Patent Rules*, a signature is required if a small entity declaration is included in the petition.

SOR/2007-90, ss. 28, 29; SOR/2009-319, ss. 22 to 26.

SCHEDULE II

(Section 3)

TARIFF OF FEES

PART I

APPLICATIONS

Column I	Column II
Item Description	Fee
1. On filing an application under subsection 27(2) of the Act:	
(a) small entity fee.....	\$ 200.00
(b) standard fee.....	400.00
2. On completing an application in response to a requisition under subsection 94(1) of these Rules or on avoiding a deemed abandonment under subsection 148(1) of these Rules.....	200.00
3. On requesting examination of an application under subsection 35(1) of the Act:	
(a) if the application has been the subject of international search by the Commissioner,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(b) in any other case,	
(i) small entity fee.....	400.00
(ii) standard fee.....	800.00
4. On requesting the advance of an application for examination under section 28 of these Rules.....	500.00
5. On filing an amendment under subsection 32(1) of these Rules, after a notice is sent under subsection 30(1) or (5) of these Rules.....	400.00
6. Final fee under subsection 30(1) or (5) of these Rules:	
(a) for applications filed on or after October 1, 1989,	
(i) basic fee,	
(A) small entity fee.....	150.00
(B) standard fee.....	300.00
(ii) plus, for each page of specification and drawings in excess of 100 pages.....	6.00

Column I	Column II
Item Description	Fee
(b) for applications filed before October 1, 1989, (i) basic fee, (A) small entity fee.....	350.00
(B) standard fee.....	700.00
(ii) plus, for each page of specification and drawings in excess of 100 pages.....	4.00
7. On requesting reinstatement of an abandoned application.....	200.00
8. On applying for restoration of a forfeited application under subsection 73(2) of the Act as it read immediately before October 1, 1989.....	200.00

PART II
INTERNATIONAL APPLICATIONS

Column I	Column II
Item Description	Fee
9. Transmittal fee under Rule 14 of the Regulations under the PCT.....	\$ 300.00
9.1 Search fee under Rule 16 of the Regulations under the PCT.....	1,600.00
9.2 Additional fee under Rule 40 of the Regulations under the PCT.....	1,600.00
9.3 Preliminary examination fee under Rule 58 of the Regulations under the PCT.....	800.00
9.4 Additional fee under Rule 68 of the Regulations under the PCT.....	800.00
10. Basic national fee under paragraph 58(1)(c) of these Rules: (a) small entity fee.....	200.00
(b) standard fee.....	400.00
11. Additional fee for late payment under subsection 58(3) of these Rules.....	200.00

PART III
PATENTS

Column I	Column II
Item Description	Fee
12. On the filing an application to reissue a patent under section 47 of the Act.....	\$ 1,600.00
13. On making a disclaimer to a patent under section 48 of the Act, or of the Act as it read immediately before October 1, 1989.....	100.00
14. On requesting re-examination of a claim or claims in a patent under subsection 48.1(1) of the Act: (a) small entity fee.....	1,000.00
(b) standard fee.....	2,000.00
15. On requesting registration of a judgment under section 62 of the Act, or of the Act as it read immediately before October 1, 1989.....	50.00
16. On presenting an application to the Commissioner under subsection 65(1) of the Act: (a) for the first patent to which the application relates.....	2,500.00
(b) for each additional patent to which the application relates.....	250.00
17. On requesting an advertisement of an application under subsection 65(1) of the Act in the <i>Canadian Patent Office Record</i> in accordance with subsection 68(2) of the Act.....	200.00
18. On requesting publication in the <i>Canadian Patent Office Record</i> of a notice listing the patent numbers of patents available for licence or sale, other than at the time of	20.00

Column I	Column II
Item Description	Fee
issuance of the patent, for each patent number listed.....	

**PART IV
GENERAL**

Column I	Column II
Item Description	Fee
19. On requesting correction of a clerical error under section 8 of the Act, or of the Act as it read immediately before October 1, 1989.....	\$ 200.00
20. [Repealed, SOR/2003-208, s. 18]	
21. On requesting registration of a document under section 49 or 50 of the Act, or of the Act as it read immediately before October 1, 1989, or under section 38, 39 or 42 of these Rules, for each patent or application to which the document relates.....	100.00
22. On applying for an extension of time under section 26 or 27 of these Rules.....	200.00
22.1 Late payment fee under subsection 3.1(1) of these Rules.....	the greater of \$50 and 50% of the amount of the fee that has not been paid

