Protecting Innovative Technology for Goods and Services in Canada and abroad

Peter W. McBurney
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I. INTRODUCTION

This Paper deals with important new changes in legislation under which innovative technology can be protected in Canada. By far the most important of these changes are the amendments to the Patent Act.\(^1\) It will also deal with amendments to the Copyright Act, proposed semiconductor chip protection and industrial design problem areas.

II. PATENTS

Extremely significant changes to Canadian patent laws have been made by Bill C-22.\(^2\) It has improperly, but more popularly, become known as the Drug Patent Bill. Bill C-22 is divided into drug patent legislation, which was the raison d'etre for the Bill, and other things which will radically change the Canadian patent system. These provisions include a change to a first-to-file system; absolute novelty with a grace period in some circumstances; publication of patent applications; a twenty year patent term; deferred examination; a re-examination and an opposition procedure; maintenance fees for patent applications and patents; and a provision for Canada to join the Patent Cooperation Treaty.

On November 19, 1987, more than a year after the first reading, Bill C-22, properly called an “Act to Amend the Patent Act,” finally received royal assent. However, very few of its provisions came into force that day. Essentially the only provisions of importance that came into force on November 19, 1987 involved marking of patented inventions in Canada and the amendment of section 39(1),\(^3\) formerly section 41(1), which denied product protection \textit{per se} to substances which were produced by chemical processes and intended for food or medicine and offered only process-dependent product protection.

A. Marking of Patented Inventions (Sections 6 and 26)

There were no new requirements in Canada for marking of patented

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inventions. The Canadian Patent Act previously required the use of a word such as "patented" followed by the date of the patent.\(^4\) The penalty for failure to comply was a fine or imprisonment in default thereof.\(^5\) Canada did not require marking or other notification as a condition precedent to recovery of damages for past infringement as in the United States, and the law in Canada remains unchanged in this respect.

While no form of marking is now required in Canada, marking may be desirable for its commercial value, i.e., to impress consumers. It may also be desirable to warn and dissuade potential infringers. One remains free to use "patent pending" or words of like import as long as they are true. I recommend that patent marking be maintained in Canada, but suggest that a more appropriate form of marking would be the Canadian patent number rather than its date.

The sections of Bill C-22 to be discussed will come into force on a day or days to be fixed by proclamation. Currently, the government expects that Bill C-22 will not be fully implemented until the summer of 1989, with July 3, 1989 being the target date.

B. First-to-File (Section 8)

It is well known that Canada, the United States and the Philippines are the only countries in the world to have first-to-invent systems, although Canada and other countries look at the United States from a first-to-file point of view because of the requirement that priority of invention be established based only on acts which took place in the United States. Canada will be turning to a first-to-file system, so that in due course Canadian conflicts, which are similar to U.S. interferences, will become a thing of the past. Canada will join the list of countries where the one who gets the patent will be the one who wins the race to the Patent Office.

However, one cannot advise clients to dispense with lab notebooks and the like used in the past to establish priority of invention. First, Bill C-22 provides for conflicts to be declared between a pending application filed under the old first-to-invent system and one filed under the new first-to-file system,\(^6\) and it is not unknown for a Canadian patent application to remain pending for five or more years. Second, notebooks and other records may be required to establish that the person named as inventor in a Canadian patent application is in fact an inventor of the invention. The law in Canada remains that only an inventor or his legal representative is entitled to obtain a Canadian patent. Where derivation becomes an issue, it may be necessary to be able to establish actual inventorship.

\(^4\) Id. § 24.
\(^5\) Id. § 74.
C. Absolute Novelty, Grace Period (Section 8)

In Canada we have had two-year statutory bars, running from the actual filing date of a Canadian patent application, on public use in Canada or in printed publication anywhere in the world. This is to be replaced with absolute novelty, i.e., with the exception to be noted hereinafter, no making available of the invention to the public anywhere in the world before the effective filing date (actual filing date or priority date, if any) of a Canadian patent application on the invention. The exception is a one-year grace period running prior to the actual filing date of the Canadian patent application for disclosure of the invention by the applicant or by a person who obtained knowledge of the invention directly or indirectly from the applicant, and by virtue of which it became available to the public.

