



Patent Act Amended as Part of Canada's Response to COVID-19 Pandemic

March 26, 2020

By Scott MacKendrick and Laura MacDonald

After courthouse closures and suspensions, the Canadian Intellectual Property Office's suspension of *Patent Act*, *Trademarks Act* and *Industrial Design Act* deadlines, and the temporary suspension of limitation periods in some provinces – all in response to the COVID-19 pandemic – change has now come to Canada's *Patent Act*. The Canadian Parliament has passed Bill C-13, the *COVID-19 Emergency Response Act*, amending, and in force as of March 25, 2020, the *Patent Act* and more than 15 other acts. As described in the *Act Summary*, the *Patent Act* amendments provide that the Commissioner of Patents “must, on the application of the Minister of Health, authorize the Government of Canada and any person specified in the application to make, construct, use and sell a patented invention to the extent necessary to respond to a public health emergency that is a matter of national concern.”

Specifically, new section 19.4(1) of the *Patent Act* provides that the Commissioner of Patents *shall*, on the application of the Minister of Health, authorize the Government of Canada and any other person specified in the application to make, construct, use and sell a patented invention to the extent necessary to respond to the public health emergency. Applications must include, *inter alia*, a description of the public health emergency and a confirmation that the Chief Public Health Officer believes that the emergency is of national concern.

Patent owners impacted by such an authorization are entitled to payment of remuneration, defined in section 19.4(5) as “any amount that the Commissioner considers to be adequate remuneration in the circumstances, taking into account the economic value of the authorization and the extent to which they make, construct, use and sell the patented invention.”

In the event a patented invention is being used in a manner inconsistent with an authorization granted, section 19.4(8) provides that a patent owner may bring an application to the Federal Court for an order requiring the Government or any authorized person to cease making, constructing, using or selling the invention. The language of section 19.4(8) suggests that the issuance of such an order is in the Court's discretion.

The amendments provide that an authorization is of limited duration. Section 19.4(3) sets out that an authorization will expire on the earlier of the day on which the Minister of Health notifies the Commissioner that the authorization is no longer necessary to respond to the public health emergency set out in the application, and one year after the day on which it is granted.

Lastly, the window for the Government to apply for an authorization is time-limited. Section 19.4(9) provides that the Commissioner shall not make an authorization after September 30, 2020.

Content shared on Bereskin & Parr's website is for information purposes only. It should not be taken as legal or professional advice. To obtain such advice, please contact a Bereskin & Parr LLP professional. We will be pleased to help you.