**PART V
INFORMATION AND COPIES**

Column I	Column II
Item Description	Fee
23. On requesting information respecting a pending application under section 11 of the Act.....	\$ 100.00
24. On requesting information on whether a patent has issued, on the basis of an application filed in Canada and identified by a serial number.....	20.00
25. On requesting a copy in paper form of a document, for each page, (a) if the person requesting makes the copy using Patent Office equipment.....	0.50
(b) if the Patent Office makes the copy.....	1.00
25.1 On requesting a copy in electronic form of a document, (a) for each request.....	10.00
(b) plus, for each patent or application to which the request relates.....	10.00
(c) plus, if the copy is requested on a physical medium, for each physical medium requested in addition to the first.....	10.00
(d) plus for each additional 10 megabytes or part of them exceeding 7 megabytes.....	10.00
26. On requesting a certified copy in paper form of a document, other than a request under Rule 317 or 350 of the <i>Federal Courts Rules</i> : (a) for each certification.....	35.00
(b) plus, for each page.....	1.00
26.1 On requesting a certified copy in electronic form of a document, other than a request under Rule 317 or 350 of the <i>Federal Courts Rules</i> : (a) for each certification.....	35.00
(b) plus, for each patent or application to which the request relates.....	10.00

Column I	Column II
Item Description	Fee
(c) plus for each additional 10 megabytes or part of them exceeding 7 megabytes.....	10.00
27. On requesting that the Patent Office provide information concerning the status of a patent application or patent, for each application or patent.....	15.00
28. On requesting a copy of an audio magnetic tape.....	50.00
29. On requesting a transcript of an audio magnetic tape, for each page in the transcript.....	50.00

PART VI
MAINTENANCE FEES

Column I	Column II
Item Description	Fee
30. For maintaining an application filed on or after October 1, 1989 in effect, under section 99 or 154 of these Rules:	
(a) payment on or before the second anniversary of the filing date of the application in respect of the one-year period ending on the third anniversary,	
(i) small entity fee.....	\$ 50.00
(ii) standard fee.....	100.00
(b) payment on or before the third anniversary of the filing date of the application in respect of the one-year period ending on the fourth anniversary,	
(i) small entity fee.....	50.00
(ii) standard fee.....	100.00
(c) payment on or before the fourth anniversary of the filing date of the application in respect of the one-year period ending on the fifth anniversary,	
(i) small entity fee.....	50.00
(ii) standard fee.....	100.00
(d) payment on or before the fifth anniversary of the filing date of the application in respect of the one-year period ending on the sixth anniversary,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(e) payment on or before the sixth anniversary of the filing date of the application in respect of the one-year period ending on the seventh anniversary,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(f) payment on or before the seventh anniversary of the filing date of the application in respect of the one-year period ending on the eighth anniversary,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(g) payment on or before the eighth anniversary of the filing date of the application in respect of the one-year period ending on the ninth anniversary,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(h) payment on or before the ninth anniversary of the filing date of the application in respect of the one-year period ending on the tenth anniversary,	
(i) small entity fee.....	100.00
(ii) standard fee.....	200.00
(i) payment on or before the tenth anniversary of the filing date of the application in	

Column I	Column II
Item Description	Fee
respect of the one-year period ending on the eleventh anniversary,	
(i) small entity fee.....	125.00
(ii) standard fee.....	250.00
(j) payment on or before the eleventh anniversary of the filing date of the application in respect of the one-year period ending on the twelfth anniversary,	
(i) small entity fee.....	125.00
(ii) standard fee.....	250.00
(k) payment on or before the twelfth anniversary of the filing date of the application in respect of the one-year period ending on the thirteenth anniversary,	
(i) small entity fee.....	125.00
(ii) standard fee.....	250.00
(l) payment on or before the thirteenth anniversary of the filing date of the application in respect of the one-year period ending on the fourteenth anniversary,	
(i) small entity fee.....	125.00
(ii) standard fee.....	250.00
(m) payment on or before the fourteenth anniversary of the filing date of the application in respect of the one-year period ending on the fifteenth anniversary,	
(i) small entity fee.....	125.00
(ii) standard fee.....	250.00
(n) payment on or before the fifteenth anniversary of the filing date of the application in respect of the one-year period ending on the sixteenth anniversary,	
(i) small entity fee.....	225.00
(ii) standard fee.....	450.00
(o) payment on or before the sixteenth anniversary of the filing date of the application in respect of the one-year period ending on the seventeenth anniversary,	
(i) small entity fee.....	225.00
(ii) standard fee.....	450.00
(p) payment on or before the seventeenth anniversary of the filing date of the application in respect of the one-year period ending on the eighteenth anniversary,	
(i) small entity fee.....	225.00
(ii) standard fee.....	450.00
(q) payment on or before the eighteenth anniversary of the filing date of the application in respect of the one-year period ending on the nineteenth anniversary,	
(i) small entity fee.....	225.00
(ii) standard fee.....	450.00
(r) payment on or before the nineteenth anniversary of the filing date of the application in respect of the one-year period ending on the twentieth anniversary,	
(i) small entity fee.....	225.00
(ii) standard fee.....	450.00
31. For maintaining the rights accorded by a patent issued on the basis of an application filed on or after October 1, 1989 under section 100, 101, 155 or 156 of these Rules:	
(a) in respect of the one-year period ending on the third anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the second anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the second anniversary:	
(A) small entity fee.....	250.00