Whereas the claiming of priority under the Convention in a Canadian patent application previously had no significance or benefit, under absolute novelty it may be vital. Also, any priority to be claimed must be claimed within six months of filing the Canadian patent application.

While the test for novelty or anticipation clearly runs from the filing date or Convention priority date, there is no mention in Bill C-22 of inventive step or non-obviousness. Canadian courts have set the date of invention as being the critical date when it comes to testing for non-obviousness. If this test remains, Canada will continue to have a two date system for novelty and inventive ingenuity. Furthermore, the date of invention will not be ascertainable from the patent, thus giving rise to all sorts of uncertainties.

Those seeking patent protection in Canada should become more diligent about ensuring that there is no publication of an invention before filing the first patent application on it in a Convention country.

Reliance should not be placed on the grace period unless absolutely necessary. How would you preclude a non-inventor who obtains knowledge of your invention from your publication and fraudulently (because he is not an inventor) files a patent application on it before you do so from obtaining a Canadian patent and precluding you from doing so?

D. Publication of Canadian Patent Applications (Section 2)

Currently, a pending Canadian patent application is kept secret until it matures to patent, just as is the case in the United States. Under section 11 of the Patent Act, if one can identify a foreign patent, one can require the Canadian Patent Office to advise if a corresponding Canadian patent application is pending, but all one gets is a simple yes or no.

Under the new law every Canadian patent application filed and all documents filed in connection with the application will be laid open for

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8 Id. § 10.
public inspection eighteen months after its priority date or, if no priority date is claimed, eighteen months after its actual filing date in Canada. Applications that are withdrawn before expiration of the eighteen month period will not be published. The manner and form of publication is not yet known.

While many foreign countries publish patent applications within eighteen months, neither Canada nor the United States does so. The early publication of Canadian patent applications will provide a North American source, mostly in English, some in French, of technology and the first insight to the many inventions on which patent applications are filed only in Canada or only in Canada and the United States. The possibility of monitoring published Canadian patent applications should be considered in order to obtain advance warning of technology and for general information purposes.

E. Deferred Examination (Section 12)

A request for examination may be made by the applicant within seven years from the date of filing. It can also be made by any other person who pays the required fee and it can be forced upon the applicant by the Commissioner.

The Patent Office is proposing that the present total cost of the filing and final fees will be the same as the total cost of the new filing, examination and final fees. The proposal is that the filing fee will remain the same as it is now with the new final fee to be reduced by an amount equal to the examination fee. For a small entity, which is charged differently in Canada than in the United States, the proposed new fees in Canadian dollars are: filing $150; examination $200; and final $150, totaling $500. For a non-small entity these fees would be doubled.

F. Term and Enforcement of Patent Protection (Sections 16 and 21)

The current term of a Canadian patent is seventeen years from grant or date of issue, just as in the United States. Under the present system, unless there is unauthorized use in Canada of an invention on which a Canadian patent application is pending, or some other commercial reason for obtaining prompt issuance of a patent in Canada, it is generally to the advantage of the applicant to delay issuance of a Canadian patent, since this effectively extends its life.

Under the new scheme of things the life of a Canadian patent will be twenty years from its actual filing date in Canada. An infringer will be liable to the patentee and all persons claiming under the patentee for all damages sustained by the patentee or such person by reason of infringement after grant of the patent. The infringer also will be liable to pay reasonable compensation for any damages arising out of an act which

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9 Id. § 46.
took place after opening a patent application to public inspection and
before the grant of a patent which would have constituted an infringe-
ment of the patent if it had been granted on the day on which the appli-
cation became open to public inspection.

