



September 14, 2009

By Email: cipo.contact@ic.gc.ca

Canadian Intellectual Property Office
Client Service Center
50 Victoria Street, Phase 2, 4th Floor
Gatineau, Québec
K1A 0C9

Attention: Ms. Christina-Maria Syme and Patrice Lemyre

Re: Proposal to Provide a Filing Date on Weekends and Holidays

FICPI Canada wishes to thank the Canadian Intellectual Property Office for the opportunity to comment on the proposed amendments to the *Patent Rules*, the *Trade-marks Regulations*, the *Industrial Design Regulations*, the *Copyright Regulations*, and the *Integrated Circuit Topography Regulations* to provide a filing date for applications submitted on weekends and statutory holidays.

As you know, FICPI (the Federation Internationale des Conseils en Propriété Industrielle), comprises more than 3500 intellectual property attorneys in private practice in 86 countries. FICPI Canada is a self-governing national association of FICPI and represents the interests of Canadian patent and trade mark professionals. Our membership includes senior professionals at most major Canadian intellectual property firms. Our clients span all types and sizes of businesses, including multi-national corporations, small and medium size enterprises, and individuals.

FICPI Canada is opposed to the proposed changes. We consider that patent and trade mark agents, and their employees, should be able to enjoy weekends and holidays as non-business days, just as do the staff of CIPO.

Patent applications, trade mark applications, and industrial design applications that are filed by registered patent agents and trade mark agents account for the major part of CIPO's business. The proposal to grant filing dates on weekends and holidays would present potential issues of liability for patent and trade mark practitioners who were not open for business on weekends and holidays. The resulting pressure on members of the profession to remain open for business on weekends and holidays would inevitably increase costs, which would in turn be borne by clients.

CIPO has presented no evidence that there is a demand to provide filing dates for applications or other documents that are submitted on weekends and holidays. While it is recognized that certain countries have adopted such a practice, there is no evidence that it is widely used. (According to one recently published study, only 2% of patent applications filed to date this year in the U.S. Patent and Trademark Office were filed on a Saturday or a Sunday.)

FICPI Canada is also concerned that the proposed changes to the regulations will not adequately address the *dies non* effect for statutory time limits, particularly novelty time limits for patent and design applications that are established by the *Patent Act* and the *Industrial Designs Act*, as opposed to being established by regulations or set-out in requisitions from CIPO.

FICPI Canada also observes that the proposal to grant application filing dates on weekends and holidays will exacerbate the advantage enjoyed by foreign applicants living in earlier time zones, or who do not observe Canadian statutory holidays or the standard Canadian work week.

As a practical matter, CIPO's ability to receive and provide confirmation of filing for applications submitted electronically, particularly in the field of patent and design applications, is also not considered to be satisfactory for CIPO to consider offering filing dates on weekends.

In short, FICPI Canada considers the proposed changes to be ill advised.

Thank you again for the opportunity to provide comments. If CIPO has any questions about our position, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Storey', with a long horizontal flourish extending to the right.

Robert B. Storey, President
FICPI Canada
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P.S. Since dictating the above, I have had the opportunity to review the draft submissions of the Intellectual Property Institute of Canada, with which FICPI Canada concurs. Those submissions provide detailed examples of the potential problems and confusion that should be expected regarding statutory time deadlines, and related treaty issues, if the proposed changes were implemented.