



Canadian Patent Fees Are Increasing in 2024: **Consider Paying Fees in Advance**

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On January 1, 2024, standard fees that are payable to the Canadian Intellectual Property Office (“**CIPO**”) for patent applications and patents will increase by at least 25 percent.¹ To save costs, applicants and patentees may consider taking certain steps and paying certain types of fees in the 2023 calendar year before the fee increases take effect.

Also on January 1, 2024, the definition of small entity status will expand to include entities that employ up to 99 employees (subject to certain conditions), which is an increase from the current limit of 50 employees. This revised definition may allow more applicants and patentees to pay fees at the small entity rate starting on January 1, 2024.

Fee Increases

The below table summarizes the fee increases in 2024 for commonly paid fees at their standard rates. Most of these fee increases are about 32 percent of their current amounts.

Fee	2023	2024
Application filing or national phase entry	\$421.02	\$555.00
Examination or request for continued examination (RCE)	\$816.00	\$1,111.00
Excess claim fee for each claim over 20	\$100.00	\$110.00
Advanced examination	\$526.29	\$694.00
Final fee	\$306.00	\$416.00
Reinstatement	\$210.51	\$277.00
Maintenance fees: 2 nd to 4 th anniversary	\$100.00	\$125.00
Maintenance fees: 5 th to 9 th anniversary	\$210.41	\$277.00
Maintenance fees: 10 th to 14 th anniversary	\$263.14	\$347.00
Maintenance fees: 15 th to 19 th anniversary	\$473.65	\$624.00
Recordal or registration of an assignment, transfer or name change	\$100.00	\$125.00

For applications and patents for which a small entity declaration has been filed with CIPO (see discussion below for more information), most of the 2023 fees above are discounted by 50 percent or thereabouts. In 2024, these small entity fees will also increase, but only by about 10 percent or less from their current amounts. Accordingly, the discount of small entity fees relative to standard fees will become more significant in 2024.

¹ See: *Rules Amending the Patent Rules*, SOR/2023-113, online <<https://www.gazette.gc.ca/rp-pr/p2/2023/2023-06-21/html/sor-dors113-eng.html>>.



Advance Payments to Avoid Certain Fee Increases

As a cost-saving measure, applicants and patentees may consider taking certain steps and paying certain types of fees in 2023, before the fee increases take effect in 2024. The following are examples of situations where doing so may save costs.

- **National phase entries:** Patent Cooperation Treaty (“PCT”) applications must be entered into the national phase in Canada within 30 months of the priority date, with payment of at least the basic national fee. Applicants may consider entering pending PCT applications into the Canadian national phase in 2023.
- **Divisional applications:** Divisional applications must be filed before the grant of the parent application, with payment of the application filing fee and any maintenance fees due from the second anniversary of the filing date of the parent application. Examination fees may also need to be paid within three months of filing the divisional application. For pending applications that have received a restriction requirement from CIPO, applicants may consider filing divisional applications for unelected claims in 2023.
- **Requests for examination:** Examination of applications must be requested and the examination fee must be paid within five years of the filing date for applications having a filing date before October 30, 2019, and within four years of the filing date for applications having a filing date on or after October 30, 2019. Applicants may consider requesting examination of unexamined applications in 2023.
- **Maintenance fees:** Maintenance fees for applications and patents must be paid every year by the anniversary of the filing date of the application, starting with the second anniversary. Applicants and patentees may consider paying maintenance fees in 2023 that are due in 2024 and future years.

Broadened Definition of Small Entity Status

The *Patent Rules* allow an applicant or patentee to pay fees at the discounted small entity rate if the applicant or patentee has filed a small entity declaration with CIPO stating that the applicant or patentee believes that the requirements for small entity status are met. The *Patent Rules* currently define a small entity as an applicant that has 50 employees or less, or is a university, other than:

- an entity that is controlled directly or indirectly by an entity, other than a university, that has more than 50 employees, or
- an entity that has transferred or licensed, or has an obligation other than a contingent obligation to transfer or license, any right or interest in a claimed invention to an entity, other than a university, that has more than 50 employees.



Small entity status is determined with regard to the circumstances of the applicant on the filing date for a directly filed application, or the national phase entry date in Canada for a PCT application. Small entity status is determined in respect of the original application for a divisional application. The Canadian courts have clarified that entity status is determined once on the relevant date and is unaffected by subsequent changes to the circumstances of the applicant or the patentee.²

On January 1, 2024, the small entity status definition will change by increasing the maximum employee threshold from 50 employees to 99 employees. Applicants and patentees that do not fall within the current small entity status definition might fall within the revised small entity status definition and be able to pay small entity fees starting in 2024. For example, an applicant that directly filed an application before January 1, 2024, and had between 51 to 99 employees at the filing date may fall within the revised small entity status definition if it meets all other requirements of the definition. Such an applicant can file a small entity status declaration in 2024 and thereafter pay fees at the small entity rate. It will not be possible, however, to claim a partial refund of any fee paid at the standard rate before filing the small entity declaration.

Applicants and patentees may wish to assess their eligibility to declare small entity status under the revised small entity status definition. If appropriate, they may wish to wait until 2024 to declare small entity status and pay fees at the small entity rate to save costs.

Disclaimer: This article offers general comments on legal developments of concern to business organizations and individuals and is not intended to provide legal advice. Readers should seek professional legal advice on the particular issues that concern them.

² See: *Dutch Industries Ltd. V. Canada (Commissioner of Patents)* (C.A.), 2003 FCA 121; and CIPO's Manual of Patent Office Practice (MOPOP), c. 10.02.01.

Contacts



Fiona Brown

Partner

T 416.865.3078

E fbrown@airdberlis.com

Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Expert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



Peter S. L. Wong

Patent Agent &
Lawyer | Partner

Peter is an intellectual property lawyer and a registered patent agent with the Canadian Intellectual Property Office and the United States Trademark and Patent Office. He serves technology-based businesses and inventors in a variety of technical fields, such as manufacturing, oil and gas (including oil sands) extraction and processing, construction, computing, agriculture, advanced materials and medical devices. Peter provides clients with approachable and exceptional service and meticulous work product. His experience in patent prosecution is complemented by his previous experience as a civil litigator and a strong academic background in engineering.

Peter's practice focuses on drafting and prosecution of applications for utility patents and industrial designs before the Canadian Intellectual Property Office, the United States Patent and Trademark Office and the World Intellectual Property Organization, and assisting clients with management of patent and industrial design portfolios worldwide. He advises on patentability, patent validity, freedom-to-operate and patent infringement issues. Peter also drafts and reviews IP-related aspects of agreements (e.g., non-disclosure, employment, consulting, joint venture, purchase, license and assignment), and performs due diligence on IP assets in support of transactions.



Pia-Lauren Reece
Patent Agent |
Associate

Pia-Lauren's forward-thinking approach and scientific credentials allow her to understand the technological underpinnings of an invention as well as how the technology may evolve in the future. She looks at a product beyond its face value when drafting and developing patent applications to ensure its longevity and success in the marketplace.

Pia-Lauren is a registered patent agent in Canada and the United States with experience in the areas of patent application filing, drafting, prosecution and opinion work. She has a technical background in specialized areas of life sciences and medicine, including cellular biology, biochemistry, diagnostics, therapeutics and immunology.

She received a doctorate in immunology from McMaster University and went on to investigate early life biomarkers of allergic disease as a postdoctoral fellow at the university. Her work has been published in peer-reviewed journals and has been presented at conferences held in Canada and abroad.