Injunctions restraining further infringement will be available only in
respect of patents, not published applications. Therefore, delaying the
actual grant of a Canadian patent will no longer have any effect on its
effective life, which will be twenty years from filing.

Apparently there will be no prohibition against broadening a claim
between publication and grant. After grant a patent speaks from its date
of publication, so it appears that one whose acts did not infringe any
published claim but did infringe the broadened granted claim would be
liable in respect of such acts that took place between publication and
grant.

\section*{G. Maintenance Fees (Sections 9 and 16)}

Canada is one of the last, if not the last, industrialized country
which does not provide some form of maintenance fees for keeping pat-
extent applications or patents in force. Maintenance fees will be introduced
for both patent applications and patents. The Patent Office is proposing
annual maintenance fees which, for a small entity, start at $50 per year
and end at $200 per year. The total over the 20-year life of an applica-
tion or patent would be $2025. The fees would be doubled for a non-
small entity. In the case of a seventeen year patent the proposed mainte-
nance fees would total $1425 for a small entity and $2850 for a large
entity.

As in other countries, the requirement to pay maintenance fees
should have the effect of clearing out deadwood patents and may stimu-
late innovation by ventures into areas that would not previously have
been explored because of the existence of an adversely held blocking
patent.

\section*{H. Opposition to Patent Grant (Section 11)}

Canada has had no formal opposition procedure under the present
law because pending Canadian patent applications are kept secret until
they mature to patent. However, there has always been an informal op-
position procedure whereby, if one knew, i.e., by virtue of a section 11
search,\footnote{Id. § 11.} or thought that a Canadian patent application on a specific in-
volution was pending, and was aware of relevant prior art, one could
bring that art to the attention of the Patent Office. Section 11 of Bill C-
22 essentially codifies that procedure but limits the prior art to patents
and printed publications, excluding prior uses, for example, and requires
the submitter to explain the pertinency of the prior art.
The "opposer" apparently will not be able to participate in any discourse between the Patent Office and the applicant arising out of the "opposer's" prior art. Given this, coupled with the relatively lenient view that the Patent Office takes with respect to prior art, and the reluctance of the courts to strike down patents based on prior art previously considered by the Patent Office, it may be better tactically to withhold such prior art for advancement in court proceedings where the validity of the patent is capable of being attacked.

I. Re-examination of Patents (Section 18)

This is a new procedure for Canada and, undoubtedly, was stimulated by the re-examination procedure in the United States. A patentee or any other person may request re-examination of a patent upon payment of the required fee, which is proposed to be $1000 for a small entity and double that for a non-small entity. Re-examination is restricted to prior art in the form of patents and printed publications.

A Re-examination Board of not less than three persons, at least two of whom must be Patent Office employees, will decide whether or not there is any merit in the re-examination request. If not, the Board's decision is final and binding. If merit is found, the patentee will be given an opportunity to make submissions on patentability. Following these submissions, there will be a re-examination.

The patentee may propose amended claims or new claims but may not enlarge the scope of the granted claims. A time limit of twelve months for re-examination is set.

The decision of the Re-examination Board will be in the form of a certificate canceling any claim determined to be unpatentable, confirming any claim determined to be patentable or incorporating into the patent any proposed or amended new claim determined to be patentable. Where some, but not all, claims of a patent are canceled by the re-examination procedure, the patent will be deemed to have been issued in corrected form from its date of grant. Where all claims are canceled, the patent will be deemed never to have been issued. Where a claim is amended or a new claim is incorporated into a re-examined patent, the amended or new claim will be effective from the date of the certificate of the re-examination board.

It does not appear that a person other than a patentee requesting re-examination will be able to participate in the re-examination procedure other than at the time of filing the request for re-examination.