Column I	Column II
Item Description	Fee
(B) standard fee.....	300.00
(b) in respect of the one-year period ending on the fourth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the third anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the third anniversary:	
(A) small entity fee.....	250.00
(B) standard fee.....	300.00
(c) in respect of the one-year period ending on the fifth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the fourth anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fourth anniversary:	
(A) small entity fee.....	250.00
(B) standard fee.....	300.00
(d) in respect of the one-year period ending on the sixth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the fifth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fifth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(e) in respect of the one-year period ending on the seventh anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the sixth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the sixth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(f) in respect of the one-year period ending on the eighth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the seventh anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the seventh anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(g) in respect of the one-year period ending on the ninth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the eighth anniversary:	

Column I	Column II
Item Description	Fee
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the eighth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(h) in respect of the one-year period ending on the tenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the ninth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the ninth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(i) in respect of the one-year period ending on the eleventh anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the tenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the tenth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(j) in respect of the one-year period ending on the twelfth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the eleventh anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the eleventh anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(k) in respect of the one-year period ending on the thirteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the twelfth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the twelfth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(l) in respect of the one-year period ending on the fourteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the thirteenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the thirteenth anniversary:	

Column I	Column II
Item Description	Fee
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(<i>m</i>) in respect of the one-year period ending on the fifteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the fourteenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fourteenth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(<i>n</i>) in respect of the one-year period ending on the sixteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the fifteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fifteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
(<i>o</i>) in respect of the one-year period ending on the seventeenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the sixteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the sixteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
(<i>p</i>) in respect of the one-year period ending on the eighteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the seventeenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the seventeenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
(<i>q</i>) in respect of the one-year period ending on the nineteenth anniversary of the filing date of the application,	
(i) fee, if payment is made on or before the eighteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the eighteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
(<i>r</i>) in respect of the one-year period ending on the twentieth anniversary of the filing date of the application,	

Column I	Column II
Item Description	Fee
(i) fee, if payment is made on or before the nineteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the nineteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
32. For maintaining the rights accorded by a patent issued on or after October 1, 1989 on the basis of an application filed before that date under subsection 182(1) or (3) of these Rules:	
(a) in respect of the one-year period ending on the third anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the second anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the second anniversary:	
(A) small entity fee.....	250.00
(B) standard fee.....	300.00
(b) in respect of the one-year period ending on the fourth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the third anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the third anniversary:	
(A) small entity fee.....	250.00
(B) standard fee.....	300.00
(c) in respect of the one-year period ending on the fifth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the fourth anniversary:	
(A) small entity fee.....	50.00
(B) standard fee.....	100.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fourth anniversary:	
(A) small entity fee.....	250.00
(B) standard fee.....	300.00
(d) in respect of the one-year period ending on the sixth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the fifth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fifth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(e) in respect of the one-year period ending on the seventh anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the sixth anniversary:	

Column I	Column II
Item Description	Fee
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the sixth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(f) in respect of the one-year period ending on the eighth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the seventh anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the seventh anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(g) in respect of the one-year period ending on the ninth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the eighth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the eighth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(h) in respect of the one-year period ending on the tenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the ninth anniversary:	
(A) small entity fee.....	100.00
(B) standard fee.....	200.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the ninth anniversary:	
(A) small entity fee.....	300.00
(B) standard fee.....	400.00
(i) in respect of the one-year period ending on the eleventh anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the tenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the tenth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(j) in respect of the one-year period ending on the twelfth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the eleventh anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the eleventh anniversary:	

Column I	Column II
Item Description	Fee
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(k) in respect of the one-year period ending on the thirteenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the twelfth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the twelfth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(l) in respect of the one-year period ending on the fourteenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the thirteenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the thirteenth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(m) in respect of the one-year period ending on the fifteenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the fourteenth anniversary:	
(A) small entity fee.....	125.00
(B) standard fee.....	250.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fourteenth anniversary:	
(A) small entity fee.....	325.00
(B) standard fee.....	450.00
(n) in respect of the one-year period ending on the sixteenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the fifteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the fifteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00
(o) in respect of the one-year period ending on the seventeenth anniversary of the day on which the patent was issued,	
(i) fee, if payment is made on or before the sixteenth anniversary:	
(A) small entity fee.....	225.00
(B) standard fee.....	450.00
(ii) fee, including an additional fee for late payment, if payment is made within the period of grace of one year following the sixteenth anniversary:	
(A) small entity fee.....	425.00
(B) standard fee.....	650.00

