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Amendments to Canada's *Patent Rules* Will Simplify Declarations of Entitlement for Applicants

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Late last year, Canada adopted amendments designed to simplify and clarify its *Patent Rules* (Rules).¹ Although these amendments do not come into force until October 2010, patent applicants and patent lawyers, alike, are eagerly awaiting them because they significantly simplify the procedure for patent applicants to establish their entitlement to a patent.²

The current Rules require that an applicant in Canada establish its entitlement by filing a declaration that is structured to make the applicant select from a list of prescribed statements (e.g., the applicant is entitled to the grant of a patent by way of an assignment). The rigidity of the prescribed statements has caused confusion and uncertainty. This is especially true for applicants seeking a Canadian patent on the basis of an application filed under the Patent Cooperation Treaty (PCT), in part because the statements refer to the applicant's entitlement as at the filing date of the PCT application, rather than the national entry date for the Canadian application. Furthermore, according to the current Rules, the filing of a declaration is a "completion requirement" (i.e., the requirement must be fulfilled in order to obtain a Canadian filing date), which means that there is a limited time to comply with the requirement before an additional fee is incurred.

When the amended Rules come into force, the declaration of entitlement will cease to be a completion requirement; thus, there will be no prescribed time limit for an applicant to file this document. Additionally, although the amended Rules will still prescribe the statements for establishing entitlement, the wording will be more flexible in only requiring that the applicant declare that it is the legal representative of the inventor, without any reference to the international filing date. The term "legal representative" refers to assignees and other persons claiming through or under inventors for patents and patentees of inventions.³

Applicants filing in Canada under a PCT application can also establish their entitlement in Canada by way of a declaration filed under the PCT rules.

The amendments to the Rules are a welcome development that should save applicants time and expense when seeking Canadian patent protection. **T**

¹ The amendments also make a number of minor changes to clarify the language of the Rules and render the terminology consistent throughout.

² "Entitlement" refers to an applicant's right to apply for a patent in Canada; an applicant typically establishes entitlement by declaring that it is the assignee of the inventor(s).

³ This term was used to establish an applicant's entitlement for many years prior to adoption of the current declaration requirements.

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