If the Re-examination Board decides that a request for re-examination does not raise a substantial new question affecting the patentability of a claim, its decision is final for all purposes and is not subject to appeal or to review by any court. Consequently, the person requesting re-examination may be stopped from contesting validity on the basis raised in the
request for re-examination in subsequent court proceedings where validity is being attacked.

A decision of the Re-examination board resulting in a certificate can be appealed by the patentee to the Federal Court of Canada.

If the view of validity taken by the Re-examination Board is similar to that of the patent office, the Re-examination Board will probably be a useful forum for re-examination requests by patentees. New art will be brought to the attention of the Patent Office before it can surface in court, and a favorable ruling in the face of that art may be obtained. Because of the prima facie doctrine of validity, that ruling is unlikely to be upset.

Parties wishing to attack a patent are more likely to do so in court where all validity issues, not merely validity based on prior patents or printed publications, can be heard, and where the attacking party actually will be involved in the hearing and has the potential to appeal any adverse judgment.

A point of interest and significance with respect to both opposition and re-examination is the restriction to patents and printed publications. This again raises the whole discussion of what is meant by a printed publication and which is at variance with section 8 of Bill C-22. Section 8 of Bill C-22, the absolute novelty provisions, simply refers to the invention having become available to the public. For example, if a published Canadian patent application is not printed, and it is very unlikely that it would be, then it appears that it could not be used in opposition or re-examination procedures, yet it would clearly qualify under Section 8 as something which would make the invention available to the public.

J. Patent Cooperation Treaty (Section 3)

The only significant countries who are not members of Patent Cooperation Treaty ("PCT") are Canada, Mexico, South Africa, Spain and many South American countries. Canada will implement the PCT, which I am sure will be well received in the United States. The patent profession in Canada seems to be in favor of implementing both Chapter I and Chapter II, but I would not be surprised to see this implemented in two steps spaced several years apart.

K. Internal Priority (Section 8)

One has never been able to file a patent application in Canada claiming the filing date of an earlier filed Canadian application, except in the case of a divisional. There has been no procedure paralleling a U.S. "continuation in part."

A new procedure is being introduced whereby a second Canadian patent application for the same invention as a first Canadian patent application can be filed within twelve months of the filing of the first application and will be entitled to the filing date of the first application.
However, the first application must not have been withdrawn, abandoned or refused, must not have been opened to public inspection and must not have served as a basis for claiming a right or priority in any country. The preceding restrictions, coupled with the fact that the second application must be for the same invention as the first, make it clear that Canada will still not have a continuation in part procedure and will make the new procedure of limited usefulness.

The new procedure seems to recognize that under the first-to-file system “fast and dirty” patent applications will be filed in Canada, therefore, the new procedure gives the applicant a year to perfect his act.

L. Products Intended for Food or Medicine (Section 14)

Under the old provisions a product produced by a chemical process and intended for use as a food or medicine could not be claimed per se, but only in process-dependent form. As of November 19, 1987 this was changed so that products intended for use as foods or medicines could be claimed per se, as long as they are not “prepared or produced by, or significantly derived from, microbiological processes.” If they are, they can be claimed only in process-dependent form. As of November 19, 1991, the microbiological process restriction will self-destruct, so after that date all foods and medicines will be entitled to per se protection.

M. Compulsory License Provisions Relating to Medicines (Section 15)

Previously it was possible for anyone, at any time during the life of a Canadian patent, to apply for and obtain a license under any patent relating to a food or medicine. A royalty of 4% of the net selling price of the medicine in final dosage form became the standard royalty to be paid.

New provisions with respect to the compulsory licensing of inventions and relating to medicines came into force on December 7, 1987 and are retroactive to June 27, 1986. The new provisions are complex, and the language used in the legislation is tortuous. Basically, compulsory licensing of medicines will continue to exist in Canada, quite likely at the same royalty rate as presently exists, but the time period before a compulsory license can come into effect increased from seven years to ten years depending on certain circumstances. In the case of drug inventions made in Canada, it will be possible for the patentee, by manufacturing in Canada and completely satisfying the market for the medicine in Canada, to prevent any compulsory license from being granted. In return for these concessions, the drug companies have agreed to substantially increase their funding of research in Canada.

