

Changes to Canadian patent examination: delayed and still uncertain

January 17, 2022

UPDATE: This legalisation has been finalized and the changes are coming into force on October 3, 2022. For details please see our latest publication: [The CSA's changes to mandatory registrant regulatory filings are now effective](#).

Significant changes to Canada's historically flexible system of patent examination are expected by July 1, 2022, though the exact nature and timing of the changes remain uncertain. Applicants may wish to request examination early to avoid the new regime.

On July 3, 2021, proposed amendments to Canada's *Patent Rules* were published in [Part I of the Canada Gazette](#). Published without prior public consultation, the overall aim of the amendments is to streamline examination of patent applications at the Canadian Intellectual Property Office (CIPO), and thereby set the stage for later implementation of a patent term adjustment regime required under the *Canada-United States-Mexico Agreement* (CUSMA).

Among other changes, the amendments proposed the introduction of:

- **Excess claims fees** for each claim in excess of 20, payable at the time of the examination request and, for any unpaid claim over 20, at the time the final fee is paid. Multiple dependencies will not contribute to these fees.
- **Requests for continued examination** (RCE) and an associated fee would be required to continue examination after issuance of three examination reports. The RCE would then permit up to two additional examination reports, after which a further RCE would be required, and so on.

These changes would mark a significant departure from Canada's current flexible system of examination. Notably, the imposition of excess claims fees would make it more onerous for applicants to have comprehensive claims sets assessed for unity, which can be important for mitigating risk under Canada's unique double patenting law.

The proposed amendments generated critical feedback, including an extensive submission from the Intellectual Property Institute of Canada – the professional

association of intellectual property practitioners in Canada. It is unknown if the amendments will be revised based on the feedback received.

The proposed amendments also adopt the WIPO Standard ST.26 for sequence listings. CIPO had initially planned to implement the changes by Jan. 1, 2022 in order to comply with the new sequence listing standard. WIPO member states subsequently agreed to delay the implementation of ST.26 to July 1, 2022. CIPO has not outlined a revised timeline for implementation of the amended *Rules*, though it seems reasonable to expect that the coming-into-force date will be no later than the ST.26 start date of **July 1, 2022**.

The new examination regime would apply to any Canadian patent application for which a request for examination is submitted after the coming-into-force date. Accordingly, applicants may wish to consider requesting examination early to avoid the new examination practices, bearing in mind that the amended *Rules* may come into force with less than 30 days' notice, depending on the timing of the publication of the *Rules* in relation to their official registration date.

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