PART VII
PATENT AGENTS

Column I	Column II
Item Description	Fee
33. On applying for entry on the register of patent agents under section 15 of these Rules.....	\$ 350.00
34. On notifying the Commissioner, pursuant to subsection 14(2) of these Rules, of a proposal to sit for the whole or any part of the qualifying examination, per paper.....	200.00
35. For maintaining the name of a patent agent on the register of patent agents pursuant to paragraph 16(1)(a) of these Rules.....	350.00
36. On applying to the Commissioner for reinstatement on the register of patent agents under section 17 of these Rules.....	200.00

SOR/99-291, ss. 18 to 20; SOR/2003-208, ss. 10 to 23; SOR/2007-90, ss. 30 to 37; SOR/2009-319, s. 27.

RELATED PROVISIONS

— SOR/2003-208, s. 24:

24. For greater certainty, items 30 to 32 of Schedule II of the *Patent Rules*, as enacted by section 22 of these Rules, do not apply in respect of fees paid before January 1, 2004 pursuant to those items as they read immediately before January 1, 2004.

— SOR/2003-208, s. 25:

25. For greater certainty, where, before January 1, 2004, an application for a patent is deemed to be abandoned for failure to pay a prescribed fee, the amount of the fee that must be paid for the purposes of paragraph 73(3)(b) of the *Patent Act* to reinstate the application is the amount set out in Schedule II of the *Patent Rules* as they read on the date of abandonment.

— SOR/2003-208, s. 26:

26. Where, in respect of an application for a patent filed on or after October 1, 1989, a notice is sent before January 1, 2004 pursuant to subsection 30(1) or (5) of the *Patent Rules*, the amount of the final fee that must be paid for the purposes of subsections 30(1) or (5) of the *Patent Rules* is that set out in Item 6(a) of Schedule II of the *Patent Rules* as they read immediately before January 1, 2004.

— SOR/2007-90, s. 39:

39. In respect of fees paid before the coming into force of these Rules, if a fee was paid by an applicant or patentee on the basis that the applicant or patentee was not a small entity, no refund shall be made solely for the reason that it was later determined to be a small entity.

— SOR/2007-90, s. 40:

40. In respect of an application, other than a PCT national phase application, filed before the coming into force of these Rules, the applicant may substitute the requirements of section 37 of the *Patent Rules* as they read immediately before the coming into force of these Rules and of Form 3 of Schedule I to the *Patent Rules* as they read immediately before the coming into force of these Rules for the requirements of Form 3 of Schedule I to the *Patent Rules*.

— SOR/2007-90, s. 41:

41. In respect of a PCT national phase application filed before the coming into force of these Rules, the applicant must either comply with the requirements of section 37 of the *Patent Rules* as they read immediately before the coming into force of these Rules or file a declaration as to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent, in accordance with Rule 4.17 of the Regulations under the PCT.

— SOR/2007-90, s. 42:

42. In respect of a PCT national phase application filed before the coming into force of these Rules, the applicant may substitute the requirements of section 62 of the *Patent Rules* as they read immediately before the coming into force of these Rules for the requirements of section 94 of the *Patent Rules*.

— **SOR/2007-90, s. 43:**

43. In respect of applications filed before the coming into force of these Rules, the applicant may substitute the requirements of sections 111 to 131 of the *Patent Rules* as they read immediately before the coming into force of these Rules for the requirements of section 111 of the *Patent Rules*.

— **SOR/2009-319, s. 28:**

28. In respect of an application, other than a PCT national phase application, that has a filing date before October 1, 2010, the applicant may substitute the requirements of Form 3 of Schedule I to the *Patent Rules* as it read immediately before October 1, 2010 for the requirements of section 37 of the *Patent Rules* and of Form 3 of Schedule I to the *Patent Rules*.

— **SOR/2009-319, s. 29:**

29. If the Commissioner, before October 1, 2010, requisitions the applicant by notice under subsection 94(1) of the *Patent Rules* as it read immediately before October 1, 2010 and the time provided by that subsection to reply has not expired,

(a) the notice is considered not to apply to the extent that it requisitions the applicant to comply with the requirements of any of clause 94(2)(b)(ii)(B) or subparagraph 94(3)(b)(i) or (ii) of the *Patent Rules* as they read immediately before October 1, 2010; and

(b) if the notice requisitions the applicant to comply with only one or more of the requirements referred to in paragraph (a), the applicant is not required to pay the fee set out in item 2 of Schedule II to the *Patent Rules* as it read immediately before October 1, 2010.