A Patented Medicines Prices Review Board has been set up to monitor the cost of patented drugs to the public. The Board has the power to

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11 Id. § 39(1).
12 Id. § 39.
order a patentee to decrease its selling price or may revoke the prohibition against importation or manufacture in Canada, not only for the patent under consideration, but also for any other patent of the patentee relating to another inventions.

N. General Transitional Provisions (Sections 27 to 29)

Applications for patents filed before the general provisions of the Act come into force, which is now expected to be in mid-1989, are to be dealt with and disposed of in accordance with the existing Patent Act, while applications for patents filed after that date are to be dealt with under the amended Patent Act.

Any matter arising after the general provisions of the Act come into force and relating to any patent issued before the Act came into force is to be dealt with and disposed of in accordance with the existing Patent Act, while patents granted on applications filed after that are to be dealt with under the amended Act. Exceptions to this are the new pharmaceutical compulsory license provisions which apply to all patents in force irrespective of their issue date.

III. INDUSTRIAL DESIGNS

In Canada ornamental designs are capable of being protected under an Act known as the Industrial Design Act. This is a separate Act from the Patent Act and, unfortunately, is a remarkably inept piece of legislation. In spite of repeated criticism by Canadian intellectual property professionals, industrial designers, their employers, contractors and the judiciary, the Industrial Design Act, which was defective from the start, has not been revised to any appreciable extent for over one hundred years.

Three particularly deplorable sections of the Act which provide pitfalls for the unwary deal with proprietorship, time limits to secure registration and marking.

In order to be valid, a Canadian industrial design registration must have been filed in the name of the proprietor of the design. If the design application is filed in the name of an assignee who does not qualify as the proprietor, for example, because the assignee obtained title to the design after its creation, as opposed to by contract before its creation, the design registration will be invalid. It can, however, be validly assigned by the proprietor after registration.

14 Id. § 8 and 12.
15 Id. § 14.
16 Id.
17 Id. § 8 and 12.
To be valid a Canadian industrial design registration must be registered, which includes more than merely filing an application, within one year of publication of the design in Canada. This often requires the cooperation of the staff of the Industrial Design Office who, recognizing the inadequacy of the Act in this respect and in the present day commercial environment, is very cooperative in awkward situations. I am personally aware of a case in which the Industrial Design Office cooperated in passing an application to registration within two weeks of its filing in order to meet the one year deadline, and I would not be at all surprised if applications had been processed through the office even more promptly.

Under the Industrial Design Act the marking of an article as protected under the Act is a condition precedent to maintenance of validity. The form of marking is the name of the proprietor, the letters "Rd." and the year of registration of the design. That failure to mark leads to invalidity has been confirmed by the courts.

IV. PROTECTION OF SEMICONDUCTOR CHIPS IN CANADA

The first legislation anywhere in the world for protecting semiconductor chips was the U.S. Semiconductor Chip Protection Act of 1984 ("SCPA"). It has stimulated legislation and other steps toward legislation in this area in other countries by providing that nationals of countries other than the United States would be eligible to register semiconductors chips under U.S. legislation as long as the other countries were taking positive steps towards enacting similar legislation under which U.S. nationals would be protected. Interim protection under the SCPA has been extended to Canada on this basis.

In April 1987, the Canadian government released a discussion paper containing seventeen specific recommendations for legislation with respect to protecting semiconductor chips in Canada. The actual wording of the proposed legislation has not been publicly released yet, but it implements the recommendations for the most part.

The SCPA uses the terminology "mask-work," which is a reference to the original technique for creating semiconductor chips. Other techniques have subsequently been developed, as a result of which the "mask-work" terminology is somewhat archaic. In Canada the proposal is to protect a "topography," i.e., the three-dimensional pattern of active and passive circuit elements and interconnections embodied in a semiconductor integrated circuit.

