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*Memorandum to Associates - April 2002*

## **CANADA: FILING INFORMATION - PATENT APPLICATIONS**

### **New Time Limits for National Phase Entry in Canada**

As of 1 April 2002, the time limits fixed in Article 22(1) of the *Patent Cooperation Treaty* were modified such that the basic time limit for entry into the national phase has been extended from 20 months from the *Paris Convention* priority date to 30 months from the priority date, irrespective of whether the applicant has timely elected International Preliminary Examination under Chapter II of the *PCT*. Previously, the basic deadline for national phase entry was 20 months from the priority date under Chapter I of the *PCT*, or 30 months from priority date under Chapter II (in those cases where Chapter II had been elected and a Demand for International Preliminary Examination had been filed prior to the expiry of 19 months from the priority date).

Corresponding amendments have been made to the Canadian *Patent Rules* that will allow all Chapter I and Chapter II applicants (subject to the transitional situations discussed in this memorandum) to delay entry into the national phase in Canada until 30 months after the priority date or, where an applicant pays an additional fee for late national phase entry, up to a maximum of 42 months after the priority date. As explained below, this ability to enter the national phase in Canada up to a year late (on payment of a late fee) is peculiar to Canada, and results in important changes to the usual rules for the transitional applicability of the time limit amendments to *PCT* applications filed prior to 1 April 2002.

For PCT applications that were filed prior to the coming into force of these time limit amendments on 1 April 2002, two general categories of applications exist under the transitional provisions applicable in Canada. As was the case before the amendments came into force, in those applications where the applicant has entered Chapter II and filed a Demand for International Preliminary Examination prior to the expiry of 19 months from the priority date, the applicant will continue to have until the expiry of 30 months from the priority date (or 42 months from the priority date if a late fee is paid) to enter the national phase in Canada. However, in those cases where the applicant did not file a Demand for International Preliminary Examination prior to the expiry of 19 months from the priority date, three different new situations may exist, as outlined below.

### **Summary:**

1. If a Demand for Preliminary Examination has been timely filed prior to the expiry of 19 months from the priority date, the applicant will continue to have until the expiry of 30 months from the priority date (or 42 months from the priority date if a late fee is paid at the time of national entry) to enter the national phase in Canada.

2. If no Demand has been filed as above, then there are three possibilities, as follows:

a. If the expiry of 30 months from the priority date occurs **on or after** 1 April 2002, the applicant has until 30 months from the priority date to enter the national phase in Canada (or 42 months from the priority date if a late fee is paid at the time of national entry).

b. If the expiry of 30 months from the priority date occurs **before** 1 April 2002 but the expiry of 32 months from the priority date occurs **on or after** 1 April 2002, the applicant has until 42 months from the priority date to enter the national phase in Canada, with a late fee payable at the time of national entry.

c. If the expiry of 32 months from the priority date occurs **before** 1 April 2002, then it is too late for the application to enter the national phase in Canada.

If you have any questions, please communicate with us.

- Barrigar Intellectual Property Group