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Bill C-47 Proposes to Amend Patent Act to Implement CUSMA

Mark Davis, Kassandra Shortt, Rachel Binder

May 8, 2023

On April 20, 2023, the Government of Canada introduced Bill C-47 which proposes to amend patent term adjustment provisions within the *Patent Act*. Specifically, the bill extends the term of a Canadian patent filed on or after December 1, 2020 when there has been an unreasonable delay in granting the patent.

Background on CUSMA

The Canada-United States-Mexico Agreement (CUSMA, also known as USMCA) is a free trade agreement that includes a legal framework of minimum standards for the protection and enforcement of IP rights in North America. Under CUSMA, Canadian patent applications filed on or after December 1, 2020, may be eligible for patent term adjustment if they have been subjected to unreasonable prosecution delay by the Canadian Intellectual Property Office.

Article 20.44 of CUSMA requires the parties to process patent applications "in an efficient and timely manner, with a view to avoiding unreasonable and unnecessary delays." If an "unreasonable delay" occurs, the patentee may request a patent term adjustment to compensate for prosecution delays. According to CUSMA, an "unreasonable delay" is defined as a delay that is the later of:

1. greater than five years from the date of filing; or
2. greater than three years from the request for examination.

The patent term adjustment provisions of CUSMA must come into force by January 1, 2025, in each signatory country. To account for CUSMA, Canada is proposing to amend the *Patent Act* through Bill C-47, the *Budget Implementation Act*, which proposes to provide for patent term adjustments for unreasonable prosecution delays.

Bill C-47's Patent Term Adjustment Provisions

With the patent adjustment term, the patent will be eligible for an additional term if the patent was issued after the later of:

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1. Three years from the date examination was requested under section 35 of the *Patent Act*, and the prescribed fee has been paid; and
2. Five years from:
 - a. in the case of PCT national phase applications and divisional applications, a "prescribed day" that is not yet established within legislation;
 - b. in all other cases, the filing date of the application.

The additional term will be the number of days in delay of the granting of the patent minus the "number of days that is determined under the regulations." The patentee must apply for this additional term and pay a prescribed fee, it is not automatically granted, and a certificate of additional term will be issued to the patentee.

Pursuant to CUSMA, the proposed patent adjustment term provisions of the *Patent Act* are not required to come into force until January 1, 2025. The proposed amendments will be subject to public comment and review by the House of Commons and the Senate.

Cassels will track the progress of Bill C-47 at each step. If you have any questions, please reach out to a member of our patent team.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.