In order to be protected under the proposed Act a topography would have to be the result of intellectual effort, not a copy or substantial copy of a previous topography and, in implementation of Recommenda-

20 Id. § 14(1).
21 Id. § 14.
22 Id.
tion 4, "The standard of originality demanded of a topography should be somewhat higher than the standard for ordinary copyright, but appreciably lower than the degree of novelty under the Patent Act," not merely a commonplace arrangement at the earlier of its date of first commercial use or registration under the Act. Also, the topography could not be the only topography capable of reasonably efficient implementation of the function it is intended to perform. Contrary to Recommendation 10, which proposed a voluntary system of topography registration in Canada, the proposed legislation requires that a topography be registered under the Act in order to be protected. Finally, implementation of Recommendation 17 suggests that the Canadian chip-protection law should be able to be extended to nationals and residents of states offering comparable protection to Canadian topographies. Furthermore, the proposed legislation requires that in order for a topography to be protected under the Act, the first owner, at the earlier of the date of first commercial use of the topography or the date of applying for protection under the Act, must have been a citizen or permanent resident of Canada, or a company domiciled in Canada; a citizen or permanent resident of, or a company adhered to by Canada, which provides standards of protection for topographies and which country actually protects topographies in accordance with such convention or treaty; or a citizen or permanent resident of, or a company domiciled in a country which Canada recognizes as giving reciprocal rights to Canadian citizens as those granted under the Act.

The proposed legislation provides that an application for protection of a topography must be made either before the first commercial use of the topography or within two years after the first commercial use thereof. The application must be made by the first owner or any unconditional assignee or exclusive licensee of the Canadian rights, the first owner being the creator of the topography; the creator's employer where the creator designed the topography pursuant to his employment; or the contractual owner of the topography.

Subject to a number of exceptions, the proposed legislation would give the owner of a protected topography, for the duration of the topography registration, the exclusive right to reproduce, see, rent, lease, offer for sale, distribute or import any copy or substantial copy of the protected topography or any integrated circuit product, whether alone or as part of another article, which comprises a copy or substantial copy of such topography.

One exception, which is needed to encourage the spread and development of chip technology in Canada, and in accordance with Recommendation 5, is to allow unauthorized copying of a protected topography for research and teaching.

Another exception, consistent with Recommendation 6, is to permit reverse engineering, provided that the resultant topography is not merely a copy or a substantial copy of the protected topography.

A further exception contemplated in Recommendation 13 has to do
with innocent infringement. Thus, in a situation where a defendant is not the manufacturer of an integrated circuit and is found to be infringing but did not know or have reason to believe that the integrated circuit was an infringement, the defendant will not be liable for damages and will be able to dispose of inventory by paying a reasonable royalty.

A very important exception flows from Recommendation 14 which introduces the doctrine of exhaustion, i.e., that the topography owner's exclusive marketing rights should terminate on first authorized sale, this being reinforced by Recommendation 15 which prohibits the topography owner from receiving a statutory right of market segregation by country.

A further exception relates to a protected topography temporarily or accidentally brought into Canada in a land vehicle, vessel, aircraft or spacecraft registered in a country other than Canada and used for a purpose which is necessary or ancillary to that vehicle, vessel or craft.

Recommendation 7 is that a chip topography should be protected for a ten-year term beginning with the first commercial exploitation anywhere in the world of a chip embodying the protected topography or of an industrial article incorporating a chip embodying the protected topography. This term is much shorter than the normal statutory term of copyright protection which is usually the life of the author plus fifty years or the seventeen-year term of a patent, but may be adequate in the circumstances bearing in mind how rapidly technology advances in the semiconductor chip field.

The proposed legislation deviates somewhat from Recommendation 7 and provides for a topography registration term of ten years from date of application.

Because of the short period of protection and the reverse engineering exception, Recommendation 9 provides that there should not be any compulsory licensing provisions in the proposed legislation.

Recommendation 11 provides a voluntary system of notice by marking. This has been implemented in the proposed legislation. The selected symbol for those who wish to so mark is the letter "T" in a circle or the symbol *T*. The name of the owner of the topography and the date of application for registration also are to be included. While marking is voluntary, some benefits do flow from it.

Recommendation 16 provides that a court should be able to order Revenue Canada Customs to stop the entry of infringing products at the border, this has been implemented in the proposed legislation.

The proposed legislation contemplates the granting of interim or interlocutory injunctions against infringement of a protected topography. It contemplates the awarding of damages, an accounting of profits and punitive and exemplary damages with a three year limitation period.

V. COPYRIGHT

Important changes have been made to the Copyright Act by virtue
of Bill C-60.\textsuperscript{24}

First, the law in Canada with respect to infringement of copyright in useful articles has been clarified. Thus, it has been provided that the following acts do not constitute an infringement of either the copyright or moral rights in a work:

1) Applying to a useful article features that are dictated solely by a utilitarian function of an article;
2) By reference solely to a useful article, making a drawing or other reproduction in any material form of any features of the article that are dictated solely by a utilitarian function of the article; and
3) Using any method or principle of manufacture or construction.\textsuperscript{25}

The provisions noted above are retroactive and make it clear that the copying of a purely utilitarian article from another such article, or the making of it from drawings of the article, shall not constitute infringement of copyright.

On the other hand, it is recognized that utilitarian articles may have a "design" constituent, design being defined as "features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye." Bill C-60\textsuperscript{26} provides that when copyright subsists in such a design applied to a useful article and, by or under the authority of the copyright owner, the article is reproduced in a quantity of more than fifty or, where the article is a plate, engraving or cast, the article is used for producing more than fifty useful articles, then anyone is free to reproduce the design of the article without infringement.

Exceptions to the foregoing are prescribed\textsuperscript{27} as follows:

a) A graphic or photographic representation that is applied to the face of an article;
b) A trade mark or a representation thereof or a label;
c) Material that has a woven or knitted pattern or that is suitable for piece goods or surface coverings or for making wearing apparel;
d) An architectural work of art that is a building or a model of a building;
e) A representation of a real or fictitious being, event or place that is applied to an article as a feature of shape, configuration, pattern or ornament; (Mickey Mouse is alive and well and living in Canada);
f) Articles that are sold as a set, unless more than fifty sets are made; or
g) Such other work or article as may be prescribed by regulation of the Governor in Council.

While judgments in a series of cases in Canada have held that copy-

\textsuperscript{24} An Act to Amend the Copyright Act, 35-36-37 Elizabeth II, ch. 15, (1988).
\textsuperscript{25} Id. § 11; see also id. § 46.1(1).
\textsuperscript{26} See id. § 46(2).
\textsuperscript{27} See id. § 46(3).
right subsists in computer programs, Bill C-60 clearly extends copyright protection to computer programs, these being defined as "a set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result." Bill C-60 amends the definition of "literary work" in the Copyright Act to include computer programs. There are provisions enabling a person, without infringement, to make a copy of a computer program for back-up purposes or where it is necessary to make the program compatible with a particular computer.

VI. CONCLUSION

For whatever reasons, after many years of relative inactivity in intellectual property legislation, Canada has, in the past few years, experienced important and substantial changes in such legislation, and it appears that the Canadian government is on the track to continue activity in this area. It is likely that the Canada-United States Free Trade Agreement and intellectual property negotiations in the GATT will stimulate further intellectual property legislation in Canada, in the future, perhaps giving interested parties additional opportunity for intellectual property reform.

28 Id. § 1(3).
29 Id. § 1(2).
30 Id. § 5.